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December 18, 2018

Leonard Tao,
Director and Chief FOIA Officer
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Subject: Request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

Dear Mr. Tao:

I request records under the Freedom of Information Act, which are described below. Further, as more fully set forth below, I also request a fee waiver as I have no commercial interest in the described records and it is in the public interest for the Federal Energy Regulatory Commission (FERC) to disclose these records to the public.

Description of records sought:

I seek the "NERC Full Notice of Penalty" version which includes the name of the registered entity (and which has been previously withheld from the public) for the following docket numbers:

Date	FERC Docket Number	Region	Registered Entity	Entities
1/30/2014	NP14-29-000	WECC	Unidentified Registered Entity	1
1/30/2014	NP14-30-000	RFC	Unidentified Registered Entity	1
2/27/2014	NP14-32-000	SPP RE	Unidentified Registered Entity	1
3/31/2014	NP14-37-000	WECC	Unidentified Registered Entity	1
4/30/2014	NP14-39-000	WECC	Unidentified Registered Entity	1
5/29/2014	NP14-41-000	WECC	Unidentified Registered Entity	1
5/29/2014	NP14-42-000	SERC	Unidentified Registered Entity	1
7/31/2014	NP14-45-000	WECC	Unidentified Registered Entity	1
7/31/2014	NP14-46-000	RFC	Unidentified Registered Entities	7
8/27/2014	NP14-48-000	RFC/NPCC	Unidentified Registered Entities	3
10/30/2014	NP15-5-000	SPP	Unidentified Registered Entity	1
10/30/2014	NP15-6-000	TRE	Unidentified Registered Entity	1
11/25/2014	NP15-10-000	WECC	Unidentified Registered Entity	1
11/25/2014	NP15-11-000	RFC	Unidentified Registered Entity	1
11/25/2014	NP15-9-000	MRO	Unidentified Registered Entity	1
12/30/2014	NP15-13-000	RFC	Unidentified Registered Entity	1
12/30/2014	NP15-15-000	SERC	Unidentified Registered Entity	1
12/30/2014	NP15-17-000	WECC	Unidentified Registered Entity	1

Date	FERC Docket Number	Region	Registered Entity	Entities
2/26/2015	NP15-20-000	SERC	Unidentified Registered Entity	1
3/31/2015	NP15-23-000	WECC	Unidentified Registered Entities	3
4/30/2015	NP15-24-000	RFC	Unidentified Registered Entity	1
4/30/2015	NP15-26-000	RFC	Unidentified Registered Entity	1
8/31/2015	NP15-33-000	RFC	Unidentified Registered Entity	1
10/29/2015	NP16-2-000	WECC	Unidentified Registered Entity	1
12/1/2015	NP16-4-000	WECC	Unidentified Registered Entity	1
12/1/2015	NP16-5-000	WECC	Unidentified Registered Entity	1
12/30/2015	NP16-7-000	SPP	Unidentified Registered Entity	1
1/28/2016	NP16-10-000	RF	Unidentified Registered Entity	1
1/28/2016	NP16-9-000	WECC	Unidentified Registered Entity	1
2/29/2016	NP16-12-000	RF	Unidentified Registered Entity	1
4/28/2016	NP16-18-000	RF / SERC	Unidentified Registered Entities	5
5/31/2016	NP16-20-000	FRCC	Unidentified Registered Entity	1
7/28/2016	NP16-23-000	SERC	Unidentified Registered Entity	1
7/28/2016	NP16-24-000	SERC	Unidentified Registered Entity	1
10/31/2016	NP17-2-000	WECC	Unidentified Registered Entity	1
10/31/2016	NP17-3-000	WECC	Unidentified Registered Entity	1
11/30/2016	NP17-8-000	MRO	Unidentified Registered Entity	1
12/29/2016	NP17-10-000	WECC	Unidentified Registered Entity	1
12/29/2016	NP17-11-000	WECC	Unidentified Registered Entity	1
12/29/2016	NP17-12-000	WECC /SERC	Unidentified Registered Entities	4
12/29/2016	NP17-13-000	WECC	Unidentified Registered Entity	1
4/27/2017	NP17-21-000	WECC	Unidentified Registered Entity	1
7/31/2017	NP17-25-000	WECC	Unidentified Registered Entity	1
7/31/2017	NP17-26-000	SPP RE	Unidentified Registered Entity	1
9/28/2017	NP17-31-000	SERC	Unidentified Registered Entity	1
10/31/2017	NP18-2-000	WECC	Unidentified Registered Entities	2
2/28/2018	NP18-7-000	WECC	Unidentified Registered Entity	1
5/31/2018	NP18-14-000	RF	Unidentified Registered Entity	1
5/31/2018	NP18-15-000	WECC	Unidentified Registered Entity	1
7/31/2018	NP18-21-000	WECC	Unidentified Registered Entity	1
8/30/2018	NP18-22-000	WECC	Unidentified Registered Entity	1
9/27/2018	NP18-26-000	NPCC	Unidentified Registered Entity	1

In the instances where there was a "Spreadsheet NOP" I request a copy of the spreadsheet that lists the name(s) of the entity subject to the regulatory action. There is a total of 52 docket numbers covered under this request, with a total of 70 "Unidentified Registered Entities."

The records sought are not Critical Energy Infrastructure Information (CEII) or otherwise classified to protect national security:

I note that FERC Order No. 833 holds that the Commission's practice is that information that "simply give[s] the general location of the critical infrastructure" or simply provides the name of the facility is not Critical Energy

Infrastructure Information (CEII).¹ I am not seeking any CEII. I simply ask for disclosure of the identities of the “Unidentified Registered Entities” in the above dockets.

There is no national security reason or FOIA exemption that should prevent disclosure of the identity of this violator of reliability standards to the public, because the NERC Notice of Penalty claims that the cybersecurity vulnerabilities have been remedied.

Mere disclosure of the identity of the violating entity, without disclosure of the details of any remedied cybersecurity violations, will not provide adversaries information of any value but instead will likely reduce future violations. Disclosure of the identity of violators will prompt other utilities to be more diligent in order to avoid adverse publicity. The possibility of public shaming is a key component of the mandatory system of electric reliability standards established by Congress under Section 215 of the Federal Power Act and further codified in the Code of Federal Regulations. For example, when a utility has caused a blackout, FERC has had no issue in identifying the offending utilities and the amount of the fines. Would it not be better to identify reliability standard violators and therefore avoid blackouts?

I lastly note that the public has already been forced to wait years for this information in some instances, allowing electric utilities to hide behavior that causes profound risk to the public interest.

Under FERC’s regulations, the names of the entities must be disclosed:

18 CFR § 39.7 (b)(4) provides that: “Each violation or alleged violation shall be treated as nonpublic until the matter is filed with the Commission as a notice of penalty or resolved by an admission that the user, owner or operator of the Bulk-Power System violated a Reliability Standard or by a settlement or other negotiated disposition.” [Emphasis added.]

Further, 18 CFR § 39.7(d)(1) provides that a notice of penalty by the Electric Reliability Organization shall consist of, *inter alia*: “The name of the entity on whom the penalty is imposed.”

The regulations are very clear that the name of the entity on whom the penalty is imposed is to be disclosed. Yet, somehow this is not the practice at NERC and the records I am requesting have had the names of the registered entities hidden from the public.

The records sought would not reveal trade secrets and commercial or financial information obtained from a person and privileged or confidential:

I note that it has been practice for FERC and NERC to disclose the identities of some entities who have been subject to regulatory fines by NERC. Therefore, those entities violating reliability standards have not been considered privileged or confidential information, solely on the basis of being a violator.

I also note that it is inconsistent with a well-functioning democracy for monetary penalties to be assessed against regulated entities whose identities are then held as secrets. I urge the Commission to reconsider the implications of allowing NERC, the FERC-designated Electric Reliability Organization (ERO), to have delegated authority to assess fines for wrongdoing and then to keep the identities of wrongdoers from public view. I know of no other federal regulator that allows this odious practice.

¹ Order No. 833 at pg. 17. Also see 18 C.F.R. §388.113(c)(1)(iv).

Request for Waiver of Fees:

I am a private citizen with expertise in emergency preparedness and critical infrastructure protection. I maintain a blog where I intend to disseminate this information². I accept no advertising on my blog and derive no revenue from writing or posting my blog articles.

As set forth fully below, I am entitled to a waiver of fees as I meet all the requirements of 18 C.F.R. §388.109(c).

Requirement: In accordance with 18 C.F.R. §388.109(c)(1), “(1) Any fee described in this section may be reduced or waived if the requester demonstrates that disclosure of the information sought is: (i) In the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (ii) Not primarily in the commercial interest of the requester.”

Answer: Disclosure of this information will inform the public as to the actions the government and the designated ERO have taken to insure the security of the bulk power system. There has been a great deal of media attention and government notices regarding recent cyberattacks and cybersecurity breaches to the electric grid.³ Disclosure of the requested information is critical to the public’s understanding of how FERC and the ERO holds regulated entities accountable to compliance with regulatory standards for cybersecurity.

I have no commercial interest in these records and will use these records in research and information dissemination to the public.

Requirement: In accordance with 18 C.F.R. §388.109(c)(2) “The Commission will consider the following criteria to determine the public interest standard:”

Answer: I will answer each criterion in turn.

Criterion: (i) “Whether the subject of the requested records concerns the operations or activities of the government”

Answer: The protection of the critical infrastructure, including the bulk power system, is a clear function of the federal government.⁴ The regulation of the critical infrastructures by the federal government and the transparency of the process – including the identities of entities that violate reliability standards– concerns the operations or activities of the government.

² <https://michaelmabee.info/category/mikes-blog/> (accessed April 13, 2018).

³ See for example: US-CERT Alert (TA18-074A) <https://www.us-cert.gov/ncas/alerts/TA18-074A> (accessed March 15, 2018); Gizmodo: “FBI and DHS Warn That Russia Has Been Poking at Our Energy Grid.” <https://apple.news/AHv5RwYqbSf-El-yla355Jw> (accessed March 15, 2018); Washington Free Beacon: “Russia Implicated in Ongoing Hack on U.S. Grid.” <https://apple.news/AGs6ieh6wSP-1tQkUFttREA> (accessed March 15, 2018); Slate: “What Does It Mean to Hack an Electrical Grid?” <https://apple.news/Au5gy7bTITDSovpvzg5j79w>

⁴ Executive Order 13800 “Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure.” May 11, 2017. <https://www.gpo.gov/fdsys/pkg/FR-2017-05-16/pdf/2017-10004.pdf> (accessed March 24, 2018); Presidential Policy Directive 21 (PPD-21) – Critical Infrastructure Security and Resilience. February 12, 2013. <https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil> (accessed March 24, 2018).

Criterion: (ii) "Whether the disclosure is likely to contribute to an understanding of government operations or activities"

Answer: According to NERC, "These violations posed a serious or substantial risk to the reliability of the bulk power system (BPS)." The entity in question risked the reliable operation of the bulk power system and therefore the public has a right to examine this incident and the behavior and actions of the violating entity.

Criterion: (iii) "Whether disclosure of the requested information will contribute to public understanding"

Answer: As previously noted, there has been a great deal of public attention, press articles and increased awareness to the threat of cyberattacks against the bulk power system. The identity of entities that place the public at risk by violating cybersecurity standards is critical to the public understanding of the effectiveness of existing standards.

Criterion: (iv) "Whether the disclosure is likely to contribute significantly to public understanding of government operations or facilities."

Answer: Under Section 215 of the Federal Power Act, regulation of the bulk power system is clearly a government operation. The public needs to understand how reliability standards are being enforced.

Requirement: In accordance with 18 C.F.R. §388.109(c)(3) "The Commission will consider the following criteria to determine the commercial interest of the requester:"

Answer: I will answer each criterion in turn.

Criterion: (i) Whether the requester has a commercial interest that would be furthered by the requested disclosure.

Answer: No. The requester a private citizen and has no commercial interest in the information.

And, if so: criterion: (ii) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Answer: Not applicable since the requester has no commercial interest in the information.

The records may be provided to me electronically at this email address: CivilDefenseBook@gmail.com.

Sincerely,



Michael Mabee