

Michael Mabee

(516) 808-0883

CivilDefenseBook@gmail.com

August 3, 2019

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.<sup>1</sup> 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 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
1/25/2019	NP19-4-000	unk	Unidentified Registered Entity	1
2/28/2019	NP19-5-000	FRCC/SPP	Unidentified Registered Entities	unk
3/28/2019	NP19-6-000	WECC	Unidentified Registered Entities	unk
4/30/2019	NP19-7-000	WECC	Unidentified Registered Entity	1
4/30/2019	NP19-9-000	FRCC	Unidentified Registered Entity	1
5/30/2019	NP19-10-000	unk	Unidentified Registered Entity	1
5/30/2019	NP19-11-000	unk	Unidentified Registered Entity	1
6/26/2019	NP19-14-000	SERC	Unidentified Registered Entity	1
6/27/2019	NP19-12-000	NPCC/WECC	Unidentified Registered Entities	unk
7/31/2019	NP19-15-000	NPCC/WECC	Unidentified Registered Entities	unk

In the instances where there was a "Spreadsheet NOP" or a "FFT" spreadsheet I request a copy of the spreadsheet that lists the name(s) of the entity subject to the regulatory action as well as the "Notice of Penalty." There is a total of 10 docket numbers covered under this request, with an unknown total of "Unidentified Registered Entities."

---

<sup>1</sup> This is a new request. I submitted a previous requests for a different sets of records on December 18, 2018 (FOIA-2019-0019) and on January 12, 2019 (FOIA 2019-0030).

**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).<sup>2</sup> 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 allowing electric utilities to hide behavior that causes such a profound risk is contrary to the public interest and provides no incentive for the regulated entities to change their behavior.

**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.

---

<sup>2</sup> Order No. 833 at pg. 17. Also see 18 C.F.R. §388.113(c)(1)(iv).

**According to NERC, the majority of the violations have already been mitigated.**

Appendix 1 (attached) is the relevant entries from NERC's website<sup>3</sup> showing that all the requested dockets have already passed the "Mitigation Completion Date" with one exception. That exception is NP19-4-000 which the press has already outed as Duke Energy Corp.<sup>4</sup> Therefore, all the names of these violators should be released to the public.

**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 information<sup>5</sup>. 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 and hearings regarding recent cyberattacks and cybersecurity breaches to the electric grid.<sup>6</sup> 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.

---

<sup>3</sup> [https://www.nerc.com/pa/comp/CE/Enforcement%20Actions%20DL/Searchable Enforcement Page 07312019.xlsx](https://www.nerc.com/pa/comp/CE/Enforcement%20Actions%20DL/Searchable%20Enforcement%20Page%2007312019.xlsx) (accessed August 3, 2019).

<sup>4</sup> Sobczak, Blake and Behr, Peter. "Duke agreed to pay record fine for lax security — sources" E&E News, February 1, 2019. <https://www.eenews.net/energywire/2019/02/01/stories/1060119265?fbclid> (accessed August 3, 2019).

<sup>5</sup> <https://michaelmabee.info> (accessed April 13, 2018).

<sup>6</sup> 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-EI-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> Senate Hearing: "Hearing to Consider the Status and Outlook for Cybersecurity Efforts in the Energy Industry." February 14, 2019. <https://michaelmabee.info/senate-cybersecurity-hearing/> (accessed August 3, 2019); House Hearing: "Keeping The Lights On: Addressing Cyber Threats To The Grid." July 12, 2019. <https://michaelmabee.info/house-cybersecurity-hearing/> (accessed August 3, 2019).

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.<sup>7</sup> 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.

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

Answer: According to NERC, many of “[t]hese violations posed a serious or substantial risk to the reliability of the bulk power system (BPS).” The entities 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, Congressional hearings 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.

---

<sup>7</sup> 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).

The records may be provided to me electronically at this email address: [CivilDefenseBook@gmail.com](mailto:CivilDefenseBook@gmail.com).

Sincerely,

A handwritten signature in blue ink, appearing to be the initials 'MM' followed by a flourish.

Michael Mabee

Date	Regulatory Authority	Regulatory Filing ID	Region	Registered Entity	NERC Violation ID	Mitigation Completion Date
7/31/2019	FERC	NP19-15-000	WECC	Unidentified Registered Entity	WECC2016015862	11/14/2017
7/31/2019	FERC	NP19-15-000	WECC	Unidentified Registered Entity	WECC2018020282	5/15/2017
7/31/2019	FERC	NP19-15-000	NPCC	Unidentified Registered Entity	NPCC2018020351	9/4/2018
7/31/2019	FERC	NP19-15-000	NPCC	Unidentified Registered Entity	NPCC2018020346	9/6/2018
7/31/2019	FERC	NP19-15-000	NPCC	Unidentified Registered Entity	NPCC2018020350	9/18/2018
7/31/2019	FERC	NP19-15-000	NPCC	Unidentified Registered Entity	NPCC2018020348	9/4/2018
7/31/2019	FERC	NP19-15-000	NPCC	Unidentified Registered Entity	NPCC2018020347	9/4/2018
7/31/2019	FERC	NP19-15-000	WECC	Unidentified Registered Entity	WECC2017016929	6/5/2018
7/31/2019	FERC	NP19-15-000	WECC	Unidentified Registered Entity	WECC2017016926	3/29/2019
7/31/2019	FERC	NP19-15-000	WECC	Unidentified Registered Entity	WECC2017016940	10/19/2018
7/31/2019	FERC	NP19-15-000	WECC	Unidentified Registered Entity	WECC2017016938	5/17/2018
7/31/2019	FERC	NP19-15-000	WECC	Unidentified Registered Entity	WECC2017016939	4/10/2018
7/31/2019	FERC	NP19-15-000	WECC	Unidentified Registered Entity	WECC2017016928	12/19/2018
7/31/2019	FERC	NP19-15-000	WECC	Unidentified Registered Entity	WECC2017016941	5/23/2018
7/31/2019	FERC	NP19-15-000	WECC	Unidentified Registered Entity	WECC2018019006	4/4/2018
7/31/2019	FERC	NP19-15-000	WECC	Unidentified Registered Entity	WECC2018020039	5/3/2018
7/31/2019	FERC	NP19-15-000	WECC	Unidentified Registered Entity	WECC2017017885	2/8/2019
7/31/2019	FERC	NP19-15-000	WECC	Unidentified Registered Entity	WECC2017018174	10/4/2018
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2016015954	4/19/2019
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2017018136	9/15/2017
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2017018279	9/22/2017
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2017018774	12/18/2017
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2016016548	8/17/2018
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2017017286	6/26/2018
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2017018440	1/23/2018
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2017018441	4/18/2019
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2016016492	1/19/2017
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2017018467	10/11/2017
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2017017236	7/10/2018
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2017016832	2/8/2019
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2017018246	7/12/2018
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2018019200	7/23/2018
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2017018548	12/6/2017
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2016016339	10/26/2016
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2016016321	4/27/2018
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2018019106	4/27/2018
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2016016379	9/4/2018
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2016016572	9/4/2018
6/27/2019	FERC	NP19-14-000	SERC	Unidentified Registered Entity	SERC2017017564	9/4/2018
6/27/2019	FERC	NP19-12-000	NPCC	Unidentified Registered Entity	NPCC2018020059	12/14/2018
6/27/2019	FERC	NP19-12-000	NPCC	Unidentified Registered Entity	NPCC2018020060	12/14/2018
6/27/2019	FERC	NP19-12-000	NPCC	Unidentified Registered Entity	NPCC2018020061	12/14/2018
6/27/2019	FERC	NP19-12-000	NPCC	Unidentified Registered Entity	NPCC2018020063	12/14/2018
6/27/2019	FERC	NP19-12-000	NPCC	Unidentified Registered Entity	NPCC2018020064	12/14/2018
6/27/2019	FERC	NP19-12-000	NPCC	Unidentified Registered Entity	NPCC2018020062	12/14/2018
6/27/2019	FERC	NP19-12-000	WECC	Unidentified Registered Entity	WECC2017018752	11/6/2017
6/27/2019	FERC	NP19-12-000	WECC	Unidentified Registered Entity	WECC2018019340	8/14/2018
6/27/2019	FERC	NP19-12-000	WECC	Unidentified Registered Entity	WECC2017018489	11/8/2017
6/27/2019	FERC	NP19-12-000	WECC	Unidentified Registered Entity	WECC2017018732	8/15/2018
6/27/2019	FERC	NP19-12-000	WECC	Unidentified Registered Entity	WECC2017017229	3/1/2017
6/27/2019	FERC	NP19-12-000	WECC	Unidentified Registered Entity	WECC2018020044	12/19/2017
6/27/2019	FERC	NP19-12-000	WECC	Unidentified Registered Entity	WECC2018020045	12/19/2017









