

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Reliability Technical Conference

)

Docket No. AD19-13-000

**REPLY COMMENTS TO THOSE OF THE AMERICAN PUBLIC POWER ASSOCIATION
("APPA") AND THE LARGE PUBLIC POWER COUNCIL ("LPPC")**

Michael Mabee, a private citizen, requests the Commission's leave to file reply comments to the comments filed on American Public Power Association ("APPA") and the Large Public Power Council ("LPPC") on August 22, 2019 at 4:03PM. I request the Commission's leave for this one-day late reply filing as I only became aware of misleading information asserted by APPA and LPPC in their filing once it was made public late in the afternoon on August 22, 2019.¹

APPA and LPPC (along with other trade associations in the industry) are apparently using their motions and comments in several FERC dockets, including this one, as a forum to fight FOIA requests that I have pending before the Commission.² These various filings, including the APPA and LPPC comments on this docket filed yesterday afternoon, misleadingly assert that Commission orders and regulations protect the disclosure of the names of Critical Infrastructure Protection (CIP) standard violators from the public, and that release of the names of regulatory violators would somehow endanger the public.

In fact, the opposite is true.

For this reason, I attach as Exhibit 1 my Motion to Intervene in Docket NP19-4-000 and as Exhibit 2 my reply comments to the Trade Associations (including APPA) in Docket NP19-4-000.

¹ The Commission's "Notice Inviting Post-Technical Conference Comments re Reliability Technical Conference under AD19-13" dated July 23, 2019 requested that post-technical conference filings be made on or before 30 days from the date of the notice.

² FOIAs #2019-0019 filed December 18, 2018, amended on January 4, 2019; #2019-0030 filed on January 12, 2019 and #2019-0099 Filed on August 3, 2019.

Reply Comments of Michael Mabee

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In these filings, I explain the legal basis upon which the names of CIP regulatory violators must be disclosed, in accordance with Commission Regulations and orders.

I submit these documents to complete the record as it is apparent the APPA and LPPC are using multiple FERC dockets, including this one, to convince the Commission to deny my FOIA requests. It is therefore critical that my arguments be considered as well.

Respectfully submitted by:



Michael Mabee

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

NERC Full Notice of Penalty regarding)	
[Redacted in Public Version of NOP])	Docket No. NP19-4-000
)	

MOTION TO INTERVENE

Submitted to FERC on February 21, 2019

Michael Mabee, a private citizen, requests the Commission's leave to intervene in the above captioned docket, pursuant to 18 C.F.R. § 39.7(e)(4). I request that 1) the Commission review this Notice of Penalty (NOP) to ensure that it is in the public interest, and 2) that the name of the entities(s), the unredacted Notice of Penalty and the unredacted settlement agreement be released in the public docket. NERC has made redactions to the publicly available documents, alleging the identities and other identifying information about Critical Infrastructure Protection (CIP) standards violators must be kept from the public. The lack of transparency in this Notice of Penalty raise significant public interest concerns.

Background on FERC Docket No. NP19-4-000

On January 25, 2019, the North American Electric Reliability Corporation (NERC) filed a Notice of Penalty with FERC that disclosed 127 cybersecurity standard violations by unidentified "Companies."¹ NERC and its Regional Entities (RE) determined:

[T]he 127 violations collectively posed a serious risk to the security and reliability of the BPS (Bulk Power System). The Companies' violations of the CIP Reliability Standards posed a higher risk to the reliability of the BPS because many of the violations involved long durations, multiple instances of noncompliance, and repeated failures to implement physical and cyber security protections.

¹ This NOP is a departure from past NOPs where the violators were referred to a "Unidentified Registered Entities." In this NOP, the unidentified entities are referred to as "the Companies."

It is notable that the Notice of Penalty revealed violations that could allow adversaries in remote locations to gain electronic access to grid facilities:

The REs determined that the Companies allowed interactive remote access to the BCSs (Bulk Electric System Cyber Systems) inside the Companies ESP (Electronic Security Perimeter) without first going through an Intermediate System, utilizing encryption, and requiring multi-factor authentication.

The violation started when the Standard became mandatory and enforceable and is *currently ongoing*. [Emphasis added.]

The violated standard, CIP-005-5-2 R2, became effective in July 2015. Without the violator having fear of public scrutiny, it is apparent that even three and one-half years have not been sufficient time for “the Companies” to remedy this *currently ongoing* violation.

On February 1, 2019, trade publication *EnergyWire* disclosed that Duke Energy is the unnamed standards violator.² Duke Energy is one of America’s largest utilities, with 7.2 million customers across seven states. Duke’s generation fleet includes six nuclear plants. A physical or cyber-attack on Duke could cause a long-term, wide-area blackout and result in release of radioactive contaminants. Nonetheless, the NERC standard enforcement regime, with its practice of hiding the names of violators under the guise of so-called Critical Energy/Electric Infrastructure Information (CEII), has failed to assure the protection of Americans depending on Duke for their electric power.

The NERC-imposed fine was \$10 million, tiny in comparison to Duke’s 2017 net income of \$3 billion.

This NOP had redactions that are far beyond the redactions in all previous CIP NOP’s submitted to FERC by NERC. For example, in all previous CIP NOPs, the identity of the Regional Entity (RE) was disclosed and the NERC Violation ID was disclosed. Also, in this NOP the reason for the NOP was redacted – usually it is disclosed that the reason the NOP is being filed is that, for example,

² 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 February 5, 2019).

the Regional Entity and the “Unidentified Registered Entity” have entered into a settlement agreement. Here on page 1 of the Duke NOP, NERC has redacted the reason for the NOP’s submission:

NERC is filing this Notice of Penalty with the Commission because [REDACTED]

This is the first instance since 2010 that NERC has used this type of redaction. Also, the “NERC Violation ID” is redacted for the first time since 2010. Here is the beginning of the violation table from page 2 of the NOP:

NERC Violation ID	Standard	Req.	VRF/ VSL	Applicable Function(s)	Discovery Method*	Risk
[REDACTED]	CIP-002-5.1	R1.2	High/ Lower	[REDACTED]	SR	Moderate
[REDACTED]	CIP-002-5.1	R1.2	High/ Lower	[REDACTED]	SR	Minimal
[REDACTED]	CIP-002-5.1	R1.2	High/ Lower	[REDACTED]	SR	Minimal
[REDACTED]	CIP-002-5.1	R1.2	High/ Lower	[REDACTED]	SR	Minimal

NERC’s coverup of the identity of the violator (“the Companies”), the identity of the regulator (the “Regional Entities” or “REs”), and settlement agreement are profoundly against the public interest. FERC should not tolerate this concealment by NERC. “The Companies” were subjected to a \$10-million fine for 127 cybersecurity violations; the details of this compliance gap are of great public interest.³ The public must be able to cast scrutiny over the activities of NERC and its regulated entities for the self-regulatory scheme codified in Section 215 of the Federal Power Act to be effective.

³ In fact, there have been several press articles already on this NOP, most identifying Duke Energy as “the Companies.”

Federal Regulations Require Disclosure

NERC requests that the redacted portions of the NOP be designated as nonpublic under 18 CFR § 39.7(b)(4) and as CEII under 18 CFR § 388.113(e)(1). Neither of these regulations provide NERC, the “Regional Entities” or “the Companies” relief from public scrutiny in this regulatory action. As described in detail below, NERC is apparently violating its duties as the designated “Electric Reliability Organization” (ERO) by:

- (1) Improperly classifying information as CEII,
- (2) Improperly applying the “Cybersecurity Incident” exemption to disclosure,
- (3) Improperly applying the “disposition” exemption to disclosure,
- (4) Providing misleading interpretations of Commission orders.

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. The *disposition of each violation or alleged violation that relates to a Cybersecurity Incident* or that would jeopardize the security of the Bulk-Power System if publicly disclosed shall be nonpublic unless the Commission directs otherwise. [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.”

So, 18 CFR § 39.7 (b)(4) and 18 CFR § 39.7(d)(1) are clear that at the point when “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” then the name of the penalized entity as well as the supporting documentation – including the settlement agreement – must be publicly disclosed. Importantly, the “notice of penalty” is afforded different treatment in 18 CFR § 39.7 (b)(4) than the “disposition of each violation”—there is no provision in regulation to make the “notice of

penalty” nonpublic. Moreover, 18 CFR § 39.7(d)(1) makes it absolutely clear that “the name of the entity on whom the penalty is imposed” is part of the “notice of penalty.”

18 CFR § 39.7 (b)(4) allows the “disposition of each violation” (or alleged violation) to be made nonpublic, but only if disclosure of the “disposition” would jeopardize security of the Bulk Power System. Again, the “name of the entity” is not part of “disposition” of the violation, so there is never an exemption of the violator’s name from public disclosure. Nor has NERC made a credible case that disclosure of the “disposition” of the Duke violations would jeopardize the security of the Bulk-Power System, especially when the violations do not involve *bona fide* Cybersecurity Incidents as defined in 18 CFR § 39.1.

FERC has made no public order (or change in regulation) to allow NERC to withhold the “notice of penalty” for the Duke NOP (or any other NOP). If FERC has made a private directive to NERC to withhold the “disposition” of the violations in Duke NOP, and other NOPs, then the public interest demands that the text of this hidden FERC directive and its underlying legal rationale be promptly released by the Commission.

NERC’s “Cybersecurity Incident” Shell Game.

The “cybersecurity incident” exception that NERC frequently evokes as a justification for covering up the names of violators clearly does not apply. It is critical to point out that nothing in this redacted NOP refers to a “cybersecurity incident.” 18 CFR § 39.1 defines “cybersecurity incident” as:

Cybersecurity Incident means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk-Power System.

There is no allegation in the NOP of a malicious act or suspicious event that disrupted or attempted to disrupt the Reliable Operation of the Bulk-Power System. This was simply a regulatory action after instances of noncompliance of CIP standards were discovered, either through self-reports or regulatory audits.

It is extremely disconcerting that NERC claims in 2015, 2016, and 2017 there were zero reportable cybersecurity incidents. In NERC's June 2018 "State of Reliability 2018" report⁴, on page 39 we see NERC's claim:

Cyber Security

Security Metric: Reportable Cyber Security Incidents

No reportable cyber security incidents⁷³ occurred in the last three years, so therefore there are none that caused a loss of load. This does not suggest that the risk of a cyber security incident is low as the number of cyber security vulnerabilities continues to increase (see [Security Metric: Global Cyber Vulnerabilities](#)). Additional observed and potential risks are detailed in the E-ISAC cyber security data and findings available to those with access to the E-ISAC portal.⁷⁴

Yet somehow, in the Duke NOP NERC claims the name of "the Companies" must be withheld from public scrutiny since these are "cybersecurity incidents." Since the violations described in the Duke NOP occurred over the same time period that NERC reported that there were no reportable "cybersecurity incidents", the public is confused. Why is it we cannot have the name of the violator? In its State of Reliability report NERC says that there were no reportable cybersecurity incidents, but the Duke NOP contains descriptions of "cybersecurity incidents" so serious they must be redacted? NERC's twisted logic defies all commonsense.

Further, to the extent that NERC attempts to argue that disclosure of the name of the regulated entity or the settlement agreement "would jeopardize the security of the Bulk-Power System if publicly disclosed"⁵, their argument falls flat. In fact, it is misleading.

In the NOP NERC quotes FERC Order 672 – out of context – and argues that:

As the Commission has previously recognized, information related to CIP violations and cyber security issues, including the identity of the registered entity, may jeopardize BPS security, asserting that "even publicly identifying which entity has a system vulnerable to a 'cyber attack' could jeopardize system security, allowing persons seeking to do harm to focus on a particular entity in the Bulk-Power System."⁶

⁴ See: https://www.nerc.com/pa/RAPA/PA/Performance%20Analysis%20DL/NERC_2018_SOR_06202018_Final.pdf (accessed February 20, 2019).

⁵ 18 CFR § 39.7 (b)(4)

⁶ NOP, pg. 55.

This is a grossly selective use of a quote from FERC Order 672. The entire passage from the FERC order explains the *benefit of transparency*:

As explained in the NOPR, and confirmed by numerous commenters, a proceeding **involving a Cybersecurity Incident** requires additional protection because it is possible that Bulk-Power System security and reliability would be further jeopardized by the public dissemination of information involving incidents that compromise the cybersecurity system of a specific user, owner or operator of the Bulk-Power System. For example, even publicly identifying which entity has a system vulnerable to a “cyber attack” could jeopardize system security, allowing persons seeking to do harm to focus on a particular entity in the Bulk-Power System. While the Commission recognizes the *benefit of transparency* in Commission proceedings, as discussed by APPA and TAPS, the benefits of transparency are overridden in the limited situation of cases in which such transparency would jeopardize Bulk-Power System security. [Internal footnotes omitted, Emphasis added.]

Nothing in this NOP credibly alleges that a “Cybersecurity Incident” as defined in 18 CFR § 39.1 has taken place. Moreover, NERC provides no evidence or argument, other than a conclusory statement, that disclosure of the redacted information would jeopardize Bulk-Power System security.

Then NERC compounds this apparent misrepresentation by stating:

Consistent with the Commission’s statement, NERC is treating as nonpublic the identity of the Companies and any information that could lead to the identification of the Companies.⁷

In other words, NERC is blaming FERC for the coverup by quoting this out of context passage and apparently misapplying federal regulations.

If NERC has direction from FERC allowing redaction of Notices of Penalty, the public interest demands that FERC release the text of this direction. If in fact there is no direction from FERC, the Commission should make this clear.

Perhaps NERC is somehow arguing that releasing any data that identifies any entity that is subject to a regulatory action (or even the identity of the regulator or “Regional Entity”) will

⁷ NOP pg. 55.

endanger the Bulk-Power System. One way to read this argument is that since our regulatory regime is so weak and ineffective, a coverup is necessary so the “malicious actors” don’t find out how vulnerable we are.

Newsflash: Our enemies already know.⁸

NERC’s Abuse of the CEII Rule.

Presently, NERC as ERO, is improperly using the Critical Energy/Electric Infrastructure Information (CEII) rule⁹ to hide from public view the identities of entities that violate Critical Infrastructure Protection (“CIP”) Reliability Standards – even when the violation has been abated and there is no arguable security need to withhold this information. Essentially, NERC and the Regional Entities are misusing FERC’s authority to shield industry from public scrutiny. The Commission must not allow this practice repugnant to the public interest to continue.

Only NERC is asserting that this information is CEII or “privileged” or “nonpublic” – the Commission has not made such a determination. 18 CFR § 388.112(c)(1)(i) Provides that:

The documents for which privileged treatment is claimed will be maintained in the Commission's document repositories as non-public until such time as the Commission may determine that the document is not entitled to the treatment sought and is subject to disclosure consistent with § 388.108. *By treating the documents as nonpublic, the Commission is not making a determination on any claim of privilege status. The Commission retains the right to make determinations with regard to any claim of privilege status, and the discretion to release information as necessary to carry out its jurisdictional responsibilities.* [Emphasis added.]

NERC has for years been classifying the names of the violators and the settlement agreements as “nonpublic” and tries to argue that FERC also deems these documents as “nonpublic” – not so according to the regulations.

⁸ It is noteworthy that on February 14, 2019 in a hearing before the Senate Committee on Energy and Natural Resources – a hearing attended by both the President and CEO of NERC as well as the Chairman of the Commission – Senator Angus King noted unequivocally that “the Russians are already in the grid.” See: <https://michaelmabee.info/senate-cybersecurity-hearing/> (accessed February 20, 2019).

⁹ 18 CFR § 388.113, et seq.

Finally, even the Commission's own interpretation of the Critical Energy Infrastructure Information rules support disclosure. 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).¹⁰

The NERC Enforcement Regime is Broken and Endangers the U.S.

CIP regulations should protect the U.S. electric grid by holding "the Companies" accountable to protect the portion of the U.S. critical infrastructure that they own or operate. Instead, NERC has twisted this regulatory scheme into a sham where companies have no incentive to do more than the minimum. If caught violating a CIP standard, NERC and the Regional Entities will settle the matter privately with "the Companies," negotiating a "penalty" that "the Companies" are willing to pay and will keep the matter from public view. A great deal for "the Companies" – not so much for the American people.

NERC's view of how an effective enforcement regime should work is gravely flawed. NERC essentially argues in the NOP that they are redacting the names of "the Companies" and any identifying information because:

Malicious individuals already target the Companies' operational personnel, seeking bits and pieces of data to map the Companies' systems and identify possible attack vectors. The public disclosure of a single piece of redacted information may not, on its own, provide everything needed to exploit an entity and attack the electric grid. But, successive public disclosures of additional pieces of redacted information will increase the likelihood of a cyber-intrusion with a corresponding adverse effect on energy infrastructure. Each successive disclosure could fill in some knowledge gaps of those planning to do harm, helping to complete the maps of entity systems. Therefore, it is important to examine and evaluate the redacted information in the aggregate.¹¹

¹⁰ FERC Order No. 833 at pg. 17. Also see 18 C.F.R. §388.113(c)(1)(iv).

¹¹ NOP pg. 56

This is a generic argument that any information of any kind identifying “the Companies” would assist hackers. Therefore, according to NERC, hiding the names of the companies will somehow thwart the Chinese and Russian hackers.

What would work better is if “the Companies” took the CIP regulations seriously and put effort in to thwart the malicious individuals. What would also help is if NERC became a regulator rather than an industry advocate. Public scrutiny of regulatory failings is the time-tested method to ensure accountability in a free society.

NERC has been redacting the names of the companies since July 6, 2010 – over 8 ½ years. In an official assessment to the U.S. Congress released on January 29, 2019, the U.S. Intelligence Community confirmed that the U.S. electric grid is not secure against foreign incursions:¹²

Russia has the ability to execute cyber attacks in the United States that generate localized, temporary disruptive effects on critical infrastructure—such as disrupting an electrical distribution network for at least a few hours—similar to those demonstrated in Ukraine in 2015 and 2016. Moscow is mapping our critical infrastructure with the long-term goal of being able to cause substantial damage.

Redacting the names, NRC ID and other “identifying information” clearly hasn’t thwarted our adversaries – it has only thwarted the American people from evaluating the weakness of NERC’s enforcement regime – and actually it is *this weak enforcement of CIP standards* that has assisted the “malicious individuals.” (One has to wonder whether NERC is spending more legal effort on hiding threats from the public than on enforcing grid security standards on utilities.)

Finally, NERC has no problem providing all this identifying information on its website on all active registered entities in its “NERC Active Compliance Registry Matrix” (NCR). Exhibit A is the most recent list of all the 1495 registered entities – with NRC ID and functions – pieces of information redacted in the NOP – and in all other NOP’s since July 6, 2010. I obtained this list from NERC’s public website on February 10, 2019.¹³ So this list apparently poses no information

¹² Coats, Daniel R. “Worldwide Threat Assessment of the U.S. Intelligence Community” Senate Select Committee on Intelligence. January 29, 2019. <https://www.dni.gov/files/ODNI/documents/2019-ATA-SFR---SSCI.pdf> (accessed February 5, 2019).

¹³ See: <https://www.nerc.com/pa/comp/Pages/Registration.aspx> (accessed February 10, 2019).

of interest to “malicious individuals” but somehow NERC argues that the name of the of the entity subjected to a regulatory action in every single CIP violation since July of 2010 somehow poses such a threat.

Industry Embarrassment Does Not Equal National Security Concern

Since NERC began covering up the names of CIP violators – as they are continuing to do in this NOP – there has been *less incentive to fix the grid security problems*. That’s why disclosure is important. Why should utilities spend money to fix grave cybersecurity issues if they know that 1) if caught, their friendly regulator will “settle” the violation privately and the settlement agreement will be kept secret, 2) the utility can negotiate a trivial fine, and 3) the utility’s name will not be disclosed to the public?

On the surface, it is hard to understand why the industry has taken the lack of transparency approach to CIP regulation. However, upon closer historical examination, the industry has crafted its own favorable (to the industry) regulatory scheme whereby it implements whatever protections are convenient and inexpensive – but it can avoid any protections that the industry deems too “burdensome.”¹⁴ Simply put, the security of the electric grid is apparently optional – we depend on about 1,500 electric utility industry entities to do the right thing – but there is no strong requirement that they do the right thing.

A logical conclusion one can draw from this set of facts is that the industry seeks to avoid public exposure for their inaction on cyber security. Under the guise of protecting us (because we the public cannot be trusted with this sensitive information) private, secret regulation is ongoing, with back-room settlements and handshake penalties. Thus, “the Companies” and their shareholders avoid the embarrassment of being outed for a lack of action on Critical Infrastructure protection (CIP) standards. And NERC is not held accountable for their ineffective enforcement regime.

¹⁴ We found there were 172 instances of the word “burden” in industry comments on FERC Docket RM17-13-000 (cyber security rulemaking) <https://michaelmabee.info/grid-cybersecurity-comments-ferc/> (accessed February 10, 2019).

Meanwhile, after a decade of inaction, it is well known that our electric grid is vulnerable – and in fact, has been penetrated and probed. This regulatory scheme has not made us safer.

Conclusion

The federal regulations are very clear that the name of the entity on whom the NERC penalty is imposed must be disclosed, along with the settlement agreements and all documents necessary for public scrutiny of the regulatory transaction. FERC has failed to enforce its own regulations, with great harm to the public interest.

For all of the forgoing reasons, I request that the Commission fully review the Notice of Penalty in this docket and require that the identity of “the Companies”, names of the regional entities, the full text of the settlement agreement, and all other redacted information is promptly disclosed to the public.

If FERC’s practice of allowing NERC to hide the names of cybersecurity violators was going to help electric grid security, it should have worked over the past nine years. The Director of National Intelligence says that America’s electric grid is at grave risk of cyberattack—it is obvious that reform of this weak enforcement regime is long overdue.

Respectfully submitted by:



Michael Mabee

**UNITED STATES OF AMERICA
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NERC Full Notice of Penalty regarding)	
[Redacted in Public Version of NOP])	Docket No. NP19-4-000
)	

REPLY COMMENTS TO THOSE OF THE TRADE ASSOCIATIONS

Submitted to FERC on May 9, 2019

Michael Mabee, a private citizen, requests the Commission's leave to file reply comments to the Motion to Intervene of the American Public Power Association ("APPA"), the Edison Electric Institute ("EEI"), and the National Rural Electric Cooperative Association ("NRECA"), (collectively, the "Trade Associations").

I. Background

On March 28, 2019 the Trade Association's filed Motions to Intervene in docket no. NP19-4-000 and 192 other FERC dockets wherein the names of the Critical Infrastructure Protection (CIP) standards violators were withheld from the public by the NERC.¹ The Trade Associations' filings were prompted by my Motions to Intervene in these 193 dockets, requesting that the Commission release the names of the standards violators to the public and not allow the industry to continue this coverup. The Trade Associations are also apparently using their motions in these dockets as a forum to fight two FOIA requests that I have pending before the Commission.²

¹ Exhibit A is a list of the 192 dockets other than NP19-4-000.

² FOIAs #2019-0019 filed December 18, 2018, amended on January 4, 2019 and #2019-0030 filed on January 12, 2019. The Trade Associations included as appendices to their filing in these 193 dockets two letters to the Commission in opposition to my FOIA requests and argue in their filing in these dockets that the Commission should deny my FOIA requests.

II. The Trade Associations Misrepresented FERC's Role in the Industry Coverup

In the Trade Associations' March 28, 2019 motions, they refer to an alleged agreement between the Commission and NERC to intentionally withhold the names of CIP violators since 2010:

*"The Trade Associations understand that in 2010 NERC and the Commission intentionally chose to post only the public versions of the Notices of Penalty without the names of the entities to address security concerns because the names, when combined with information on the violations and penalties, were considered CEII. In addition to the entity names, details on cybersecurity vulnerabilities and mitigation measures that can be used by an attacker to determine which entity to target; what device or system to target; and how to target that entity, device, or system were also intentionally left out of the public versions."*³ [Emphasis Added.]

This statement is not true. On April 1, 2019 I filed a Freedom of Information Act (FOIA) request⁴ with the Commission requesting documentation of this alleged agreement between the FERC and NERC described in the Trade Associations' motions. A copy of this request is attached hereto as Exhibit B. On April 30, 2019, The Commission responded to the FOIA request stating that there were no responsive documents. A copy of the Commission's response is attached hereto as Exhibit C.

In other words, this proves that there are no records that the Commission ever agreed with the scheme to wholesale withhold all the names of all the CIP violators in perpetuity from the public as the Trade Associations allege. Therefore, when NERC initiated this practice in 2010, they did so with no written approval from the Commission. The Trade Associations have attempted to mislead the Commission staff and the public by falsely asserting that there was an agreement by FERC to perpetuate this industry coverup.

³ Motion of Trade Associations in FERC Docket NP19-4 (as well as the 192 additional dockets listed on the motion) at page 14.

⁴ FOIA #2019-0061.

III. The Trade Associations Misrepresented FERC's Orders

The Trade Associations claim in their objections to my FOIAs which they attached as exhibits to their NP19-4 Motion to Intervene:

"For these reasons, the Commission should not release the documents requested. Also, this information has previously been protected by the Commission from public disclosure.[FN 4] As discussed below, this is not a new policy, but one carefully crafted by the Commission over nine years ago in its 2011-2012 Find, Fix, and Track and Report ("FFT") proceeding—an open and transparent proceeding in which stakeholders and the public were able to weigh in on policy concerns, ultimately striking a careful balance between information disclosure and national security throughout the six months of that proceeding.[FN 5]

FN 5 See FFT Order, 138 FERC ¶ 61,193 (Mar. 15, 2012).

[Emphasis added.] This statement is not true. In fact, FERC's order (138 FERC ¶ 61,193) says the opposite:

67. NERC asserts that, with regard to the FFT informational filings, the Commission's regulations do not appear to permit public disclosure of confidential information that is not included in a Notice of Penalty. Therefore, NERC proposes that the FFT informational filings will not publicly disclose identification of registered entities.

68. *We disagree with NERC on this issue.* Section 39.7(b)(4) of our regulations provides that "[e]ach violation or alleged violation shall be treated as non-public until the matter is filed with the Commission as a notice of penalty or resolved by [an admission of violation] or a settlement or other negotiated disposition" *We do not see this provision of our regulations as preventing the disclosure of the identity of an entity that is the subject of an FFT matter. First, the regulation is intended to prevent the public disclosure of an entity subject to an ongoing compliance matter. The FFT informational filing results in closure of a compliance matter before NERC. Thus, similar to the filing of a Notice of Penalty with the Commission, the submission of a FFT filing is the appropriate time for disclosure.* Moreover, it is reasonable to view the closure of a possible violation pursuant to the FFT informational filing as the product of a "negotiated disposition" that NERC may file on a public basis pursuant to the first sentence of section 39.7(b)(4). Because there may be similarly situated registered entities, public disclosure of the identity of the entity in an FFT informational filing will provide industry with valuable information on compliance issues. *Further, public disclosure will make the full information regarding an FFT matter available to state regulators and the public, thus, providing additional accountability and deterrence.*

69. However, section 39.7(b)(4) of our regulations also provides an exception that “[t]he disposition of each violation or alleged violation that relates to a Cybersecurity Incident or that would jeopardize the security of the Bulk-Power System if publicly disclosed shall be non-public unless the Commission directs otherwise.” This exception will continue to apply in the FFT context.

[Emphasis Added, internal citations omitted.] Of course, the “Cybersecurity Incident” exception does not apply here as 18 CFR § 39.1 defines “cybersecurity incident” as:

Cybersecurity Incident means a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk-Power System.

There is no allegation in the NP19-4-000 NOP of a malicious act or suspicious event that disrupted or attempted to disrupt the Reliable Operation of the Bulk-Power System. This was simply a regulatory action after instances of noncompliance of CIP standards were discovered, either through self-reports or regulatory audits.⁵

If not a “Cybersecurity Incident,” the second prong of §39.7(b)(4) provides that “[t]he disposition of each violation...that would jeopardize the security of the Bulk-Power System if publicly disclosed shall be non-public unless the Commission directs otherwise” also does not apply here. First, the second prong does not apply to the names of the violators – only the dispositions. Second, for all of the reasons discussed in my Motion to Intervene⁶ it is outlandish to claim that the withholding of all the names of all the regulatory violators in perpetuity will somehow protect the security of the Bulk-Power System. This may be the way the electric utility industry would like their regulatory scheme to continue, but it is not the way that an effective regulatory system works in a free society.

⁵ The same applies to the other 192 dockets listed in Exhibit A. To my knowledge, none allege “a malicious act or suspicious event that disrupts, or was an attempt to disrupt, the operation of those programmable electronic devices and communications networks including hardware, software and data that are essential to the Reliable Operation of the Bulk-Power System.”

⁶ Motion to Intervene of Michael Mabee Filed in Docket NP19-4-000 on February 21, 2019, Accession Number: 20190221-5025.

Specifically, as discussed in my Motion to Intervene, there are no circumstances or arguments made by NERC or the Trade Associations in the NP19-4-000 NOP which would indicate that withholding the name of the violator is necessary for the security of the Bulk-Power System. In fact, customers and investors have a right to follow up with the violator. State regulators and Congress also may have an interest in following up with the violator. This is why the Commission noted that “public disclosure will make the full information regarding an FFT matter available to state regulators and the public, thus, providing additional accountability and deterrence.” The same applies to NOPs which the regulations also require to be disclosed to the public – including the names of the violators.

Thus, the Trade Associations have made two egregious misrepresentations in their filings in these dockets. I noted instances in my Motion to Intervene in Docket NP19-4-000 of NERC making similar misrepresentations of FERC orders and regulations.⁷ It appears that there may be a deliberate effort by the industry, including NERC and the Trade Associations to mislead the Commission and the public by misrepresenting Commission orders and regulations in the public dockets. Such behavior is repugnant to the public interest and should not be tolerated by the Commission.

But it gets worse.

IV. The Trade Associations Threaten the Commission with a Regulatory Mutiny

The Trade Associations’ Motions to Intervene contains a not so thinly veiled threat:

“If the Commission begins releasing entity names in addition to the information already made public in the posted Notices of Penalty, then Registered Entities may re-evaluate whether they will continue to self-report security information knowing that providing

⁷ Ibid., pages 5-9.

such information to their regulators may be disclosed to the public, including to people seeking to attack their systems. In addition, Registered Entities also may re-evaluate what information is included in their mitigation plans.”

This is an extraordinary threat that the entire industry represented by the Trade Associations, and who are subject to mandatory reliability standards under federal law,⁸ will essentially engage in a regulatory mutiny if the Commission decides to release the names of regulatory violators to the public, as its past orders and regulations require.

To justify this threat, the Trade Associations mirror NERC’s argument in the NP19-4-000 NOP that any little piece of information contributes to “information in the aggregate” which would assist hackers. Therefore, according to NERC and the Trade Associations, hiding the names of the companies will somehow thwart the Chinese and Russians (whose cyberattackers already dwell comfortably in the grid). The Trade Associations state in the appendices to their Motions to Intervene:⁹

Even information that some may deem innocuous—such as revealing the names of UREs involved in a remediated NOP—can result in unintended consequences. For example, in some instances, a URE may have remediated a particular instance of regulatory noncompliance. However, that URE may have experienced a pattern of similar noncompliance—not because of a lack of will to fix, but because there are significant other factors at play. In addition, UREs face challenges in integrating modern information technology systems with older operational technology systems that were never designed with modern cybersecurity needs in mind. Sophisticated bad actors, like the ones discussed above, may be able to discern points of attack and vulnerabilities in publicly disclosed UREs based on their patterns of NOPs. The Trade Associations recognize that public access to information is important, and appreciate the goal of

⁸ 16 U.S. Code § 824o(b)(1) (Electric reliability) provides that: “The Commission shall have jurisdiction, within the United States, over the ERO certified by the Commission under subsection (c), any regional entities, and all users, owners and operators of the bulk-power system, including but not limited to the entities described in section 824(f) of this title, for purposes of approving reliability standards established under this section and enforcing compliance with this section. *All users, owners and operators of the bulk-power system shall comply with reliability standards that take effect under this section.*” [Emphasis added.]

⁹ Exhibits B & C

FOIA, but believe the line must be drawn where a requested disclosure might risk the security of the Bulk-Power System.

Another very reasonable inference to draw here is that the line was already “drawn” on the wrong side. For example:

- Might disclosing the names of the violators lead the public and Congress to assess how well the regulatory system is working?
- Might this information inform the public and Congress as to whether the current regulatory system has adequately thwarted threats to the grid?
- Also, might this information lead the public and Congress to conclude that better investment in the critical infrastructures is necessary?

These are public policy questions, not CEII.

Interestingly, NERC, the Trade Associations and the regulated companies themselves put a lot of information about the companies and the industry as a whole on their websites. By their defective rationale, all this “innocuous” information should be CEII. In fact, any information whatsoever about any of NERC’s 1,500 regulated entities by this bogus argument should be considered CEII. All utility websites open to the public should be shut down, and even our electric bills should not list the name of the company we are paying, lest these small pieces of “innocuous” information in the aggregate leads hackers to realize which utility is operating in that area, and thus helps to narrow the hacker’s target list.

Obviously, the forgoing illustration of the industry argument is ridiculous as is ultimately the industry argument itself. Why? Because there is *only one piece of information* that the industry is fighting vehemently to keep from the public: The names of regulatory violators.

Why is this one piece of information so sensitive to the industry? Because the name of a standard violator is the most essential piece of information to hold that utility accountable.

For the industry to threaten the federal government with a regulatory mutiny if the names of their regulatory violators are revealed to the public is stunning. Such a threat if carried out,

would endanger the bulk power system – it is not the release of the names that would cause the danger – it is the industry’s refusal to be regulated.

For any entities that choose this route – the regulatory equivalent of a child throwing a snit in the cereal aisle – NERC and FERC should ensure that these entities enjoy the maximum benefit of the penalties using their lack of self-reporting as an aggravating factor.

V. Conclusion

The Commission should disregard the Trade Associations motions and comments in these 193 dockets and proceed to correct the industry’s cover up, starting with the name of the violator of NP19-4-000, which should be immediately disclosed in the public docket. The names of the violators in the 192 dockets with expired CEI designations should also be immediately disclosed to the public.

Neither NERC nor the Trade Associations have provided any compelling reason to withhold this information any longer from Congress, state regulators and the public.

Respectfully submitted by:



Michael Mabee

Dockets With Expired CEII Designations

Date	FERC Docket Number	Region	Registered Entity	Entities	Total Penalty (\$)	NOP	Order	A2 Spreadsheet	Years
7/6/2010	NP10-130-000	SERC	Unidentified Registered Entity	1	\$0	View NOP	View Order		8.6
7/6/2010	NP10-131-000	SERC	Unidentified Registered Entity	1	\$5,000	View NOP	View Order		8.6
7/6/2010	NP10-134-000	SPP	Unidentified Registered Entity	1	\$0	View NOP	View Order		8.6
7/6/2010	NP10-135-000	WECC	Unidentified Registered Entity	1	\$8,000	View NOP	View Order		8.6
7/6/2010	NP10-136-000	WECC	Unidentified Registered Entity	1	\$7,000	View NOP	View Order		8.6
7/6/2010	NP10-137-000	WECC	Unidentified Registered Entity	1	\$39,000	View NOP	View Order		8.6
7/6/2010	NP10-138-000	RFC	Unidentified Registered Entity	1	\$5,000	View NOP	View Order		8.6
7/6/2010	NP10-139-000	WECC	Unidentified Registered Entity	1	\$3,000	View NOP	View Order		8.6
7/6/2010	NP10-140-000	RFC	Unidentified Registered Entity	1	\$5,600	View NOP	View Order	View Data request	8.6
7/30/2010	NP10-159-000	WECC	Unidentified Registered Entity	1	\$109,000	View NOP	View Order		8.6
9/13/2010	NP10-160-000	WECC	Unidentified Registered Entity	1	\$0	View NOP	View Order 1	NERC Filing	8.4
10/7/2010	NP11-1-000	WECC	Unidentified Registered Entity	1	\$106,000	View NOP	View Order		8.4
10/7/2010	NP11-2-000	WECC	Unidentified Registered Entity	1	\$9,000	View NOP	View Order		8.4
10/7/2010	NP11-3-000	SERC	Unidentified Registered Entity	1	\$6,000	View NOP	View Order	View Data Request	8.4
10/7/2010	NP11-4-000	FRCC	Unidentified Registered Entity	1	\$250,000	View NOP	View Order		8.4
10/7/2010	NP11-5-000	SERC	Unidentified Registered Entity	1	\$16,000	View NOP	View Order	View Data Request	8.4
11/5/2010	NP11-21-000	RFC	Unidentified Registered Entity	1	\$8,000	View NOP	View Order		8.3
11/5/2010	NP11-22-000	SERC	Unidentified Registered Entity	1	\$5,000	View NOP	View Order		8.3
11/30/2010	NP11-47-000	SERC	Unidentified Registered Entity	1	\$0	View NOP	View Order		8.2
11/30/2010	NP11-56-000	SERC	Unidentified Registered Entity	1	\$0	View NOP	View Order		8.2
12/22/2010	NP11-59-000	RFC	Unidentified Registered Entity	1	\$7,000	View NOP	View Extension		8.2
12/22/2010	NP11-63-000	WECC	Unidentified Registered Entity	1	\$80,000	View NOP	View Order		8.2
12/22/2010	NP11-64-000	WECC	Unidentified Registered Entity	1	\$38,500	View NOP	View Order		8.2
12/22/2010	NP11-70-000	WECC	Unidentified Registered Entity	1	\$55,000	View NOP	View Order		8.2
12/22/2010	NP11-72-000	SERC	Unidentified Registered Entity	1	\$2,000	View NOP	View Order		8.2
12/22/2010	NP11-76-000	SERC	Unidentified Registered Entity	1	\$0	View NOP	View Order		8.2
12/22/2010	NP11-79-000	FRCC	Unidentified Registered Entity	1	\$100,000	View NOP	View Order		8.2
12/22/2010	NP11-81-000	MRO, SPP	Unidentified Registered Entities	2	\$50,000	View NOP	View Order		8.2
1/31/2011	NP11-102-000	WECC	Unidentified Registered Entity	1	\$6,500	View NOP >>	View Order >>		8.1
1/31/2011	NP11-98-000	WECC	Unidentified Registered Entity	1	\$5,000	View NOP >>	View Order >>		8.1
2/1/2011	NP11-104-000	Various	Unidentified Registered Entities	6	\$9,300	View NOP >>	View Order >>	View A-2 Spreadsheet >>	8.1
2/23/2011	NP11-106-000	RFC	Unidentified Registered Entity	1	\$15,000	View NOP >>	View Order >>		8.0
2/23/2011	NP11-111-000	MRO	Unidentified Registered Entity	1	\$120,000	View NOP >>	View Order >>		8.0
2/23/2011	NP11-116-000	FRCC	Unidentified Registered Entity	1	\$75,000	View NOP >>	View Order >>		8.0
2/23/2011	NP11-124-000	RFC	Unidentified Registered Entity	1	\$100,000	View NOP >>	View Order >>		8.0
2/23/2011	NP11-125-000	SPP, RFC	Unidentified Registered Entity	1	\$77,000	View NOP >>	View Order >>		8.0
2/23/2011	NP11-127-000	FRCC	Unidentified Registered Entity	1	\$55,000	View NOP >>	View Order >>		8.0
2/23/2011	NP11-128-000	WECC	Unidentified Registered Entity	1	\$450,000	View NOP >>	View Order >>		8.0
2/28/2011	NP11-133-000	Various	Unidentified Registered Entities	5	\$11,500	View NOP >>	View Order >>	View A-2 Spreadsheet >>	8.0
3/30/2011	NP11-136-000	WECC	Unidentified Registered Entity	1	\$14,500	View NOP >>	View Order >>		7.9
3/30/2011	NP11-137-000	WECC	Unidentified Registered Entity	1	\$106,000	View NOP >>	View Order >>		7.9
3/30/2011	NP11-140-000	WECC	Unidentified Registered Entity	1	\$27,000	View NOP >>	View Order >>		7.9
3/30/2011	NP11-143-000	SERC	Unidentified Registered Entity	1	\$5,000	View NOP >>	View Order >>		7.9
3/30/2011	NP11-145-000	WECC	Unidentified Registered Entity	1	\$13,000	View NOP >>	View Order >>		7.9
3/30/2011	NP11-146-000	RFC	Unidentified Registered Entities	3	\$52,500	View NOP >>	View Order >>		7.9
3/30/2011	NP11-149-000	RFC	Unidentified Registered Entity	1	\$20,000	View NOP >>	View Order >>		7.9
3/30/2011	NP11-150-000	MRO	Unidentified Registered Entity	1	\$0	View NOP >>	View Order >>		7.9
3/30/2011	NP11-155-000	WECC	Unidentified Registered Entity	1	\$2,000	View NOP >>	View Order >>		7.9

Dockets With Expired CEII Designations

Date	FERC Docket Number	Region	Registered Entity	Entities	Total Penalty (\$)	NOP	Order	A2 Spreadsheet	Years
3/30/2011	NP11-156-000	SERC	Unidentified Registered Entity	1	\$12,500	View NOP >>	View Order >>		7.9
3/30/2011	NP11-157-000	SERC	Unidentified Registered Entity	1	\$7,000	View NOP >>	View Order >>		7.9
3/30/2011	NP11-161-000	WECC	Unidentified Registered Entity	1	\$35,000	View NOP >>	View Order >>		7.9
3/31/2011	NP11-162-000	TRE, NPCC	Unidentified Registered Entities	2	\$10,500	View NOP >>	View Order >>	View A-2 Spreadsheet >>	7.9
4/29/2011	NP11-166-000	SPP, TRE	Unidentified Registered Entity	1	\$50,000	View NOP >>	View Order >>		7.8
4/29/2011	NP11-167-000	WECC	Unidentified Registered Entity	1	\$89,000	View NOP >>	View Order >>		7.8
4/29/2011	NP11-174-000	RFC	Unidentified Registered Entity	1	\$15,000	View NOP >>	View Order >>		7.8
4/29/2011	NP11-175-000	WECC	Unidentified Registered Entity	1	\$32,000	View NOP >>	View Order >>		7.8
4/29/2011	NP11-176-000	WECC	Unidentified Registered Entity	1	\$80,000	View NOP >>	View Order >>		7.8
4/29/2011	NP11-178-000	WECC	Unidentified Registered Entity	1	\$35,000	View NOP >	View Order >>		7.8
4/29/2011	NP11-179-000	MRO	Unidentified Registered Entity	1	\$10,000	View NOP >>	View Order >>		7.8
4/29/2011	NP11-180-000	WECC	Unidentified Registered Entity	1	\$71,500	View NOP >>	View Order >>		7.8
4/29/2011	NP11-181-000	FRCC, NPCC	Unidentified Registered Entities	6	\$39,500	View NOP >>	View Order >>	View A-2 Spreadsheet >>	7.8
5/26/2011	NP11-182-000	WECC	Unidentified Registered Entity	1	\$59,000	View NOP >>	View Order >>		7.7
5/26/2011	NP11-184-000	RFC	Unidentified Registered Entity	1	\$70,000	View NOP >>	View Order >>	View Data Request >>	7.7
5/26/2011	NP11-188-000	SPP	Unidentified Registered Entity	1	\$16,860	View NOP >>	View Order >>		7.7
5/26/2011	NP11-189-000	FRCC	Unidentified Registered Entity	1	\$17,000	View NOP >>	View Order >>		7.7
5/26/2011	NP11-192-000	WECC	Unidentified Registered Entity	1	\$12,200	View NOP >>	View Order >>		7.7
5/26/2011	NP11-193-000	WECC	Unidentified Registered Entity	1	\$60,000	View NOP >>	View Order >>		7.7
5/26/2011	NP11-198-000	SPP	Unidentified Registered Entity	1	\$17,860	View NOP >>	View Order >>		7.7
5/26/2011	NP11-199-000	Various	Unidentified Registered Entities	3	\$3,500	View NOP >>	View Order >>	View A-2 Spreadsheet >>	7.7
6/29/2011	NP11-204-000	WECC	Unidentified Registered Entity	1	\$37,500	View NOP >>	View Order >>		7.6
6/29/2011	NP11-205-000	WECC	Unidentified Registered Entity	1	\$22,000	View NOP >>	View Order >>		7.6
6/29/2011	NP11-206-000	NPCC	Unidentified Registered Entity	3	\$80,000	View NOP >>	View Order >>	View Supplemental >>	7.6
6/29/2011	NP11-211-000	WECC	Unidentified Registered Entity	1	\$14,000	View NOP >>	View Order >>		7.6
6/29/2011	NP11-212-000	WECC	Unidentified Registered Entity	1	\$381,600	View NOP >>	View Order >>		7.6
6/29/2011	NP11-213-000	WECC	Unidentified Registered Entity	1	\$143,500	View NOP >>	View Order >>	View Supplemental >>	7.6
6/29/2011	NP11-218-000	WECC	Unidentified Registered Entity	1	\$130,000	View NOP >>	View Order >>		7.6
6/29/2011	NP11-223-000	SPP	Unidentified Registered Entity	1	\$30,000	View NOP >>	View Order >>		7.6
6/29/2011	NP11-225-000	RFC	Unidentified Registered Entity	1	\$10,000	View NOP >>	View Order >>		7.6
6/29/2011	NP11-226-000	RFC	Unidentified Registered Entity	1	\$85,000	View NOP >>	View Order >>		7.6
7/28/2011	NP11-229-000	WECC	Unidentified Registered Entity	1	\$75,000	View NOP >>	View Order >>		7.6
7/28/2011	NP11-230-000	RFC	Unidentified Registered Entity	1	\$18,000	View NOP >>	View Order >>		7.6
7/28/2011	NP11-233-000	WECC	Unidentified Registered Entity	1	\$70,000	View NOP >>	View Order >>		7.6
7/28/2011	NP11-234-000	WECC	Unidentified Registered Entity	1	\$35,000	View NOP >>	View Order >>		7.6
7/28/2011	NP11-237-000	RFC	Unidentified Registered Entity	3	\$180,000	View NOP >>	View Order >>		7.6
7/28/2011	NP11-243-000	RFC	Unidentified Registered Entity	1	\$20,000	View NOP >>	View Order >>		7.6
7/28/2011	NP11-247-000	RFC	Unidentified Registered Entity	1	\$15,000	View NOP >>	View Order >>		7.6
7/28/2011	NP11-248-000	WECC	Unidentified Registered Entity	1	\$5,000	View NOP >>	View Order >>		7.6
7/28/2011	NP11-249-000	WECC	Unidentified Registered Entity	1	\$18,000	View NOP >>	View Order >>		7.6
7/28/2011	NP11-250-000	WECC	Unidentified Registered Entity	1	\$12,600	View NOP >>	View Order >>		7.6
7/28/2011	NP11-251-000	WECC	Unidentified Registered Entity	1	\$7,000	View NOP >>	View Order >>		7.6
7/29/2011	NP11-253-000	Various	Unidentified Registered Entities	8	\$26,500	View NOP >>	View Order >>	View A-2 Spreadsheet >>	7.6
8/31/2011	NP11-261-000	RFC	Unidentified Registered Entity	1	\$70,000	View NOP >>	View Order >>		7.5
8/31/2011	NP11-262-000	SPP	Unidentified Registered Entity	1	\$12,000	View NOP >>	View Order >>		7.5
8/31/2011	NP11-263-000	TRE	Unidentified Registered Entity	1	\$11,000	View NOP >>	View Order >>		7.5
8/31/2011	NP11-264-000	SPP	Unidentified Registered Entity	1	\$8,000	View NOP >>	View Order >>		7.5
8/31/2011	NP11-266-000	Various	Unidentified Registered Entities	5	\$63,500	View NOP >>	View Order >>	View A-2 Spreadsheet >>	7.5

Dockets With Expired CEII Designations

Date	FERC Docket Number	Region	Registered Entity	Entities	Total Penalty (\$)	NOP	Order	A2 Spreadsheet	Years
9/30/2011	NP11-269-000	WECC	Unidentified Registered Entity	1	\$225,000	View NOP >>	View Order >>		7.4
9/30/2011	NP11-270-000	Various	Unidentified Registered Entities	21	\$193,900	View NOP >>	View Order >>	View A-2 Spreadsheet >>	7.4
9/30/2011	RC11-6-000	Various	Unidentified Registered Entities	59	\$0	View Filing >>	View Order >>	View A-1 Spreadsheet >>	7.4
10/31/2011	NP12-1-000	RFC	Unidentified Registered Entities	3	\$275,000	View Filing >>	View Order >>	View A-2 Corrected Spreadsheet >>	7.3
10/31/2011	NP12-2-000	Various	Unidentified Registered Entities	16	\$184,200	View Filing >>	View Order >>	View A-2 Spreadsheet >>	7.3
10/31/2011	RC12-1-000	Various	Unidentified Registered Entities	33	\$0	View Filing >>	View Order >>	View A-1 Spreadsheet >>	7.3
11/30/2011	NP12-3-000	WECC	Unidentified Registered Entity	1	\$125,000	View NOP >>	View Order >>		7.2
11/30/2011	NP12-4-000	WECC	Unidentified Registered Entity	1	\$160,000	View NOP >>	View Order >>		7.2
11/30/2011	NP12-5-000	RF, WECC	Unidentified Registered Entities	12	\$89,000	View Filing >>	View Order >>	View A-2 Spreadsheet >>	7.2
11/30/2011	RC12-2-000	Various	Unidentified Registered Entities	30	\$0	View Filing >>	View Order >>	View A-1 Spreadsheet >>	7.2
12/30/2011	NP12-10-000	Various	Unidentified Registered Entities	21	\$109,600	View Filing >>	View Order >>	View A-2 Corrected Spreadsheet >>	7.1
12/30/2011	NP12-9-000	RFC	Unidentified Registered Entity	1	\$60,000	View NOP >>	View Order >>		7.1
12/30/2011	RC12-6-000	Various	Unidentified Registered Entities	40	\$0	View Filing >>	View Order >>	View A-1 Spreadsheet >>	7.1
1/31/2012	NP12-11-000	WECC	Unidentified Registered Entity	1	\$135,000	View NOP >>	View Order >>		7.1
1/31/2012	NP12-12-000	Various	Unidentified Registered Entities	18	\$160,500	View Filing >>	View Order >>	View A-2 Spreadsheet >>	7.1
1/31/2012	RC12-7-000	Various	Unidentified Registered Entities	30	\$0	View Filing >>	View Order >>		7.1
2/29/2012	NP12-16-000	WECC	Unidentified Registered Entity	1	\$80,000	View Filing >>			7.0
2/29/2012	NP12-17-000	SPP RE	Unidentified Registered Entity	1	\$40,000	View Filing >>			7.0
2/29/2012	NP12-18-000	Various	Unidentified Registered Entities	23	\$222,900	View Filing >>	View Order >>	View A-2 Spreadsheet >>	7.0
2/29/2012	RC12-8-000	Various	Unidentified Registered Entities	24	\$0	View Filing >>	View Order >>	View A-1 Spreadsheet >>	7.0
3/30/2012	NP12-20-000	WECC	Unidentified Registered Entity	1	\$60,000	View NOP >>	View Order >>		6.9
3/30/2012	NP12-22-000	Various	Unidentified Registered Entities	15	\$42,000	View NOP >>	View Order >>	View A-2 Spreadsheet >>	6.9
3/30/2012	RC12-10-000	Various	Unidentified Registered Entities	12	\$0	View Filing >>		View A-2 Spreadsheet >>	6.9
4/30/2012	NP12-25-000	RFC	Unidentified Registered Entity	1	\$115,000	View NOP >>	View Order >>		6.8
4/30/2012	NP12-26-000	Various	Unidentified Registered Entities	18	\$95,300	View NOP >>	View Order >>	View A-2 Spreadsheet >>	6.8
4/30/2012	RC12-11-000	Various	Unidentified Registered Entities	18	\$0	View Supplemental Filing >>		View A-2 Spreadsheet >>	6.8
5/30/2012	NP12-27-000	Various	Unidentified Registered Entities	20	\$48,600	View NOP >>	View Order >>	View A-2 Spreadsheet >>	6.7
5/30/2012	NP12-29-000	WECC	Unidentified Registered Entity	1	\$162,200	View NOP >>	View Order >>		6.7
5/30/2012	RC12-12-000	Various	Unidentified Registered Entities	40	\$0	View Filing >>		View A-2 Spreadsheet >>	6.7
6/29/2012	NP12-36-000	Various	Unidentified Registered Entities	15	\$121,900	View NOP >>	View Order >>	View A-2 Spreadsheet >>	6.6
6/29/2012	RC12-13-000	Various	Unidentified Registered Entities	40	\$0	View Filing >>		View A-2 Spreadsheet >>	6.6
7/31/2012	NP12-37-000	WECC	Unidentified Registered Entities	4	\$134,350	View NOP >>	View Order >>		6.6
7/31/2012	NP12-38-000	WECC	Unidentified Registered Entity	1	\$72,000	View Filing >>	View Order >>		6.6
7/31/2012	NP12-40-000	Various	Unidentified Registered Entities	15	\$101,100	View Filing >>	View Order >>	View A-2 Spreadsheet >>	6.6
7/31/2012	RC12-14-000	Various	Unidentified Registered Entities	30	\$0	View Filing >>		View A-2 Spreadsheet >>	6.6
8/31/2012	NP12-43-000	WECC	Unidentified Registered Entity	1	\$70,000	View NOP >>	View Order >>		6.5
8/31/2012	NP12-44-000	Various	Unidentified Registered Entities	16	\$182,800	View NOP >>	View Order >>	View A-2 Spreadsheet >>	6.5
8/31/2012	RC12-15-000	Various	Unidentified Registered Entities	38	\$0	View Filing >>	View Order >>	View A-2 Spreadsheet >>	6.5
9/28/2012	NP12-45-000	FRCC	Unidentified Registered Entity	1	\$150,000	View NOP >>	View Order >>		6.4
9/28/2012	NP12-46-000	WECC	Unidentified Registered Entity	1	\$200,000	View NOP >>	View Order >>		6.4
9/28/2012	NP12-47-000	Various	Unidentified Registered Entities	14	\$113,400	View NOP >>	View Order >>	View A-2 Spreadsheet >>	6.4
9/28/2012	RC12-16-000	Various	Unidentified Registered Entities	41	\$0	View Filing >>		View A-2 Spreadsheet >>	6.4
10/31/2012	NP13-1-000	WECC	Unidentified Registered Entity	1	\$200,000	View NOP >>	View Order >>		6.3
10/31/2012	NP13-4-000	RFC	Unidentified Registered Entities	3	\$725,000	View NOP >>	View Order >>		6.3
10/31/2012	NP13-5-000	Various	Unidentified Registered Entities	19	\$216,000	View NOP >>	View Order >>	View A-2 Spreadsheet >>	6.3
10/31/2012	RC13-1-000	Various	Unidentified Registered Entities	44	\$0	View Filing >>		View A-2 Spreadsheet >>	6.3
11/30/2012	NP13-6-000	WECC	Unidentified Registered Entity	1	\$62,500	View NOP >>	View Order >>		6.2
11/30/2012	RC13-2-000	Various	Unidentified Registered Entities	25	\$0	View Filing >>		View A-2 Spreadsheet >>	6.2

Dockets With Expired CEII Designations

Date	FERC Docket Number	Region	Registered Entity	Entities	Total Penalty (\$)	NOP	Order	A2 Spreadsheet	Years
12/31/2012	NP13-11-000	SPP	Unidentified Registered Entity	1	\$107,000	View NOP >>	View NOP >>		6.1
12/31/2012	NP13-12-000	Various	Unidentified Registered Entities	21	\$214,000	View Filing >>	View Order >>	View A-2 Spreadsheet >>	6.1
12/31/2012	NP13-16-000	WECC	Unidentified Registered Entity	1	\$207,000	View NOP >>	View NOP >>		6.1
12/31/2012	NP13-17-000	RFC	Unidentified Registered Entities	3	\$80,000	View NOP >>	View Order >>		6.1
12/31/2012	NP13-18-000	SPP	Unidentified Registered Entity	1	\$153,000	View NOP >>	View NOP >>		6.1
12/31/2012	NP13-19-000	SERC	Unidentified Registered Entity	1	\$950,000	View NOP >>	View NOP >>		6.1
12/31/2012	RC13-3-000	Various	Unidentified Registered Entities	25	\$0	View Filing >>		View A-2 Spreadsheet >>	6.1
1/31/2013	NP13-22-000	WECC	Unidentified Registered Entity	1	\$115,000	View NOP >>	View Order >>		6.1
1/31/2013	NP13-23-000	Various	Unidentified Registered Entities	22	\$73,000	View Filing >>	View Order >>	View A-2 Spreadsheet >>	6.1
1/31/2013	RC13-5-000	Various	Unidentified Registered Entities	22	\$0	View Filing >>		View A-2 Spreadsheet >>	6.1
2/28/2013	NP13-24-000	WECC	Unidentified Registered Entity	3	\$151,500	View NOP >>	View Order >>		6.0
2/28/2013	NP13-27-000	Various	Unidentified Registered Entities	14	\$53,000	View Filing >>	View Order >>	View A-2 Spreadsheet >>	6.0
2/28/2013	RC13-6-000	Various	Unidentified Registered Entities	27	\$0	View Filing >>		View A-2 Spreadsheet >>	6.0
3/27/2013	NP13-30-000	RFC	Unidentified Registered Entity	3	\$120,000	View NOP >>	View Order >>	View Errata>>	5.9
3/27/2013	NP13-28-000	Various	Unidentified Registered Entity	1	\$90,000	View NOP >>	View Order >>		5.9
3/27/2013	NP13-29-000	Various	Unidentified Registered Entities	10	\$80,000	View Filing >>	View Order >>	View A-2 Spreadsheet >>	5.9
4/30/2013	NP13-32-000	NERC	Unidentified Registered Entity	1	\$40,000	View NOP >>	View Order >>		5.8
4/30/2013	NP13-33-000	Various	Unidentified Registered Entities	18	\$315,250	View Filing >>	View Order >>	View A-2 Spreadsheet >>	5.8
4/30/2013	RC13-8-000	Various	Unidentified Registered Entities	50	\$0	View Filing >>		View A-2 Spreadsheet >>	5.8
5/30/2013	NP13-34-000	Texas RE	Unidentified Registered Entity	1	\$137,000	View NOP >>	View Order >>	View Errata >>	5.7
5/30/2013	NP13-38-000	WECC	Unidentified Registered Entity	1	\$291,000	View NOP >>	View Order >>		5.7
5/30/2013	NP13-39-000	Various	Unidentified Registered Entities	16	\$67,500	View Filing >>	View Order >>	View A-2 Spreadsheet >>	5.7
5/30/2013	RC13-9-000	Various	Unidentified Registered Entities	53	\$0	View Filing >>		View A-2 Spreadsheet >>	5.7
6/27/2013	NP13-41-000	Various	Unidentified Registered Entities	20	\$198,000	View Filing >>	View Order >>	View A-2 Spreadsheet >>	5.7
6/27/2013	RC13-10-000	Various	Unidentified Registered Entities	52	\$0	View Filing >>		View A-2 Spreadsheet >>	5.7
7/31/2013	NP13-45-000	WECC	Unidentified Registered Entity	1	\$198,000	View NOP >>	View Order>>		5.6
7/31/2013	NP13-46-000	Various	Unidentified Registered Entities	18	\$112,000	View Filing >>	View Order>>	View A-2 Spreadsheet >>	5.6
7/31/2013	NP13-47-000	RFC, SERC	Unidentified Registered Entities	2	\$350,000	View NOP >>	View Order>>		5.6
8/30/2013	NP13-51-000	Various	Unidentified Registered Entities	18	\$98,000	View Filing >>	View Order>>		5.5
9/30/2013	NP13-55-000	WECC	Unidentified Registered Entity	1	\$150,000	View NOP>>	View Order>>		5.4
9/30/2013	NP13-57-000	Various	Unidentified Registered Entities	12	\$189,000	View Filing >>	View Order>>	View A-2 Spreadsheet >>	5.4
10/30/2013	NP14-4-000	RF, SERC	Unidentified Registered Entities	16	\$55,000	View Filing >>	View Order>>	View A-2 Spreadsheet >>	5.3
10/30/2013	NP14-5-000	RFC	Unidentified Registered Entity	1	\$0	View NOP>>	View Order>>		5.3
11/27/2013	NP14-6-000	Various	Unidentified Registered Entities	14	\$142,000	View Filing >>	View Order >>	View A-2 Spreadsheet >>	5.2
12/30/2013	NP14-14-000	Various	Unidentified Registered Entities	18	\$276,500	View Filing >>	View Order>>	View A-2 Spreadsheet >>	5.1
12/30/2013	NP14-16-000	SERC	Unidentified Registered Entity	1	\$50,000	View NOP>>	View Order>>		5.1
12/30/2013	NP14-17-000	WECC	Unidentified Registered Entity	1	\$144,000	View NOP>>	View Order>>		5.1
12/30/2013	NP14-18-000	SERC	Unidentified Registered Entity	1	\$110,000	View NOP>>	View Order>>		5.1
12/30/2013	NP14-19-000	WECC	Unidentified Registered Entity	1	\$185,000	View NOP>>	View Order>>	View Errata>>	5.1
12/30/2013	NP14-20-000	SERC	Unidentified Registered Entity	1	\$198,000	View NOP>>	View Order>>		5.1
12/30/2013	NP14-22-000	WECC	Unidentified Registered Entity	1	\$150,000	View NOP>>	View Order>>		5.1
12/31/2013	NP14-21-000	SERC	Unidentified Registered Entity	1	\$175,000	View NOP>>	View Order>>		5.1
12/31/2013	NP14-23-000	SPP RE	Unidentified Registered Entity	1	\$100,000	View NOP>>	View Order>>		5.1
12/31/2013	NP14-24-000	SERC	Unidentified Registered Entity	1	\$350,000	View NOP>>	View Order>>		5.1
12/31/2013	NP14-25-000	SERC	Unidentified Registered Entity	1	\$250,000	View NOP>>	View Order>>		5.1
12/31/2013	NP14-26-000	SERC	Unidentified Registered Entity	1	\$120,000	View NOP>>	View Order>>		5.1
1/30/2014	NP14-29-000	WECC	Unidentified Registered Entity	1	\$109,000	View NOP	View Order		5.1
1/30/2014	NP14-30-000	RFC	Unidentified Registered Entity	1	\$75,000	View NOP	View Order		5.1

Michael Mabee

(516) 808-0883

CivilDefenseBook@gmail.com

April 1, 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. 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:

On March 28, 2019, three electric industry trade associations¹ filed a Motion to Intervene in numerous FERC dockets including NP19-4-000. In this filing, the following agreement between the FERC and the North American Electric Reliability Corporation (NERC) is described on page 14:

The Trade Associations understand that in 2010 NERC and the Commission intentionally chose to post only the public versions of the Notices of Penalty without the names of the entities to address security concerns because the names, when combined with information on the violations and penalties, were considered CEII. In addition to the entity names, details on

I request copies of any documents that describe such agreement, understanding or arrangement between FERC and NERC in or about 2010 including any memos, directives, reports, emails, notes, FERC/NERC quarterly meeting minutes or any other documents in any way describing this arrangement to withhold the names of entities in Notices of Penalty.

¹ The American Public Power Association (APPA), the Edison Electric Institute (EEl), and the National Rural Electric Cooperative Association (NRECA).

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 have no commercial interest in the requested information.

The Commission has previously found that I am entitled to a waiver of fees as I meet all the requirements of 18 C.F.R. §388.109(c).³ Should you need more specifics, let me know and I will be happy to provide them.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'm' followed by a stylized flourish.

Michael Mabee

² <https://michaelmabee.info/category/mikes-blog/> (accessed April 1, 2019).

³ See for example FOIA 2018-75, FOIA 2019-19 and FOIA 2019-30.

Federal Energy Regulatory Commission
Washington, D.C. 20426

APR 30 2019

Re: FOIA No. FY19-61,
Response Letter

VIA ELECTRONIC AND REGULAR MAIL

Michael Mabee



CivilDefenseBook@gmail.com

Dear Mr. Mabee:

This is a response to your correspondence received on April 3, 2019, in which you requested information pursuant to the Freedom of Information Act (FOIA), and the Federal Energy Regulatory Commission's (Commission) FOIA regulations, 18 C.F.R. § 388.108 (2019). Specifically, you requested:

...copies of any documents that describe such agreement,¹ understanding or arrangement between FERC and NERC in or about 2010 including any memos, directives, reports, emails, notes, FERC/NERC quarterly meeting minutes or any other document in any way describing this arrangement to withhold the names of entities in Notices of Penalty.

A search of the Commission's non-public files identified no documents responsive to this request. As provided by the FOIA and 18 C.F.R. §388.110(a)(1) of the Commission's regulations, any appeal from this determination must be filed within 90 days of the date of this letter. The appeal must be in writing, addressed to James P. Danly, General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, and clearly marked "Freedom of Information Act Appeal." Please include a copy to Charles A. Beamon, Associate General Counsel, General and Administrative Law, at the same address.

You have the right to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services (OGIS). Using OGIS services does not affect your right to pursue your appeal. You may contact OGIS by email at ogis@nara.gov; telephone at (877) 684-6448; facsimile at (301) 837-0348; or by mail to

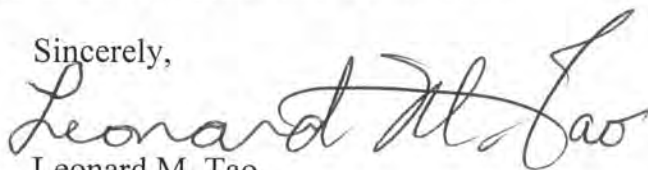
¹ You explain the agreement is indicated on page 14 of FERC Docket NP19-4-000 and reads as follows: "The Trade Associations understand that in 2010, NERC and the Commission intentionally chose to post only the public versions of the Notices of Penalty without the names of the entities to address security concerns because the names, when combined with the information on the violations and penalties, were considered CEII."

FY19-61

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the Office of Government Information Services, National Archives and Records Administration, Room 2510, Adelphi Road, College Park, MD 20740-6001.

Sincerely,

A handwritten signature in cursive script, reading "Leonard M. Tao". The signature is written in dark ink and is positioned above the printed name and title.

Leonard M. Tao

Director

Office of External Affairs

Document Content(s)

Reply Comments (Mabee) AD-19-13-000.PDF.....1-30