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**Sent:** Tuesday, August 27, 2019 12:23 PM

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**Subject:** Notice of Joint Staff White Paper on Notices of Penalty Pertaining to Violations of Critical Infrastructure Protection Reliability Standards under AD19-18.

A White Paper jointly prepared by the staffs of the Federal Energy Regulatory Commission (Commission) and the North American Electric Reliability Corporation (NERC), addresses NERC's submission, and the Commission's processing, of Notices of Penalty (NOPs) for violations of Critical Infrastructure Protection (CIP) Reliability Standards, which contain requirements that provide for the cybersecurity of the Bulk-Power System. CIP NOPs, as submitted to the Commission by NERC, typically include information pertaining to the nature of the violation, potential vulnerabilities to cyber systems as a result of the noncompliance, and mitigation activities.

While NERC has submitted CIP NOPs containing Critical Energy/Electric Infrastructure Information (CEII) requests since 2010, Commission staff did not assess a NERC request for CEII designation until 2018 when, for the first time, the Commission received a FOIA request seeking the name of an undisclosed CIP violator (referred to by NERC as an "unidentified registered entity" or "URE").

The Commission has recently received an unprecedented number of FOIA requests for non-public information in CIP NOPs. Consistent with its regulations, Commission staff has released the identity of UREs in some limited cases where the Commission staff has determined that the release will not jeopardize the security of the Bulk-Power System if publicly disclosed. The significant increase in FOIA requests for non-public information in CIP NOPs has raised security and transparency concerns within industry and the general public, which has prompted Commission and NERC staffs to re-evaluate the format of CIP NOPs filed with the Commission. The current filing format, containing detailed violation information, when coupled with the potential release of URE identities, may not be achieving an appropriate balance of security and transparency. The White Paper proposes a revised format that is intended to improve this balance.

Under the proposal, NERC CIP NOP submissions would consist of a proposed public cover letter that discloses the name of the violator, the Reliability Standard(s) violated (but not the Requirement), and the penalty amount. NERC would submit the remainder of the CIP NOP filing containing details on the nature of the violation, mitigation activity, and potential vulnerabilities to cyber systems as a non-public attachment, along with a request for the designation of such information

as CEII. This proposal would allow for transparency related to the identity of the entity and violation while protecting the more sensitive security information that could jeopardize the security of the Bulk-Power System. The proposal would only apply to future CIP NOPs submitted by NERC, and it would not affect CIP NOPs already filed with the Commission. Nor does the proposal affect pending FOIA requests pertaining to previously-filed CIP NOPs.

Commission and NERC staffs believe that the proposed revised format appropriately balances security and transparency concerns. The proposal provides a straightforward format for separating public and non-public information that should achieve efficiencies in submission and processing of CIP NOPs, and lessen the potential for inadvertent disclosure of non-public information. While names of violators would be made public with each CIP NOP submission, detailed information that could be useful to a person planning an attack on critical infrastructure, such as details regarding violations, mitigation and vulnerabilities, would likely be considered by Commission staff to be exempt from FOIA. Thus, the revised approach would better protect the electric grid by making less sensitive information available to potential bad actors. Moreover, the proposal segregates information between the public cover letter and non-public attachment in a manner that is consistent with relevant law, including section 215 of the Federal Power Act (FPA), the Fixing America's Surface Transportation Act (FAST Act) and FOIA.

Concurrently, the Commission will issue a public notice seeking comment on the White Paper. In particular, we seek comment on the following:

- The potential security benefits from the new proposed format;
- Any potential security concerns that could arise from the new format;
- Any other implementation difficulties or concerns that should be considered.
- Whether the proposed format provide sufficient transparency to the public.

The Commission and NERC are not making any changes to the CIP NOP filing format at this time. Rather, any changes will occur after consideration of public comment on the White Paper.

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