

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

**Joint Staff White Paper on Notices of)
Penalty Pertaining to Violations of Critical) Docket No. AD19-18-000
Infrastructure Protection Reliability Standards)**

Comments on Transparency

Submitted to FERC on September 20, 2019

Thomas Waller Jr., a private citizen, respectfully submits comments on FERC Docket No. AD19-18-000, Joint Staff White Paper on Notices of Penalty Pertaining to Violations of Critical Infrastructure Protection Reliability Standards.

I am a Lieutenant Colonel in the United States Marine Corps Reserve and veteran of combat operations in Afghanistan and Iraq and other types of military operations in Africa, Latin America, and North America. My service over nearly two decades has exposed me to conditions where me and my fellow Marines, and the people we sought to assist, were without electrical power. As Marines, though, we expected those conditions and had trained for them. In many cases, the residents of those countries where we served had become very accustomed to living without electricity. Unfortunately, the same cannot be said about the United States of America.

It is obvious to me, and should be obvious to all Americans, that our electronic civilization is woefully unprepared to live without electricity. Every aspect of our daily existence is tied to this "lifblood" of our society. There is simply not an infrastructure more important to the United States than that which generates, transmits, and distributes electricity. Recognizing that your Commission has cognizance and rulemaking authority over at least the transmission portion of that equation, there is no more important

federal agency in the United States than yours when it comes to ensuring that this electricity continues to flow. For that reason, when people thank me for “my service” I often remind them that nothing I have ever done in uniform would match the service provided by those who “keep the lights on” for America. I pray that your commission and those entities which regulate the generation and distribution aspects of the grid at the state level realize the weight of this responsibility.

In short, there exists in America no place more important for serving the public interest than the public utility commissions, public service commissions, and your Commission at the federal level. In the research that I have done on the corporate leadership of the electric utility industry, though, it seems that special interests trump public interests. This reality can be no more obvious than in the current, nearly decade-old practice NERC hiding the names of those companies that violate Critical Infrastructure Protection (CIP) standards. This lack of transparency protects the industry from public scrutiny and facilitates a corporate culture among electric utility executives that is far less focused on security than our present vulnerability merits.

Transparency is a fundamental aspect of a functioning democracy and it is what sets our nation’s government apart from much of the rest of the world. For this reason it is extremely disappointing to me, and it should outrage the public, that FERC has been allowing NERC to hide the identities of companies that violate CIP standards. No other federal agency does this.

For example, the public has observed that the Securities and Exchange Commission does not hide the identities of companies and individuals subject to regulatory actions under U.S. securities laws; that when the Food and Drug Administration recalls food due to public safety concerns it does not redact the

names of the food brands; and when an aircraft crashes the National Transportation Safety Board doesn't try to hide the name of the aviation company or aircraft manufacturer.

The risks of unhealthy food, irresponsible investment, or unsafe aircraft travel pale in comparison to the risk to the American public of a prolonged or widespread blackout caused by a physical attack, cyberattack, or any other breach of CIP reliability standards (including vegetation management!) The public realizes this and also realizes that your agency has the authority under the Federal Power Act to protect the public interest by enforcing the same types of disclosure practiced in every other aspect of regulation in our free society.

Therefore, I was initially pleased to learn about the FERC/NERC White Paper that is the subject of this docket. The more I researched it, though, and began to read other comments on the docket and speak with security experts in the field of electric grid protection, the more I realized that this White Paper (as currently proposed) is, for those of us who care about transparency, more like a carefully laid ambush than a peaceful outstretched hand.

For example, Mr. George Cotter pointed out in his comments on this docket that "the White Paper states:

1. NERC can continue to claim the name of the violator is CEII Information
2. NERC would no longer submit NOPs until all violations are mitigated
3. FERC Rules would apply to all NOPs, spreadsheet NOPs, "find, fix, track, and report" noncompliance postings, and compliance exceptions.
4. A considerably expanded definition of "critical Infrastructure" to claim exemption from FOIA for any information deemed 'useful' to an adversary.

5. Violation details can be claimed by NERC as CEII and can only be rebutted by a sole FERC staff CEII functionary.” [footnotes removed]

In the words of Mr. Cotter, if this White Paper were codified, it “would make minimal information publicly available on CIP violations (only Utility Name, CIP Standard but not ‘Requirements’, Penalty Amount) while formalizing and significantly extending NERC and FERC actions of the past nine years in denying the public and other Federal Authorities all other details of violations.” This observation unveils what I perceive is a disingenuous offer by FERC/NERC to enhance transparency.

Therefore, I was glad to see that Mr. Cotter and others are supporting the “Alternate Proposal” that was proposed by retired U.S. Army Command Sergeant Major (CSM) Michael Mabee in the comments he submitted to FERC on September 3, 2019. Having thoroughly read the content on CSM Mabee’s website (<https://michaelmabee.info/>), I can unequivocally state that this man is working for the public interest, upholding the oath which he took as a member of the United States armed forces many years ago.

CSM Mabee’s the research, analysis, and public dissemination of information about the regulatory environment governing the reliability and resilience of our most critical infrastructure is perhaps some of the most valuable community service I have ever witnessed. CSM Mabee’s knowledge, experience, and personal motivations (public interest vs. self-interest) are apparent in his writing, regardless of the tone or choice of words and images he uses. For these reasons, I believe that he is a credible authority and that his comments on this docket ought to bear significant weight.

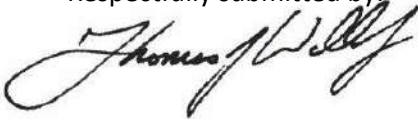
CSM Mabee's "Alternate Proposal" is, to me, clear cut and actionable. It has already garnered the support of numerous high-level national security experts and will predictably receive criticism by those in the industry who oppose transparency.

I implore your Commission to adopt CSM Mabee's "Alternate Proposal" and to thereby set the example for regulators at the state level to craft their own *genuine* initiatives toward transparency. Failing to do so will no doubt enable the persistence of a corporate culture among senior executives in the electric power industry that is less mindful of security than it ought to be.

Conversely, adopting this "Alternate Proposal" would be a course-correction that could result in the public becoming more aware of the vulnerabilities to the electric grid and more passionate about fixing them, giving the senior executives in the electric power industry the backing they need to request the resources they require (whether that be through grants or cost recovery) to fix those vulnerabilities.

Unmistakably, for the industry to protect its assets commensurate with the natural and manmade hazards that threaten them, they'll need more money. Clearly, without Americans realizing the urgent vulnerabilities, they're less likely to want to contribute this money (whether it be through rate increases or taxes). Because of these realities, *genuine* transparency will be key to "waking up" the nation and getting the grid operators what they need to Secure the Grid.

Respectfully submitted by:

A handwritten signature in black ink, appearing to read "Thomas J. Waller Jr.", written in a cursive style.

Thomas J. Waller Jr.

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