

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

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

**COMMENTS ON JOINT STAFF WHITE PAPER ON BEHALF OF
THE LOUISIANA PUBLIC SERVICE COMMISSION**

The Louisiana Public Service Commission ("Louisiana Commission" or "LPSC") hereby respectfully submits its Comments on the *Joint Staff White Paper on Notices of Penalties Pertaining to Violations of Critical Infrastructure Protection Reliability Standards* ("White Paper" or "Joint Staff Proposal") prepared by the Staffs of the Federal Energy Regulatory Commission ("FERC" or the "Commission") and the North American Electric Reliability Corporation ("NERC"). The FERC invited comments from interested parties in its "Notice of White Paper" issued on August 27, 2019. The original deadline for the submission of comments was September 26, 2019 and the Commission subsequently extended that deadline to October 28, 2019.

The White Paper contains the recommendations of the Staffs of the FERC and the NERC to revise the format of the Critical Infrastructure Protection Notices of Penalty ("CIP NOPs") to be filed with the FERC. The need for the proposed modifications is described by the FERC and NERC Staffs as follows:

"The current filing format, containing detailed violation information, when coupled with the release of URE entities may not be achieving an appropriate balance of security and transparency. To that end, this White Paper proposes a revised format that is intended to improve the balance."

(White Paper p. 3)

Under the Joint Staff Proposal, the submittal by the NERC to the FERC of the CIP NOPs would contain two parts. Part I is a cover letter in which the NERC will publicly disclose: (1) the name of the violator; (2) the Reliability Standard(s) violated (but not the requirement or sub-requirement violated); and (3) the penalty amount. Part II of the filing will be a confidential attachment that will contain details on: (1) the nature of the violation; (2) mitigation activity undertaken; and (3) potential vulnerability to cyber systems. The cover letter that will be publicly available will also contain a request by NERC that the attached confidential Part II be designed as Confidential Critical Energy/Electric Infrastructure Information. Finally, the NERC will submit CIP NOPs to the FERC only after mitigation of the underlying violation is completed (White Paper p. 10–11).

I. BACKGROUND

The Joint Staffs requested interested parties to submit comments on four areas as follows:

- 1) The potential security benefits from the new proposed format;
- 2) Any potential security concerns that could arise from the new format;
- 3) Any other implementation difficulties or concerns that should be considered; and
- 4) Does the proposed format provide sufficient transparency to the public?

The Joint Staffs also solicited comments on other suggested approaches as to the form of the CIP NOPs that will ensure the protection of sensitive information that could be helpful to someone planning an attack on critical infrastructure, while at the same time balancing the need for transparency and efficiency. (White Paper p. 12–13).

II. COMMENTS OF THE LOUISIANA COMMISSION

The analysis of the Joint Staffs Proposal is driven by the twin (and sometimes competing) goals of maintaining the security of the bulk transmission grid and ensuring transparency for the public, federal and state regulators and the electric utility industry. The Louisiana Commission believes that the Joint Staff Proposal is a step in the right direction for the following reasons:

- 1) It standardizes the format for reporting violations. Under the current system, when NERC makes a CIP NOP submission to the FERC, redactions of information are made on a filing-by-filing basis. The chances are far greater for inadvertent errors that could lead to unintended disclosures of CEII information that could be useful to a wrongdoer or potential wrongdoer.
- 2) The Joint Staff Proposal maintains as confidential the substantive details of the CIP violations, the specific mitigation techniques utilized to address the violations and the cyber security vulnerabilities that were exploited. All of this information could be useful to a future violator and is appropriately shielded from public disclosure.
- 3) The submissions are made by the NERC to the FERC only after mitigation is complete. Once again this protects against exacerbation of an existing violation and protects against disclosure of information to a new potential violator.
- 4) The public portion of the filing will disclose the identity of the violator and the general nature of the violation. These are appropriate disclosures and help to satisfy the need for transparency while not risking disclosure of more specific information that might assist wrongdoers.

There do seem to be several areas where additional public disclosure of information might be accomplished while not providing potential violators with any useful information. This is particularly true since the CIP NOPs will not be filed until after mitigation is complete. Those areas are as follows:

- 1) The date the violation occurred. Since, at the time the CIP NOP is filed, the violation has already been remedied disclosing the date of the violation should provide no benefit to a would-be perpetrator.
- 2) How the violation was discovered (e.g., self-report, audit etc.). It does not appear that disclosure of the manner in which the violation was discovered could put at risk confidential or other sensitive information that might be of use to a wrongdoer.

- 3) The duration of the violation: Once again, since the violation no longer exists and mitigation is complete at the time of the filing of the CIP NOP, disclosure of the duration of the violation does not seem problematic. In addition, specifics of the violation are not a part of the public letter, so a would-be wrongdoer cannot really leverage this information.

The Louisiana Commission recommends the adoption of one additional requirement. Like the FERC and the NERC, retail regulators such as the Louisiana Commission have a vital interest in ensuring the security of the bulk power system and that the system is safe from cyber attack. Therefore, when electric utilities are subject to, or have violated electric reliability standards, the state regulator in the state where the utility is located must be immediately notified once a CIP NOP is submitted by the NERC to the FERC regarding each such violation. The state regulator should be provided with a copy of the public portion of the filing.

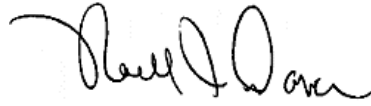
III. RESPONSES TO TOPICS IDENTIFIED BY JOINT STAFF FOR COMMENT

- 1) The potential security benefits from the new proposed format. The Joint Staff Proposal standardizes the format for reporting violations that should reduce the likelihood of inadvertent errors leading to the unintended disclosure of sensitive CEII information. The substantive details of the violation as well as the cyber security violations are maintained as confidential. In addition the CIP NOP is not submitted until mitigation is complete. All of these provisions provide security benefits and reduce the likelihood of disclosure of information that would be useful to a potential violator.
- 2) Any potential security concerns that could arise from the new format. The Louisiana Commission has not identified any such concerns.
- 3) Any other implementation difficulties or concerns that should be considered. It is impossible to determine, with certainty, how well the new format will operate. Therefore, the Louisiana Commission recommends that 24 months after the new reporting format is implemented, the Commission conduct a review to determine how well it is working and what if any changes should be implemented.
- 4) Does the proposed format provide sufficient transparency to the public? In general, the Louisiana Commission supports the additional transparency provided by the proposed format. However, the LPSC is recommending three additional provisions that it believes will provide additional transparency without providing any potential violators any advantages. The Louisiana Commission recommends that in addition to the information to be made public pursuant to the proposed format that the following information should also be provided when the CIP NOP is filed: The

date the violation occurred; how the violation was discovered (e.g., self-report, audit, etc.); and the duration of the violation. In addition, because of the unique position of state public service commissions, the Louisiana Commission recommends that when any electric utility has been subject to, or has violated any electric reliability standard, the retail regulator in the state where the utility is located must be immediately notified once a CIP NOP is submitted by the NERC to the FERC regarding each such violation. The state regulator shall be provided with a copy of the public portion of the filing.

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 28th day of October 2019.

