

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

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

**COMMENTS OF THE
NEW JERSEY BOARD OF PUBLIC UTILITIES**

The New Jersey Board of Public Utilities (“Board”) hereby submits these limited comments on the Joint White Paper published by the Staff of the Federal Energy Regulatory Commission (“Commission”) and the North American Electric Reliability Corporation (“NERC”) on August 27, 2019.¹ The Joint White Paper sets out a proposed new format for NERC Notices of Penalty (“NOP”) involving violations of Critical Infrastructure Protection (“CIP”) Reliability Standards.² The Board is generally supportive of the Joint White Paper, but recommends enhancing the process to ensure that state commissions have access to the more detailed information.

COMMENTS

The Joint White Paper addresses NERC’s submission, and the Commission’s processing, of NOPs for violations of CIP Reliability Standards, which contain requirements that provide for the cybersecurity of the Bulk-Power System. In light of a significant increase in Freedom of Information Act (“FOIA”) requests for non-public CIP NOPs,³ the Joint White Paper recognizes that the current submission and processing format used for CIP NOPs may not achieve the

¹ Joint Staff White Paper on Notices of Penalty Pertaining to Violations of Critical Infrastructure Protection Reliability Standards, Docket No. AD19-18-000 (Aug. 27, 2019) (“Joint White Paper”).

² 16 U.S.C. § 824o(e)(2).

³ “The Commission has recently received an unprecedented number of FOIA requests for non-public information in CIP NOPs.” Joint White Paper at 3.

appropriate balance between the industry's security concerns and the public's transparency concerns. The Joint White Paper proposes a revised format to improve this balance. Specifically, under the proposal, NERC CIP NOP submissions would consist of a public cover letter, disclosing the name of the violator, the Reliability Standard(s) violated (but not the Requirement), and the penalty amount. The remainder of the CIP NOP submission, containing details on the nature of the violation, mitigation activity, and potential vulnerabilities to cyber systems, would be included as a non-public attachment.

The Board generally supports the recommendations stated in the Joint White Paper as they appear to balance confidentiality, transparency, security and efficiency concerns. However, the Board, as a state regulatory commission, urges the Commission and NERC Staff to consider enhancing this process to enable state commissions access to the confidential information submitted in the attachment. The Board led the effort, on behalf of State regulators, to develop an effective and pragmatic cyber order that requires electric public utilities to document and certify their compliance with National Institute of Standards and Technology ("NIST") based standards.⁴ The performance of the bulk transmission system directly impacts distribution performance under the Board's regulatory authority. Denying state regulators access to the details incorporated in the non-public attachment (such as violations and mitigation measures) reduces the state commissions' efficacy in carrying out their statutory obligation to ensure safe, adequate and reliable service; limits state mitigation and protection activities; and reduces the State's ability to ensure availability of essential services. Confidentiality concerns should not be viewed as a barrier. The Board is able to provide confidentiality through exemptions of the Open Public Records Act ("OPRA")⁵ for

⁴ See National Institute of Standards and Technology, Cybersecurity Framework; *see also* In The Matter of Utility Cyber Security Program Requirements, BPU Docket. No. AO16030196, Order dated March 18, 2016.

⁵ N.J.S.A. §§ 47:1A-1 to -13.

matters that could potentially threaten the cyber security of State residents. The OPRA exemptions are similar to the confidentiality Exemptions 3 and 7(F) of the Freedom of Information Act.⁶ The Board also employs staff with Department of Homeland Security secret clearance; this staff is equipped to handle sensitive and confidential information. Thus, the Commission and NERC Staff should ensure any revision to the NOP CIP notification process appropriately enables state commissions necessary access to confidential information.

CONCLUSION

The Board appreciates the effort put into the Joint White Paper by the Commission and NERC Staff. The Board is generally supportive of the Joint White Paper, but recommends enhancing the process to ensure state commissions have access to more detailed information.

Respectfully submitted,

NEW JERSEY BOARD OF PUBLIC UTILITIES

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⁶ 5 U.S.C. §§ 552b(3) and (7)(F).

CERTIFICATE OF SERVICE

I hereby certify that, on this 28th day of October, 2019, I have caused the foregoing document to be served upon each party designated on the official service list compiled by the Secretary in this proceeding, by email.

/s/ Paul Youchak

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