

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

NERC Notices of Penalty Involving Violations of Critical Infrastructure Protection Reliability Standards	Docket No. AD19-18-000
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**COMMENTS OF THE CONNECTICUT PUBLIC UTILITIES REGULATORY
AUTHORITY AND THE CONNECTICUT OFFICE OF CONSUMER COUNSEL**

In response to the Federal Energy Regulatory Commission (FERC or Commission) staff's White Paper prepared jointly with staff from the North American Electric Reliability Corporation (NERC) and dated August 27, 2019 (White Paper), the Connecticut Public Utilities Regulatory Authority (PURA or Authority) and the Connecticut Office of Consumer Counsel (CT OCC; collectively, CT Agencies) hereby submit their comments regarding the White Paper.

The CT Agencies wish to thank FERC for taking up the issue of transparency regarding NERC Notices of Penalty (NOPs) involving violations of Critical Infrastructure Protection (CIP) Reliability Standards and appreciate the tension between transparency and security of the Bulk-Power System articulated in the White Paper. Generally, the CT Agencies support the conclusions of the White Paper, namely, that with CIP NOPs, an appropriate balance between transparency and security is better served by making the name of the violator public while keeping certain details of the violation and mitigation requirements/results confidential, as opposed to the current practice of keeping the name confidential while making the details public. In addition to highlighting its general support, the CT Agencies submit their comments to also address the areas on which the White Paper requested comments, including difficulties or concerns that

the CT Agencies have regarding implementation of the proposed disclosure policy and suggestions to improve its transparency.

I. COMMUNICATIONS

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II. COMMENTS

In their White Paper, the joint staffs of the Commission and NERC propose three main changes to the current type of and way information is disclosed for CIP NOPs. Namely: 1) the name of the violator is made public, not certain details of the violation; 2) the public and confidential material are contained in separate documents, a cover letter and a confidential attachment, respectively; and 3) NERC's submission of a CIP NOP would occur only after the mitigation of the underlying violation. The CT Agencies

believe that each of these features of the proposal are important and necessary as discussed below.

a. The CT Agencies Support Making the Violator's Name Public Instead of the Details of the Violation

The CT Agencies believe that making the violator's name public serves three functions: 1) it brings unwanted attention to the violator and in doing so acts as an added deterrent against violations; 2) it assists state agencies and other parties with oversight/regulatory/advocacy responsibilities in following-up and taking appropriate action; and 3) it specifically alerts and informs the public in the vicinity of the violator. These three functions enhance the transparency surrounding CIP NOPs and, in the case of function 1), may lead to fewer violations.

b. The CT Agencies Support Having Separate Documents for Public and Confidential Material

The CT Agencies agree with the White Paper that using a format that separates public and confidential information in a straightforward manner lessens the potential for inadvertent disclosure of confidential information. Use of a public cover letter with confidential attachment approach negates the need for making time consuming redactions to an otherwise confidential document, clearly identifies the information to be made public, and lessens the likelihood that errors in protecting confidential information will be made. In terms of protecting the Bulk-Power System, this proposed format is a significant improvement over the current practice.

c. The CT Agencies Support the Approach Whereby NERC would Submit a CIP NOP Only After Mitigation of the Violation

The CT Agencies believe that NERC's submission of a CIP NOP only after mitigation of the violation is a necessary feature of a proposal that publicizes the names of violators of CIP reliability standards. Absent such a feature, entities that wish to compromise the Bulk-Power System would be tempted to target the violator knowing that its defenses are substandard. By waiting until the violator has remedied its defensive shortcomings before disclosing its identity, this incentive/vulnerability is removed, and adversaries of the Bulk-Power System have no particular reason to target the violator nor insight into susceptible targets.

d. The CT Agencies' Concerns and Suggestions Regarding Implementation of the Proposed Disclosure Policy

While the CT Agencies fully support the key elements of the proposal as detailed above, the CT Agencies do have concerns regarding its implementation and some suggestions. With public disclosure of the violators' names, various state agencies nationwide, including PURA and CT OCC, will, as part of their regulatory/oversight/advocacy responsibilities, request confidential information from the violators. In addition, other interested parties will likely approach the violators directly as well as state or local government agencies requesting details on the violations and other confidential information. The CT Agencies are concerned that once requests for confidential information are directed to violators and agencies other than the Commission and NERC, a consistent, secure, and appropriate response to these requests will be difficult to ensure. Towards that end, the CT Agencies recommend that the Commission provide guidelines/directions on how such requests should be handled

by state agencies and utilities/violators. Such guidance would help prevent the unintended disclosure of confidential material and instill some uniformity into the process of handling these requests.

On a separate matter, the CT Agencies recommend that the Commission consider what other information, in addition to the name of the violator, the Reliability Standard(s) violated, and the penalty amount, can be safely made public and included in the cover letter. When assessing what other information can be included, the CT Agencies suggest focusing on that information that allows interested parties to evaluate the rigorousness and appropriateness of the Commission's and/or NERC's oversight of critical infrastructure protection. The disclosure of such information, if consistent with system security (and under the assumption that NERC is submitting CIP NOPs only after the remedy has occurred), would allow the Commission and/or NERC to receive independent analysis and guidance on how to improve this oversight. For example, information on how the violation came to NERC's attention, how long the violation had existed before it came to NERC's attention, and why the violation was not detected sooner, would help interested parties gauge the efficacy of the Commission's and/or NERC's oversight and assist them in formulating suggested improvements. The Commission should consider making such information part of the cover letter to the extent it can be disclosed without jeopardizing Bulk-Power System security.

III. CONCLUSION

For the foregoing reasons, the CT Agencies submit their comments in the above-referenced matter for the Commission's consideration.

Respectfully submitted,

CONNECTICUT PUBLIC UTILITIES
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the foregoing document has this day been served by a means permitted by Rule 2010(f) of the Commission's Rules of Practice and Procedure on each person whose name appears on the Official Service List compiled by the Secretary in this proceeding.

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Dated this 28th day of October, 2019 in New Britain, Connecticut.