

Michael Mabee

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January 1, 2020

Leonard Tao,
Director and Chief FOIA Officer
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Subject: Request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

Dear Mr. Tao:

I request records under the Freedom of Information Act, which are described below.¹ Further, as more fully set forth below, I also request a fee waiver as I have no commercial interest in the described records and it is in the public interest for the Federal Energy Regulatory Commission (FERC) to disclose these records to the public.

Description of records sought:

I seek the "NERC Notice of Penalty" version which includes the name of the registered entity (and which has been previously withheld from the public) for the following docket numbers:

Date	FERC Docket Number	Region	Registered Entity	Entities
8/29/2019	NP19-16-000	WECC	Unidentified Registered Entity	1
8/29/2019	NP19-17-000	MRO	Unidentified Registered Entities	Unk
9/26/2019	NP19-18-000	Texas RE	Unidentified Registered Entities	Unk
10/31/2019	NP20-2-000	WECC	Unidentified Registered Entity	1
10/31/2019	NP20-3-000	NPCC	Unidentified Registered Entities	Unk
12/30/2019	NP20-6-000	WECC/RF	Unidentified Registered Entities	Unk

In the instances where there was a "Spreadsheet NOP" I request a copy of the spreadsheet that lists the name(s) of the entity subject to the regulatory action as well as the "Notice of Penalty." There is a total of 6 docket numbers covered under this request, with an unknown total of "Unidentified Registered Entities."

The records sought are not Critical Energy Infrastructure Information (CEII) or otherwise classified to protect national security:

I note that FERC Order No. 833 holds that the Commission's practice is that information that "simply give[s] the general location of the critical infrastructure" or simply provides the name of the facility is not Critical Energy

¹ This is a new request. I submitted a previous requests for a different sets of records on December 18, 2018 (FOIA-2019-0019), on January 12, 2019 (FOIA 2019-0030) and on August 3, 2019 (FOIA 2019-0099).

Infrastructure Information (CEII).² I am not seeking any CEII. I simply ask for disclosure of the identities of the “Unidentified Registered Entities” in the above dockets.

There is no national security reason or FOIA exemption that should prevent disclosure of the identity of this violator of reliability standards to the public, because the NERC Notice of Penalty in all but one docket claims that the cybersecurity vulnerabilities have been remedied.

Mere disclosure of the identity of the violating entity, without disclosure of the details of any remedied cybersecurity violations, will not provide adversaries information of any value but instead will likely reduce future violations. Disclosure of the identity of violators will prompt other utilities to be more diligent in order to avoid adverse publicity. The possibility of public shaming is a key component of the mandatory system of electric reliability standards established by Congress under Section 215 of the Federal Power Act and further codified in the Code of Federal Regulations. For example, when a utility has caused a blackout, FERC has had no issue in identifying the offending utilities and the amount of the fines. Would it not be better to identify reliability standard violators and therefore avoid blackouts?

I lastly note that allowing electric utilities to hide behavior that causes such a profound risk is contrary to the public interest and provides no incentive for the regulated entities to change their behavior.

Under FERC’s regulations, the names of the entities must be disclosed:

18 CFR § 39.7 (b)(4) provides that: “Each violation or alleged violation shall be treated as nonpublic until the matter is filed with the Commission as a notice of penalty or resolved by an admission that the user, owner or operator of the Bulk-Power System violated a Reliability Standard or by a settlement or other negotiated disposition.” [Emphasis added.]

Further, 18 CFR § 39.7(d)(1) provides that a notice of penalty by the Electric Reliability Organization shall consist of, *inter alia*: “The name of the entity on whom the penalty is imposed.”

The regulations are very clear that the name of the entity on whom the penalty is imposed is to be disclosed. Yet, somehow this is not the practice at NERC and the records I am requesting have had the names of the registered entities hidden from the public.

The records sought would not reveal trade secrets and commercial or financial information obtained from a person and privileged or confidential:

I note that it has been practice for FERC and NERC to disclose the identities of some entities who have been subject to regulatory fines by NERC. Therefore, those entities violating reliability standards have not been considered privileged or confidential information, solely on the basis of being a violator.

I also note that it is inconsistent with a well-functioning democracy for monetary penalties to be assessed against regulated entities whose identities are then held as secrets. I urge the Commission to reconsider the implications of allowing NERC, the FERC-designated Electric Reliability Organization (ERO), to have delegated authority to assess fines for wrongdoing and then to keep the identities of wrongdoers from public view. I know of no other federal regulator that allows this odious practice.

² Order No. 833 at pg. 17. Also see 18 C.F.R. §388.113(c)(1)(iv).

According to NERC, the majority of the violations have already been mitigated.

According to NERC's website³ all the requested dockets have already passed the "Mitigation Completion Date" with the exception of a few violations in NP20-6-000 (which is a "Spreadsheet Notice of Penalty" with multiple entities).

Request for Waiver of Fees:

I am a private citizen with expertise in emergency preparedness and critical infrastructure protection. I maintain a blog where I intend to disseminate this information⁴. I accept no advertising on my blog and derive no revenue from writing or posting my blog articles.

As set forth fully below, I am entitled to a waiver of fees as I meet all the requirements of 18 C.F.R. §388.109(c).

Requirement: In accordance with 18 C.F.R. §388.109(c)(1), "(1) Any fee described in this section may be reduced or waived if the requester demonstrates that disclosure of the information sought is: (i) In the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (ii) Not primarily in the commercial interest of the requester."

Answer: Disclosure of this information will inform the public as to the actions the government and the designated ERO have taken to ensure the security of the bulk power system. There has been a great deal of media attention and government notices and hearings regarding recent cyberattacks and cybersecurity breaches to the electric grid.⁵ Disclosure of the requested information is critical to the public's understanding of how FERC and the ERO holds regulated entities accountable to compliance with regulatory standards for cybersecurity.

I have no commercial interest in these records and will use these records in research and information dissemination to the public.

Requirement: In accordance with 18 C.F.R. §388.109(c)(2) "The Commission will consider the following criteria to determine the public interest standard:"

Answer: I will answer each criterion in turn.

Criterion: (i) "Whether the subject of the requested records concerns the operations or activities of the government"

³ https://www.nerc.com/pa/comp/CE/Enforcement%20Actions%20DL/Searchable_Enforcement_Page_12302019.xlsx (accessed January 1, 2020).

⁴ <https://michaelmabee.info> (accessed January 1, 2020).

⁵ See for example: US-CERT Alert (TA18-074A) <https://www.us-cert.gov/ncas/alerts/TA18-074A> (accessed March 15, 2018); Gizmodo: "FBI and DHS Warn That Russia Has Been Poking at Our Energy Grid." <https://apple.news/AHv5RwYqbSf-El-yla355Jw> (accessed March 15, 2018); Washington Free Beacon: "Russia Implicated in Ongoing Hack on U.S. Grid." <https://apple.news/AGs6ieh6wSP-1tQkUFttREA> (accessed March 15, 2018); Slate: "What Does It Mean to Hack an Electrical Grid?" <https://apple.news/Au5gy7bTITDSovpvzg5j79w> Senate Hearing: "Hearing to Consider the Status and Outlook for Cybersecurity Efforts in the Energy Industry." February 14, 2019. <https://michaelmabee.info/senate-cybersecurity-hearing/> (accessed August 3, 2019); House Hearing: "Keeping The Lights On: Addressing Cyber Threats To The Grid." July 12, 2019. <https://michaelmabee.info/house-cybersecurity-hearing/> (accessed August 3, 2019).

Answer: The protection of the critical infrastructure, including the bulk power system, is a clear function of the federal government.⁶ The regulation of the critical infrastructures by the federal government and the transparency of the process – including the identities of entities that violate reliability standards– concerns the operations or activities of the government.

Criterion: (ii) “Whether the disclosure is likely to contribute to an understanding of government operations or activities”

Answer: Disclosure of this information has garnered intense public interest, including citizens, the press, elected and appointed public officials, state regulators and the U.S. Congress. See filings in FERC Docket AD19-18-000. The public, Congress and regulators need this information to scrutinize and evaluate the effectiveness of the enforcement of CIP standards.

Criterion: (iii) “Whether disclosure of the requested information will contribute to public understanding”

Answer: As previously noted, there has been a great deal of public attention, press articles, Congressional hearings and increased awareness to the threat of cyberattacks against the bulk power system. The identity of entities that place the public at risk by violating cybersecurity standards is critical to the public understanding of the effectiveness of existing standards.

Criterion: (iv) “Whether the disclosure is likely to contribute significantly to public understanding of government operations or facilities.”

Answer: Under Section 215 of the Federal Power Act, regulation of the bulk power system is clearly a government operation. The public needs to understand how reliability standards are being enforced.

Requirement: In accordance with 18 C.F.R. §388.109(c)(3) “The Commission will consider the following criteria to determine the commercial interest of the requester:”

Answer: I will answer each criterion in turn.

Criterion: (i) Whether the requester has a commercial interest that would be furthered by the requested disclosure.

Answer: No. The requester a private citizen and has no commercial interest in the information.

And, if so: criterion: (ii) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Answer: Not applicable since the requester has no commercial interest in the information.

The records may be provided to me electronically at this email address: CivilDefenseBook@gmail.com.

⁶ Executive Order 13800 “Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure.” May 11, 2017. <https://www.gpo.gov/fdsys/pkg/FR-2017-05-16/pdf/2017-10004.pdf> (accessed March 24, 2018); Presidential Policy Directive 21 (PPD-21) – Critical Infrastructure Security and Resilience. February 12, 2013. <https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil> (accessed March 24, 2018).

Sincerely,

A handwritten signature in blue ink, appearing to read 'm' followed by a horizontal line.

Michael Mabee