

NEW MEXICO PUBLIC REGULATION COMMISSION

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Mr. Jonathan First
Office of the General Counsel
Federal Energy Regulatory Commission
888 First St., NE
Washington DC, 20426

November 27, 2019

Via E-File

Re: Proposed Revisions to the Federal Energy Regulatory Commission's Notice of Penalty Pertaining to Violations of Critical Infrastructure Protection Reliability Standards, Docket AD No. 19-18-000

Dear Mr. First,

The New Mexico Public Regulation Commission (PRC) urges the Federal Energy Regulatory Commission (FERC) to strike the proper balance between legitimate cyber- and other security interests and the principles of openness and public accountability that are cornerstones of self-governance and democracy.¹ As a preliminary matter the PRC appreciates the changes made in the *Joint Staff White Paper on Notices of Penalty Pertaining to Violations of Critical Infrastructure Protection Reliability Standards* (FERC/NERC, Docket No. 19-18-000, August 27, 2019) (*White Paper*); viz., a cover letter disclosing the "name of the violator, the reliability standard(s) violated [...] and the penalty amount".² The PRC supports the changes proposed to advance transparency, but urges even more openness to best serve the public interest.

The PRC is an independently elected commission that regulates three investor owned electric utilities, aspects of 16 rural electrical cooperatives and various other industries as directed by the state legislature. While our primary focus is on balancing the interests of rate payers and

¹ These principles are statutorily encoded in the Freedom of Information Act (5 USC §552) and New Mexico's Inspection of Public Records Act (NMSA 1978, §§ 14-2-1 et seq.).

² *White Paper* at 3.

regulated entities, we occasionally participate in Federal regulatory actions. We recognize that decisions made at the national and regional level can have enormous impact on New Mexico and we appreciate the opportunity to be heard on this vital issue.

FERC's concerns with security of the United States' grid system are well-taken, and grid security is a multi-faceted topic. Without minimizing the danger of cyber-attacks, perhaps of more pressing concern to the average New Mexican are forest fires. Since 2009, well over 2 million acres have burned in New Mexico and New Mexicans have been forced to evacuate their homes.³ In fact, some of these fires have been caused by electric transmission and distribution infrastructure failures due to high winds. Additionally, cooperation and coordination of fire prevention and response is difficult in New Mexico because the State of New Mexico has a patchwork of federal, state and private land and critical infrastructure ownership. These unique factors in our State make free and open information about critical infrastructure an essential prerequisite to preventing, mitigating and extinguishing forest fires in this drought prone, heavily forested state.

The PRC believes that two principles should guide the FERC's decision-making concerning the degree of openness in Notices of Penalty (NOP) for violations of Critical Infrastructure Protection (CIP).

1. The public has a right to know if any utility is not complying with FERC reliability standards and its wildfire prevention plans, as do local and statewide government agencies. This information could be useful to them in myriad ways, not the least of which is mitigation of forest fires.
2. Grid resiliency should be a primary value. To the extent keeping CIP outage information confidential undermines grid resiliency, the rules should be changed to promote more openness.

In consideration of these principles, the PRC therefore endorses the proposal of the New Hampshire Office of Consumer Advocate when it calls for even more transparency. In addition to what FERC/NERC have proposed in their *White Paper*, we agree that seven additional pieces of information should also be included in the Notice of Penalty.⁴

1. All information fields contained in the present searchable NOP spreadsheet used by NERC, including the name of the entity that committed the violation,
2. The date on which the violation was discovered,
3. The duration of the violation,
4. The manner in which the violation was discovered,

³ <http://www.emnrd.state.nm.us/SFD/FireMgt/Historical.html>

⁴ *Comments of the New Hampshire Office of Consumer Advocate* at 5-6, (Docket No. 19-18-000) (filed October 25, 2019)(“NHOCA”) quoting *Comments and Alternate Proposal of Michael Mabee* at 5-11.

5. A description of the violation in plain English,
6. Aggravating and mitigating factors bearing on the penalty assessment,
7. Any settlement agreement applicable to the NOP.⁵

With these additions, the PRC believes a more realistic and beneficial balance for the public interest is achieved. Thank you.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Stephen Fischmann, Electronically Signed

Stephen Fischmann

Designee on behalf of New Mexico Public Regulation Commission

Commissioner of District 5

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⁵ NHOCA Comments at 5-6.

Document Content(s)

Letter from NMPRC Re FERC Docket AD19-18.PDF.....1-3