

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

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

COMMENTS OF THE PSEG COMPANIES

PSEG¹ appreciates the opportunity to submit these comments to the Federal Energy Regulatory Commission (“FERC”) in response to the *Joint Staff White Paper on Notices of Penalty Pertaining to Violations of Critical Infrastructure Protection Reliability Standards* filed in this docket on August 27, 2019 (“White Paper”). The White Paper, developed by FERC staff and the staff of the North American Electric Reliability Corporation (“NERC”), sets out a proposed new format for NERC Notices of Penalty (“NOPs”) for violations of Critical Infrastructure Protection (“CIP”) Reliability Standards. The CIP standards support the cybersecurity of the Bulk Power System (“BPS”) through mandatory cyber and physical security requirements.

To address concerns related to Freedom of Information Act (“FOIA”) requests for information contained in NOPs, the White Paper proposes a new filing format: NERC would include a public cover letter that discloses the name of the registered entity, the CIP standards that were violated, and the amount of the penalty imposed; all other information in the NOP would be submitted as a non-public attachment for which NERC would request a designation as Critical Electric Infrastructure Information (“CEII”). CEII is exempt from disclosure under FOIA.² The

¹ The PSEG Companies are: Public Service Electric and Gas Company, PSEG Power LLC and PSEG Energy Resources & Trade LLC (collectively as “PSEG”).

² See Fixing America’s Surface Transportation Act (“FAST Act”), Pub. L. No. 114-94, § 61003 (specifically exempting the disclosure of CEII and establishing the applicability of FOIA exemption 3, 5 U.S.C. § 552(b)(3), which bars disclosure under FOIA of material that is protected under other federal law).

White Paper proposal represents a change from existing practice in that the names of registered entities and other sensitive details about the CIP standard violations are not currently made public. The White Paper states that the proposed revised filing format would appropriately balance concerns about security related to disclosure of CEII and the public interest of transparency.

PSEG participated in developing the comments jointly filed by the Edison Electric Institute, the American Public Power Association, the Electric Power Supply Association, the Large Public Power Council, the National Rural Electric Cooperative Association, the Transmission Access Policy Study Group, the Electric Power Supply Association (“EPSA”), and WIRES (together, “the Trade Associations”) in this matter and incorporate those comments herein by reference. PSEG is filing these limited individual comments to further supplement the concerns and recommendations the Trade Associations express regarding the proposed NOP format.

I. COMMENTS

The proposed changes to the NOP format present an opportunity to better protect information that could be used to undermine the security of the BPS, while providing additional transparency about compliance with CIP standards. However, the White Paper’s intention to balance these two objectives could result in disclosure of information that may not be appropriate in all cases. The Trade Associations’ suggested revisions to the proposed NOP format could serve to increase transparency while protecting CEII.

PSEG and other electric utilities have incentives to protect the reliability of the BPS and are committed to providing affordable, reliable electric service to our customers. The power sector is the only sector for which there are mandatory critical infrastructure protection standards. CIP violations are subject to significant fines and could undermine the provision of reliable service to customers. The electric industry’s commitment to reliable electric service and compliance with all

Reliability Standards is underscored by the fact that the vast majority of the NOPs reported by NERC to FERC are the result of self-reporting by registered entities. Disclosure of the names of those entities making self-reports will not further increase or incent compliance.

If FERC were to adopt the proposed NOP format, the details that currently are released in the public redacted versions of the NOPs would appropriately be treated as confidential and protected from public disclosure. Although the current NOP format may provide some information of limited value to other registered entities about potential violations and mitigation options, it is inappropriate to share NOP CEII with the public, either to individual citizens making FOIA requests or to a larger set of the public within the registered entity community, particularly since NERC has the technical resources, tools, and a history of effectively communicating BES cyber risks to the electric industry.

Additionally, the White Paper does not provide a reason for making public the standard violated, other than referencing the generic goal of being more transparent about CIP NOPs, and implies that information about the violated standard is less sensitive than other information that would be contained in the non-public NOP. The value to the public in FERC providing information about the standard violated is greatly outweighed by the unnecessary and increased risks to BPS security, because public disclosure would allow adversaries to better target attacks on named entities. FERC should not adopt a revised NOP format that would disclose information about the standard violated.

The proposed revised NOP format would disclose the name of every entity for which NERC files an NOP with FERC. The disclosure of an entity name makes that entity a target. Moreover, as the White Paper notes, disclosure of names will increase attacks on those entities.³

³ See White Paper at 11.

More importantly, disclosing entity names makes it even more critical that FERC protect from disclosure other information in NOPs to mitigate this increased risk of attack.⁴ If, however, FERC determines that the default should be to disclose entity names, there should be a provision for NERC to request that some names be treated as CEII and protected from disclosure.

The White Paper proposes that NERC would only file CIP NOPs after mitigation of the underlying violation is complete, thus minimizing the possibility of adversarial insight resulting from the disclosure of any name.⁵ While it is appropriate to file NOPs after mitigation has occurred in an effort to minimize the likelihood of attacks aimed at the potentially vulnerable disclosed entity, this delay may not provide meaningful protection from increased harm in all cases. Depending on the nature of the violation and the standard violated, NERC may still have a security-based reason to believe that the risks of disclosure are too great.

More important, as noted in the White Paper and discussed in more detail in the Trade Associations' comments, FERC must make it clear in any final action on this proposal that disclosing entity names in the proposed NOP cover sheet requires that FERC protect NOP details from disclosure. The disclosure of names increases the value of this information to those who seek to harm reliability and, therefore, increases risk.

The revised NOP format would include the amount of the penalty on the public NOP cover sheet.⁶ Current practice discloses penalty amounts but does not disclose the name of the entity. While penalty amounts are not CEII, they can create some risk as well as significant confusion for

⁴ *See id.* at 10 (“...the name of the [entity], coupled with the public information usually contained in CIP NOPs, would reasonably provide useful information to a person planning an attack on critical infrastructure”).

⁵ *See id.* at 11.

⁶ *See id.*

the public. FERC should evaluate how it provides penalty information in an effort to minimize this risk and confusion.

The proposed disclosure of entity names in the public NOP cover sheet make it even more critical that FERC protect CEII included in the NOP from disclosure. Indeed, as recognized in the White Paper, the disclosure of entity names renders information in the NOP of greater value to threat actors and makes it more likely that this information is CEII and exempt from disclosure.⁷ This recognition is important, and FERC must take all steps to protect the information in the non-public NOPs from disclosure if it moves forward with the proposed format.

Additionally, FERC should carefully consider how to respond to existing FOIA requests for NOPs and CEII contained in those NOPs. There are hundreds of outstanding FOIA requests for previously filed NOPs. These requests seek not only the information that the proposed revised NOP format would make public going forward—the names of registered entities, the standards violated, and amounts of the penalties imposed—but also more detailed information, much of which is likely to be CEII. FERC should carefully consider disclosing existing NOP information to FOIA requestors and should ensure that submitters and others have sufficient opportunity to explain why the information requested should be designated as CEII. FERC should rely on all possible FOIA exemptions to minimize threats to reliability and security by protecting information about critical infrastructure from disclosure. Moreover, entities subject to FOIA requests to disclose NOP information should be given ample time to respond.

II. CONCLUSION

WHEREFORE, PSEG respectfully requests that FERC incorporate the Trade Associations' comments in this docket by reference and consider these limited supplemental

⁷ See *id.* at 11-12.

comments submitted herein in further support of developing a process for submitting NOPs that appropriately balances the public interests of security and transparency while ensuring that CEII is protected from disclosure. PSEG remains committed to working with FERC and NERC to protect the nation's energy grid from cyber and physical attacks.

Respectfully submitted,

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