


FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

MAY 17 2019

Re: Release Letter  
FOIA No. FY19-56

**VIA EMAIL AND REGULAR MAIL**

Michael Mabee

  
CivilDefenseBook@gmail.com

Dear Mr. Mabee:

This is a response to your correspondence received on March 18, 2019, in which you requested information pursuant to the Freedom of Information Act (FOIA),<sup>1</sup> and the Federal Energy Regulatory Commission's (Commission) FOIA regulations, 18 C.F.R. § 388.108 (2018). Specifically, you requested copies of NERC's comments submitted to FERC in response to the January 18, 2019 and February 8, 2019 FOIA Request Opportunity to Comment letters for FOIA FY19-19 and FOIA FY19-30.

By letter dated April 11, 2019, I advised NERC of your request and provided it an opportunity to comment. No comments were received from NERC. On April 26, 2019, I advised NERC that the requested documents would be disclosed to you no sooner than five calendar days from that date. *See* 18 C.F.R. § 388.112(e). The five-day notice period has elapsed and the requested documents are enclosed.

If you decide to appeal, this appeal must be in writing, addressed to James P. Danly, General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, and clearly marked "Freedom of Information Act Appeal." Please include a copy to Charles A. Beamon, Associate General Counsel, General and Administrative Law, at the same address.

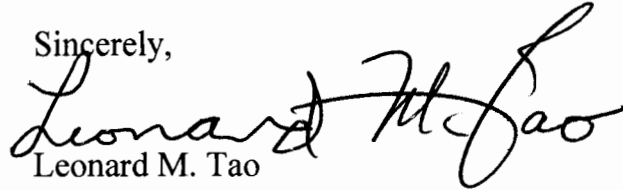
You also have the right to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services (OGIS). Using OGIS services does not affect your right to pursue your appeal. You may contact OGIS by mail at Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; email

---

<sup>1</sup> 5 U.S.C. § 552, *as amended* by the FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (2016).

at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 301-837-1996; facsimile at 301-837-0348; or toll-free at 1-877-684-6448.

Sincerely,

A handwritten signature in black ink, appearing to read "Leonard M. Tao". The signature is fluid and cursive, with the first name "Leonard" being the most prominent.

Leonard M. Tao  
Director  
Office of External Affairs

Cc

Edwin G. Kichline  
Senior Counsel and Director of Enforcement Oversight  
North American Electric Reliability Corporation  
1325 G Street N.W., Suite 600  
Washington, D.C. 20005  
[edwin.kichline@nerc.net](mailto:edwin.kichline@nerc.net)

Sonia Mendonça  
Vice President, Deputy General Counsel, and Director of Enforcement  
North American Electric Reliability Corporation  
1325 G Street N.W., Suite 600  
Washington, D.C. 20005  
[Sonia.mendonca@nerc.net](mailto:Sonia.mendonca@nerc.net)

Enclosures (2)

January 28, 2019

**VIA ELECTRONIC SUBMISSION**

Mr. Leonard M. Tao  
Director  
Office of External Affairs  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

**Re: Submitter's Rights Letter, FOIA-2019-19**

Dear Mr. Tao:

In response to your letter, dated January 18, 2019, regarding a Freedom of Information Act (“FOIA”) request to obtain the NERC Full Notice of Penalty in various dockets,<sup>1</sup> the North American Electric Reliability Corporation (“NERC”) maintains that the information requested should not be released because it is exempt from disclosure under FOIA. As FERC has previously recognized, NERC Full Notices of Penalty are exempt from public disclosure under FOIA Exemptions 3 and 7(F) as they contain Critical Energy/Electricity Infrastructure Information (“CEII”) or information that would otherwise pose a risk to the security of a NERC registered entity.<sup>2</sup>

NERC filed its CIP Notices of Penalty in the dockets subject to this request on a nonpublic basis under Section 39.7(b)(4) of the Commission’s regulations because they contained information that would jeopardize the security of the BPS if publicly disclosed.<sup>3</sup> The nonpublic version of the Notices of Penalty included the identity of the registered entities, information that could lead to the identity of the registered entities, and information about the security of the registered entities’ systems and operations, such as specific configurations or tools the registered entities use to manage their cyber systems. As the Commission has previously recognized, information related to CIP violations and cyber security issues, including the identity of the registered entity, may jeopardize BPS security because “even publicly

<sup>1</sup> The requestor is seeking information regarding numerous docket numbers. However, given the volume of information requested, your letter noted that FERC staff is processing the request on a rolling basis, with the following six docket numbers addressed first: NP14-29-000; NP14-30-000; NP14-32-000; NP14-37-000; NP14-39-000; and NP14-41-000.

<sup>2</sup> See Freedom of Information Act Appeal, FOIA No. FY18-75 (August 2, 2018). To date, the Commission has directed public disclosure regarding the disposition of CIP violations in only a small number of cases based on the specific facts in those cases. See *id.* In that case, the Commission publicly disclosed the identity of the registered entity only; the Commission did not disclose other details regarding the CIP violations.

<sup>3</sup> Section 39.7(b)(4) of the Commission’s regulations states: “The disposition of each violation or alleged violation that relates to a Cybersecurity Incident or that would jeopardize the security of the Bulk Power System if publicly disclosed shall be nonpublic unless the Commission directs otherwise.”

identifying which entity has a system vulnerable to a ‘cyber attack’ could jeopardize system security, allowing persons seeking to do harm to focus on a particular entity in the Bulk-Power System.”<sup>4</sup>

Consistent with the Commission’s statement and Section 39.7(b)(4), NERC treated as nonpublic the identity of the registered entities and any information that could lead to the identification of the registered entities. Entities providing electricity to the people of the United States are subject to constant attacks by malicious parties, including some supported by foreign governments.<sup>5</sup> Identifying the registered entities in these cases would have highlighted entities whose implementation of the CIP standards was less than adequate and may have been more vulnerable to cyber attacks, which in most cases posed a serious risk to the BPS. Consistent with the purpose of Section 39.7(b)(4), NERC has taken care to ensure that Notices of Penalty do not become mechanisms for adversaries to identify more vulnerable targets and jeopardize the security of the BPS.

The Commission’s expectation that NERC should not identify entities violating CIP Reliability Standards is longstanding<sup>6</sup> and most recently reflected in FERC’s 2014 *Order on the Electric Reliability Organization’s Five-Year Performance Assessment*. In that order, the Commission stated that, “[w]ith respect to concerns and questions raised regarding NERC’s protection of information deemed to be confidential, particularly as related to cybersecurity incidents or CIP violations, we believe that NERC currently has adequate rules and procedures in place to protect against improper disclosure of sensitive information (...).”<sup>7</sup>

NERC also treated as nonpublic any information about the security of the registered entities’ systems and operations. Details about an entity’s systems, including specific configurations or the tools/programs it uses to configure, secure, and manage changes to its BES Cyber Systems, would provide an adversary relevant information that could be used to perpetrate an attack on the entity and similar

<sup>4</sup> *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,204 at P 538 (*Order No. 672*).

<sup>5</sup> Rebecca Smith and Rob Barry, “America’s Electric Grid Has a Vulnerable Back Door—and Russia Walked Through It,” *Wall Street Journal* (January 11, 2019)(<https://www.wsj.com/articles/americas-electric-grid-has-a-vulnerable-back-doorand-russia-walked-through-it-11547137112>).

<sup>6</sup> *See North American Electric Reliability Corp.*, Order Accepting With Conditions the Electric Reliability Organization’s Petition Requesting Approval of New Enforcement Mechanisms and Requiring Compliance Filing, 138 FERC ¶ 61,193 at P 69 (wherein the Commission cited NERC’s practice under Section 39.7(b)(4) of not publicly disclosing the entities that violated the CIP Standards). *See also North American Electric Reliability Corp.*, Order on Compliance Filing, 143 FERC ¶ 61,253 at P 37 n.50 (2013)(wherein the Commission emphasizes protecting nonpublic and confidential information and redacting any details that could be used to identify the registered entity for violations of CIP Reliability Standards).

<sup>7</sup> *North American Electric Reliability Corp.*, Order on the Electric Reliability Organization’s Five-Year Performance Assessment, 149 FERC ¶ 61,141, at n. 55, P 47, and n. 65 (2014) (in response to a commenter referencing a prior inadvertent disclosure of the identity of an Unidentified Registered Entity sanctioned for violations of CIP Reliability Standards).

entities that use the same systems, products, or vendors.<sup>8</sup> As the Commission has stated, “[g]uarding sensitive or confidential information is essential to protecting the public by discouraging attacks on critical infrastructure.”<sup>9</sup>

In addition to the provisions of Section 39.7(b)(4), NERC’s nonpublic versions of the Notices of Penalty were also designated as CEII under the Commission’s regulations. As noted above, beyond just including the names of the entities and information that could be used to identify the entities, the nonpublic Notices of Penalty included specific vulnerability and design information that could be useful to a person planning an attack on critical infrastructure. For example, the nonpublic Notices of Penalty include the identification of specific cyber security issues, as well as details concerning the types and configurations of the entities’ systems and assets. The information also describes strategies, techniques, and solutions to resolve specific cyber security issues. In many cases, the entities may still use the same systems and the same or similar techniques or procedures for security.

For the reasons stated above, the information contained in the six Notices of Penalty subject to the letter still warrants continued nonpublic treatment and should not be released under FOIA Exemptions 3 and 7(F). The Notices of Penalty include detailed descriptions of the facts and circumstances of each violation; the disposition document (either a Settlement Agreement or Notice of Confirmed Violation, between the Regional Entity and the registered entity to resolve the violations); and attachments to the disposition document, including the violation discovery documents, Mitigation Plans, and documentation of mitigation completion and verification. Accordingly, NERC objects to the FOIA request and respectfully states that granting any part of the FOIA request could jeopardize the security of the Bulk Power System.

Respectfully submitted,

/s/ Edwin G. Kichline  
Edwin G. Kichline

*Senior Counsel and Director of Enforcement Oversight  
North American Electric Reliability Corporation*

cc: Ms. Toyia Johnson, FERC

---

<sup>8</sup> See “America’s Electric Grid Has a Vulnerable Back Door” (detailing phishing and other hacking schemes aimed at utility contractors in order to penetrate utility networks).

<sup>9</sup> *Reliability Standards for Physical Security Measures*, “Order Directing Filing of Standards,” 146 FERC ¶ 61,166 at P 10 (2014).

February 15, 2019

**VIA ELECTRONIC SUBMISSION**

Mr. Leonard M. Tao  
Director  
Office of External Affairs  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

**Re: Submitter's Rights Letter, FOIA-2019-30**

Dear Mr. Tao:

In response to your letter, dated February 8, 2019, regarding a Freedom of Information Act (“FOIA”) request to obtain the NERC Full Notice of Penalty in various docket, <sup>1</sup> the North American Electric Reliability Corporation (“NERC”) maintains that, with the exception of NP10-139-000, the information requested should not be released because it is exempt from disclosure under FOIA. As FERC has previously recognized, NERC Full Notices of Penalty are exempt from public disclosure under FOIA Exemptions 3 and 7(F) as they contain Critical Energy/Electricity Infrastructure Information (“CEII”) or information that would otherwise pose a risk to the security of a NERC registered entity. <sup>2</sup>

NERC does not object to the release of the non-public version of the Notice of Penalty in NP10-139-000. In that case, the affected entity has been deregistered from the NERC Compliance Registry. Further, the non-public Notice of Penalty does not provide information regarding the entity’s facilities, which are now under different ownership and not currently in operation.

NERC filed its CIP Notices of Penalty in the dockets subject to this request on a nonpublic basis under Section 39.7(b)(4) of the Commission’s regulations because they contained information that would

---

<sup>1</sup> The letter lists the following docket numbers as part of the request: NP10-140-000, NP10-139-000, NP10-138-000, NP10-137-000, NP10-136-000, NP10-135-000, NP10-134-000, NP10-131-000, NP10-130-000, and NP10-150-000. Docket No. NP10-150-000 appears to be a typographical error, as Docket No. NP10-159-000 is the next filing listed in the request. Your office issued a Submitter’s Rights Letter to the registered entity in Docket No. NP10-159-000, which corroborates that NP10-159-000 is the correct filing.

<sup>2</sup> See Freedom of Information Act Appeal, FOIA No. FY18-75 (August 2, 2018). To date, the Commission has directed public disclosure regarding the disposition of CIP violations in only a small number of cases based on the specific facts in those cases. See *id.* In that case, the Commission publicly disclosed the identity of the registered entity only; the Commission did not disclose other details regarding the CIP violations.

Response to FOIA 2019-30  
February 15, 2019

jeopardize the security of the BPS if publicly disclosed.<sup>3</sup> The nonpublic version of the Notices of Penalty included the identity of the registered entities, information that could lead to the identity of the registered entities, and information about the security of the registered entities' systems and operations, such as specific configurations or tools the registered entities use to manage their cyber systems. As the Commission has previously recognized, information related to CIP violations and cyber security issues, including the identity of the registered entity, may jeopardize BPS security because "even publicly identifying which entity has a system vulnerable to a 'cyber attack' could jeopardize system security, allowing persons seeking to do harm to focus on a particular entity in the Bulk-Power System."<sup>4</sup>

Consistent with the Commission's statement and Section 39.7(b)(4), NERC treated as nonpublic the identity of the registered entities and any information that could lead to the identification of the registered entities. Entities providing electricity to the people of the United States are subject to constant attacks by malicious parties, including some supported by foreign governments.<sup>5</sup> Identifying the registered entities in these cases would have highlighted entities whose implementation of the CIP standards was less than adequate and may have been more vulnerable to cyber attacks. Consistent with the purpose of Section 39.7(b)(4), NERC has taken care to ensure that Notices of Penalty do not become mechanisms for adversaries to identify more vulnerable targets and jeopardize the security of the BPS.

The Commission's expectation that NERC should not identify entities violating CIP Reliability Standards is longstanding<sup>6</sup> and most recently reflected in FERC's 2014 *Order on the Electric Reliability Organization's Five-Year Performance Assessment*.<sup>7</sup> In that order, the Commission stated that, "[w]ith respect to concerns and questions raised regarding NERC's protection of information deemed to be

---

<sup>3</sup> Section 39.7(b)(4) of the Commission's regulations states: "The disposition of each violation or alleged violation that relates to a Cybersecurity Incident or that would jeopardize the security of the Bulk Power System if publicly disclosed shall be nonpublic unless the Commission directs otherwise."

<sup>4</sup> *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards*, Order No. 672, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,204 at P 538 (*Order No. 672*).

<sup>5</sup> Rebecca Smith and Rob Barry, "America's Electric Grid Has a Vulnerable Back Door—and Russia Walked Through It," *Wall Street Journal* (January 11, 2019) (<https://www.wsj.com/articles/americas-electric-grid-has-a-vulnerable-back-doorand-russia-walked-through-it-11547137112>).

<sup>6</sup> See *North American Electric Reliability Corp.*, Order Accepting With Conditions the Electric Reliability Organization's Petition Requesting Approval of New Enforcement Mechanisms and Requiring Compliance Filing, 138 FERC ¶ 61,193 at P 69 (wherein the Commission cited NERC's practice under Section 39.7(b)(4) of not publicly disclosing the entities that violated the CIP Standards). See also *North American Electric Reliability Corp.*, Order on Compliance Filing, 143 FERC ¶ 61,253 at P 37 n.50 (2013) (wherein the Commission emphasizes protecting nonpublic and confidential information and redacting any details that could be used to identify the registered entity for violations of CIP Reliability Standards).

<sup>7</sup> *North American Electric Reliability Corp.*, Order on the Electric Reliability Organization's Five-Year Performance Assessment, 149 FERC ¶ 61,141.

Response to FOIA 2019-30  
February 15, 2019

confidential, particularly as related to cybersecurity incidents or CIP violations, we believe that NERC currently has adequate rules and procedures in place to protect against improper disclosure of sensitive information (...).”<sup>8</sup>

NERC also treated as nonpublic any information about the security of the registered entities’ systems and operations. Details about an entity’s systems, including specific configurations or the tools/programs it uses to configure, secure, and manage changes to its BES Cyber Systems, would provide an adversary relevant information that could be used to perpetrate an attack on the entity and similar entities that use the same systems, products, or vendors.<sup>9</sup> As the Commission has stated, “[g]uarding sensitive or confidential information is essential to protecting the public by discouraging attacks on critical infrastructure.”<sup>10</sup>

In addition to the provisions of Section 39.7(b)(4), NERC’s nonpublic versions of the Notices of Penalty were also designated as CEII under the Commission’s regulations. As noted above, beyond just including the names of the entities and information that could be used to identify the entities, the nonpublic Notices of Penalty included specific vulnerability and design information that could be useful to a person planning an attack on critical infrastructure. For example, the nonpublic Notices of Penalty include the identification of specific cyber security issues, as well as details concerning the types and configurations of the entities’ systems and assets. The information also describes strategies, techniques, and solutions to resolve specific cyber security issues. In many cases, the entities may still use the same systems and the same or similar techniques or procedures for security.

For the reasons stated above, the information contained in the Notices of Penalty subject to the letter<sup>11</sup> still warrants continued nonpublic treatment and should not be released under FOIA Exemptions 3 and 7(F). The Notices of Penalty include: (a) detailed descriptions of the facts and circumstances of each violation; (b) the disposition document (either a Settlement Agreement or Notice of Confirmed Violation between the Regional Entity and the registered entity to resolve the violations); and (c) attachments to the disposition document (including the violation discovery documents, Mitigation Plans, and documentation of mitigation completion and verification). Accordingly, NERC objects to the FOIA request and respectfully states that granting the FOIA request could jeopardize the security of the Bulk Power System.

---

<sup>8</sup> See *id.* at n. 55, P 47, and n. 65 (2014) (in response to a commenter referencing a prior inadvertent disclosure of the identity of an Unidentified Registered Entity sanctioned for violations of CIP Reliability Standards).

<sup>9</sup> See “America’s Electric Grid Has a Vulnerable Back Door” (detailing phishing and other hacking schemes aimed at utility contractors in order to penetrate utility networks).

<sup>10</sup> *Reliability Standards for Physical Security Measures*, “Order Directing Filing of Standards,” 146 FERC ¶ 61,166 at P 10 (2014).

<sup>11</sup> With the exception of NP10-139-000.



Response to FOIA 2019-30  
February 15, 2019

Respectfully submitted,

/s/ Edwin G. Kichline  
Edwin G. Kichline

*Senior Counsel and Director of Enforcement Oversight  
North American Electric Reliability Corporation*

cc: Ms. Toyia Johnson, FERC