

Foundation for Resilient Societies

24 Front Street, Suite 203

Exeter NH 03833

October 15, 2019

Chairman Thad LeVar
Public Service Commission of Utah
160 East 300 South, 4th Floor
Salt Lake City, UT 84111

Subject: Transparency in Enforcement of FERC/NERC Electric Reliability Standards

Dear Chairman LeVar:

We urge your Commission to submit a comment in FERC Docket AD19-18-000. Please consider asking FERC for formal notification to state regulators when electric utilities violate federal reliability standards. The deadline for docket comments is Monday, October 28.

Regulatory failures mean that an electric grid blackout from natural disaster or deliberate attack could occur in your state at any time. For example, PG&E has violated vegetation management standards; two million residents of California were without electric power last week.

Are you given formal notice when utilities in Utah have violated electric reliability standards approved by FERC and enforced by the Regional Entities of NERC? And given written updates on the progress of mitigations negotiated as part of Notices of Penalty?

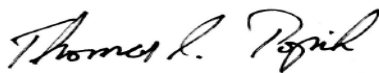
If your Commission instead must rely on NERC documents that redact identities of reliability standard violators, this is by intent. The FERC/NERC system of enforcement for reliability standards has been designed to withhold information from state regulators, the public, and others. Industry attorneys have promoted the erroneous idea that concealing the identity of violating utilities enhances national security. In contrast, experts in cybersecurity, including the National Institute of Standards and Technology, have concluded that “security through obscurity” does not provide real protection. It does shield electric utilities from regulatory accountability.

We have enclosed our recent Freedom of Information Act request and FERC response in which FERC decided to withhold the names of utilities that violated vegetation management standards. With disclosure denied and public scrutiny prevented, utilities lack incentive for improvement.

To their credit, FERC and NERC are considering ways to improve transparency when enforcing electric reliability standards. Please read the attached statement of Commissioner LaFleur.

If the current system of concealment is to be remedied, your timely comment to FERC is critical. Please contact me at thomasp@resilientsocieties.org or 855-688-2430 x 701 with any questions.

Sincerely,



Thomas S. Popik
President
Foundation for Resilient Societies

Attachments

Commissioner Cheryl A. LaFleur Statement

August 27, 2019

Docket No. AD19-18-000

Statement on FERC/NERC Staff White Paper on CIP Standards Notices of Penalties

Today, staff at the Federal Energy Regulatory Commission (FERC) and the North American Electric Reliability Corporation (NERC) issued a joint White Paper to address NERC's submission, and the Commission's processing, of Notices of Penalty (NOPs) for violations of Critical Infrastructure Protection (CIP) Reliability Standards. As I mentioned at our Reliability Technical Conference in June, the handling and confidentiality of these NOPs has been an issue of growing controversy. As I advocated then, I think it is essential that FERC and NERC conduct public process to consider the appropriate balance between transparency and security in these instances. I am very pleased that such a process is being instituted today.

The procedures that NERC and FERC have followed in processing NOPs for CIP violations has been in place since before I joined FERC and has not been changed in the past decade, as outlined in the attached White Paper. I think it is highly appropriate that we consider changes to the process at this time. As I discussed at the technical conference, it is important that we handle NOPs so as to avoid subjecting the bulk electric system to risk of a cyber attack once a vulnerability is identified. At the same time, I believe state regulators, members of the public, and others have a legitimate interest in such violations, and we should seek to achieve as much transparency as we can consistent with protecting legitimate security interests.

I believe the FERC and NERC staff have put forth one proposal worthy of consideration for a way to handle these NOPs differently. I hope that we receive a wide range of comments on the White Paper, including any suggestions for alternative processes, which will allow FERC and NERC to move forward on this issue.