

**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)
)

**Motion for the Commission to Hold a Public Hearing
Submitted to FERC on October 23, 2019**

Pursuant to Rule 212 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice and Procedure,¹ the Foundation for Resilient Societies (“Resilient Societies”), hereby respectfully submits this motion for the Commission to hold a public hearing (or technical conference) on the facts and circumstances behind the ongoing concealment of the identities of utilities who violate electric reliability standards and additionally moves that Docket No. AD19-18-000 (or other docket established for the purpose of a hearing) remain open for public comment for 30 days after the date of the hearing.

This motion follows a recent circumstance where Pacific Gas & Electric (PG&E), a repeat reliability standards violator whose identity has been redacted in FERC dockets and who recently shut off power to 2 million California residents, has informed California Governor Gavin Newsom that the utility is expected to periodically and selectively shut off power for the next ten years to prevent wildfires. Moreover, PG&E also stated that it could shut off the company’s entire electric grid at times — potentially affecting 5.4 million homes and businesses.²

¹ 18 C.F. R. § 385.212 (2018).

² Dale Kasler, Michael McGough, and Sophia Bollag, “PG&E will try to reduce blackout impact. It also says entire grid could go dark,” *Sacramento Bee*, October 18, 2019.
<https://www.sacbee.com/news/california/fires/article236411443.html>

On information and belief, there are other utilities in the Bulk Power System who have likewise violated electric reliability standards, have pervasive management shortfalls, and whose identity has been concealed after standards violations. These violating utilities could cause economic losses and blackouts for ratepayers in their states and regions. Public utility commissions and ratepayers throughout the United States deserve a public hearing on the critical issue of transparency in enforcement of reliability standards.

BACKGROUND

On August 27, 2019, FERC opened Docket No. AD19-18-000 and requested comments on a Joint White Paper of the Commission and the North American Electric Reliability Corporation (NERC). The Joint White Paper proposed a change to the procedures for drafting NERC Notices of Penalty for violators of electric reliability standards, including disclosure of the identity of standards violators.

On September 19, 2019, in response to a motion by the Edison Electric Institute and other Trade Associations, the Commission granted an extension of time to comment until October 28, 2019.

On October 9, 2019, PG&E, a violator of vegetation management and CIP standards whose identity had been concealed, executed a Public Safety Power Shutdown for 600,000 ratepayers and an estimated 2 million California residents because high winds might cause vegetation to touch transmission lines, sparking wildfires. On October 18, 2019, PG&E informed the California Public Utilities Commission that the company's entire electric grid might be shut down in some future circumstances and that it could take a decade to remedy grid management deficiencies.²

On July 31, 2009, PG&E was fined \$100,000 for violations of NERC Standard FAC-003-1 — Transmission Vegetation Management Program and other reliability standards.³ It is not known if PG&E was subsequently cited for violations of NERC vegetation management standards because NERC began concealing the identities of standard violators in July 2010 for Notices of Penalty where violations of CIP standards also were found in the audit.⁴

On February 28, 2018, PG&E was fined \$2.7 million for violations of CIP standards; on October 31, 2016, PG&E was fined \$1.125 million for violations of CIP standards; on May 29, 2014, PG&E was fined \$98,500 for violations of CIP standards. The Notices of Penalty (NOP) filed in the FERC Dockets redacted the identity of the violator in each of these cases—the PG&E's identity only became known through a Freedom of Information Act request filed by Michael Mabee, a private citizen, and reporting of the Wall Street Journal.^{5 6}

MOTION FOR A PUBLIC HEARING

Due to the long-term concealment of its identity as a standards violator, PG&E has escaped scrutiny by its state public utility commission and the ratepaying public. Deficient management practices at PG&E have not been previously remedied and now California ratepayers are faced with years of prospective blackouts from vegetation management shortfalls and possibly cybersecurity gaps as well. The same basic scenario has been observed

³ FERC Docket NP09-35-000.

⁴ Starting in July 2010, for standard violations that are part of a Notice of Penalty that containing CIP violations, NERC has designated the Registered Entity as “Unidentified Registered Entity,” “Unidentified Registered Entities,” or “NERC.” See NERC Enforcement and Mitigation webpage, hyperlink for “Searchable NOP Spreadsheet,” <https://www.nerc.com/pa/comp/CE/Pages/Enforcement-and-Mitigation.aspx>. Accessed October 23, 2019.

⁵ Rebecca Smith, “PG&E Among Utilities Cited for Failing to Protect Against Cyber and Physical Attacks,” *Wall Street Journal*, April 9, 2019. <https://www.wsj.com/articles/pg-e-among-utilities-cited-for-failing-to-protect-against-cyber-and-physical-attacks-11554821337>

⁶ FERC Dockets NP14-41-000, NP17-2-000, and NP18-7-000.

elsewhere for utilities under FERC jurisdiction. For example, on January 25, 2019, Duke Energy was fined \$10 million for violations of CIP standards, but its identity was concealed until reporting by the Wall Street Journal.^{7 8}

On information and belief, utilities in other states and regions have violated electric reliability standards, but their identity has been concealed from their public utility commissions and the ratepaying public in the majority of instances, resulting in blackout risks and possibly ratepayer overcharges. According to the September 26, 2019 NERC Searchable NOP Spreadsheet, there were 6,317 standard violations filed from July 2010 to September 2019. For 3,892 of these violations, the identity of the utility was concealed.⁹ The compliance enforcement system for reliability standards is vast, largely secret, and often unaccountable to public utility commissions and the ratepaying public.

For much of electric grid infrastructure, it is the public utility commissions that control cost recovery for grid reliability and security improvements. With information on standard violations routinely redacted in NERC Notices of Penalty and therefore withheld from state public utility commissions, the commissions lack factual record to approve cost recovery for hardware mitigations. In cases where standard violations are procedural in nature, the utilities may attempt to charge ratepayers for the monetary penalties without the knowledge of their public utility commission.

⁷ Rebecca Smith, "Duke Energy Broke Rules Designed to Keep Electric Grid Safe," Wall Street Journal, February 1, 2019. <https://www.wsj.com/articles/duke-energy-broke-rules-designed-to-keep-electric-grid-safe-11549056238>

⁸ FERC DocketNP19-4-000.

⁹ Statistics based on searches of NERC Enforcement and Mitigation webpage, "Searchable NOP Spreadsheet," <https://www.nerc.com/pa/comp/CE/Pages/Enforcement-and-Mitigation.aspx>. Accessed October 23, 2019.

A public hearing should examine the rationale for concealment of the identity of utilities who violate reliability standards. Such a hearing could call as witnesses the commissioners of state public utility commissions, as well as members of the ratepaying public who have been harmed or could be harmed, by higher rates and blackouts. Cybersecurity experts could testify on best practices for timely disclosure of vulnerabilities as established by the Cybersecurity and Infrastructure Security Agency (CISA) of the U.S. Department of Homeland Security and the divergent practice of indefinite concealment by the electric utility industry and its regulatory apparatus.¹⁰ In this matter involving both economic losses and potential deaths from blackout, docket comments are no substitute for in-person testimony before the Commission.

NOTICE AND COMMUNICATIONS

All notices and communications with respect to this proceeding should be directed to the representative listed below:

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¹⁰ CISA has established seven-point criteria for release of cybersecurity vulnerabilities. See “CISA Vulnerability Disclosure Policy” at <https://www.us-cert.gov/vulnerability-disclosure-policy>.

CONCLUSION

WHEREFORE, for the foregoing reasons, Resilient Societies respectfully requests that the Commission grant this motion to conduct a hearing on the concealment of the identities of electric reliability standards violators and changes to the Commission's procedures that would remedy this.

Respectfully submitted by:



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