

Federal Energy Regulatory Commission
Washington, DC 20426

FEB 28 2019

Re: FOIA FY19-19
Notice of Intent to Release

VIA E-MAIL AND REGULAR MAIL

Edwin G. Kichline
Senior Counsel and Director of Enforcement Oversight
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Sonia Mendonca
Vice President, Deputy General Counsel, and Director of Enforcement
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Dear Mr. Kichline and Ms. Mendonca:

Pursuant to the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 C.F.R. § 388.112(e) (2018), you are hereby notified that the Commission intends to release, in part, material requested by Mr. Michael Mabee (Mr. Mabee) pursuant to the Freedom of Information Act (FOIA).¹ On December 19, 2018, Mr. Mabee requested the following:

the "NERC Full Notice of Penalty" version which includes the name of the registered entity for various dockets, including: NP14-29-000; NP14-30-000; NP14-32-000; NP14-37-000; NP14-39-000; and NP14-41-000.² The requester also seeks any "Spreadsheet NOP [Notice of Penalty]" that lists the name(s) of the entity subject to the regulatory action.

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

² The request references numerous docket numbers. However, given the volume of information requested, Mr. Mabee's request will be processed on a rolling basis, with these initial docket numbers addressed first.

In reviewing the request in its entirety and based on staff discussions with Mr. Mabee via telephone, his request is primarily for the name of the UREs associated with various dockets.

On January 18, 2019, Commission staff notified you, as well as the relevant UREs, of the request and provided an opportunity to comment pursuant to 18 C.F.R. § 388.112. NERC submitted comments on January 28, 2019, objecting to the release of any Non-public NERC Full Notice of Penalty (“Non-public NOP”), as well as the identity of the UREs generally. Additionally, a number of trade groups submitted comments also objecting to disclosure of the Non-public NOPs and the URE identities. Finally, Commission staff has and is continuing to receive verbal comments from relevant UREs.

Identities of UREs

A case-by-case assessment of each requested document must consider the following: the nature of the CIP violation; whether mitigation is complete; the content of the public and non-public versions of the Notice of Penalty; the extent to which the disclosure of the pertinent URE identity would be useful to someone seeking to cause harm; whether an audit has occurred since the violation(s); whether the violation(s) was administrative or technical in nature; and the length of time that has elapsed since the filing of the public Notice of Penalty. An application of these factors will dictate whether a particular FOIA exemption, including 7(F) and/or Exemption 3, is appropriate. *See Garcia v. U.S. DOJ*, 181 F. Supp. 2d 356, 378 (S.D.N.Y. 2002) (“In evaluating the validity of an agency’s invocation of Exemption 7(F), the court should within limits, defer to the agency’s assessment of danger.”) (citation and internal quotations omitted).

NP14-32

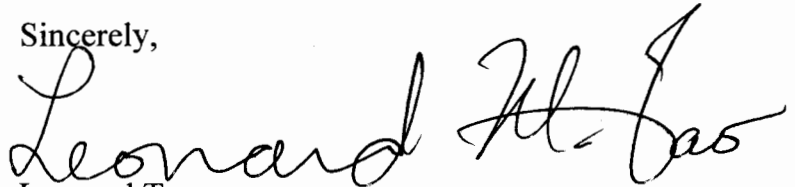
The public version of the Notice of Penalty in NP14-32 was filed on February 27, 2014. Based on my application of the various factors discussed above, I determine that the disclosure of the name of the URE is appropriate. In this regard, the violations have been mitigated, a significant amount of time has elapsed since the violations, and a follow-up audit has occurred since the filing of the Notice. I also considered relevant input from the URE and consulted with FERC technical staff in reaching my decision. A copy of the public version of the Notice of Penalty with the name of the URE inserted on the first page will be disclosed to the requestor no sooner than five calendar days from the date of this letter. *See* 18 C.F.R. § 388.112(e).

NP14-41

The public version of the Notice of Penalty in NP14-41 was filed on May 29, 2014. Based on application of the various factors discussed above, I determine that the disclosure of the name of the URE is appropriate. In this regard, the violations were administrative in nature and have been mitigated, an audit has occurred since the Notice of Penalty, and a significant period of time has elapsed since the violations. Furthermore, in finding that disclosure is appropriate, I also considered relevant input from the URE, as well as FERC technical staff. A copy of the public version of the NOP with the name of the URE inserted on the first page will be disclosed to the requestor no sooner than five calendar days from the date of this letter. *See* 18 C.F.R. § 388.112(e).

Staff is continuing to assess dockets NP14-29; NP14-30; NP14-37; and NP14-39-addressed in my January 18, 2019 letter, and will issue an additional Notice of Intent to Release, if appropriate. We will also issue additional Submitters' Rights Letters to interested UREs to cover the balance of the information sought in the FOIA request.

Sincerely,

A handwritten signature in black ink, appearing to read "Leonard H. Tao". The signature is written in a cursive style with a large initial "L".

Leonard Tao

Director

Office of External Affairs

Cc Michael Mabee

Bcc