

Michael Mabee

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March 15, 2019

Leonard Tao,
Director and Chief FOIA Officer
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Subject: Request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

Dear Mr. Tao:

I request records under the Freedom of Information Act, which are described below. Further, as more fully set forth below, I also request a fee waiver as I have no commercial interest in the described records and it is in the public interest for the Federal Energy Regulatory Commission (FERC) to disclose these records to the public.

Description of records sought:

I request to receive copies of the NERC and "trade groups" objections to my FOIAs (both FOIA 19-30 and FOIA 19-19). These letters were described in FERC's February 28, 2019 "Notice of Intent to Release" letter in FOIA 19-19, relevant reference copied here:

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.

I would point out that in my previous FOIA 18-075, NERC sent me a copy of their objections directly when they filed them with FERC – see attached. Clearly, they didn't have a problem with me having a copy then. Perhaps the fact that I was not copied on NERC and the "trade groups" objections this time was merely an administrative oversight on their part.

Regardless, I believe I should be entitled to a copy of the objections. 18 CFR § 388.112(d) requires that FERC send a copy of its "Notification of request and opportunity to comment" letter to the requestor, so it would seem logical that the requestor would be entitled to a copy of the objections, if any, that are filed in response to that letter.

Request for Waiver of Fees:

I am a private citizen with expertise in emergency preparedness and critical infrastructure protection. I maintain a blog where I intend to disseminate this information¹. I accept no advertising on my blog and derive no revenue from writing or posting my blog articles.

As set forth fully below, I am entitled to a waiver of fees as I meet all the requirements of 18 C.F.R. §388.109(c).

Requirement: In accordance with 18 C.F.R. §388.109(c)(1), "(1) Any fee described in this section may be reduced or waived if the requester demonstrates that disclosure of the information sought is: (i) In the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and (ii) Not primarily in the commercial interest of the requester."

Answer: This information is directly related to industry objections to two FOIA requests which are of substantial public interest. I have written extensively on this subject and intend to disclose these records to the public. Disclosure of this information will inform the public as to the actions the government and the designated ERO have taken to insure the security of the bulk power system. There has been a great deal of media attention and government notices regarding recent cyberattacks and cybersecurity breaches to the electric grid.² Disclosure of the requested information is critical to the public's understanding of how FERC and the ERO holds regulated entities accountable to compliance with regulatory standards for cybersecurity.

I have no commercial interest in these records and will use these records in research and information dissemination to the public.

Requirement: In accordance with 18 C.F.R. §388.109(c)(2) "The Commission will consider the following criteria to determine the public interest standard:"

Answer: I will answer each criterion in turn.

Criterion: (i) "Whether the subject of the requested records concerns the operations or activities of the government"

Answer: The protection of the critical infrastructure, including the bulk power system, is a clear function of the federal government.³ The regulation of the critical infrastructures by the federal government and

¹ <https://michaelmabee.info/category/mikes-blog/> (accessed April 13, 2018).

² See for example: US-CERT Alert (TA18-074A) <https://www.us-cert.gov/ncas/alerts/TA18-074A> (accessed March 15, 2018); Gizmodo: "FBI and DHS Warn That Russia Has Been Poking at Our Energy Grid." <https://apple.news/AHv5RwYqbSf-El-yIa355Jw> (accessed March 15, 2018); Washington Free Beacon: "Russia Implicated in Ongoing Hack on U.S. Grid." <https://apple.news/AGs6ieh6wSP-1tQkUFttREA> (accessed March 15, 2018); Slate: "What Does It Mean to Hack an Electrical Grid?" <https://apple.news/Au5gy7bTITDSovpvzg5j79w>

³ Executive Order 13800 "Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure." May 11, 2017. <https://www.gpo.gov/fdsys/pkg/FR-2017-05-16/pdf/2017-10004.pdf> (accessed March 24, 2018);

the transparency of the process – including these objections by the industry to the release of the identities of entities that violate reliability standards– concerns the operations or activities of the government.

Criterion: (ii) “Whether the disclosure is likely to contribute to an understanding of government operations or activities”

Answer: These objections by NERC and the industry groups to my FOIAs are directly related to NERC’s role as the FERC certified “Electric Reliability Organization (ERO), and therefore will inform the public as the NERC’s regulatory role in covering up the names of the entities whose names are being requested pursuant to the two underlying FOIA requests. The entities in question risked the reliable operation of the bulk power system and therefore the public has a right to examine this incident and the behavior and actions of the violating entity and ERO.

Criterion: (iii) “Whether disclosure of the requested information will contribute to public understanding”

Answer: As previously noted, there has been a great deal of public attention, press articles and increased awareness to the threat of cyberattacks against the bulk power system. The identity of entities that place the public at risk by violating cybersecurity standards is critical to the public understanding of the effectiveness of existing standards. The industry’s objections to the release of these names is also of tremendous public interest and possibly points to regulatory shortcomings.

Criterion: (iv) “Whether the disclosure is likely to contribute significantly to public understanding of government operations or facilities.”

Answer: Under Section 215 of the Federal Power Act, regulation of the bulk power system is clearly a government operation. The public needs to understand how reliability standards are being enforced and the industry’s efforts to thwart the public’s understanding.

Requirement: In accordance with 18 C.F.R. §388.109(c)(3) “The Commission will consider the following criteria to determine the commercial interest of the requester:”

Answer: I will answer each criterion in turn.

Criterion: (i) Whether the requester has a commercial interest that would be furthered by the requested disclosure.

Answer: No. The requester a private citizen and has no commercial interest in the information.

And, if so: criterion: (ii) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

Presidential Policy Directive 21 (PPD-21) – Critical Infrastructure Security and Resilience. February 12, 2013. <https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil> (accessed March 24, 2018).

Answer: Not applicable since the requester has no commercial interest in the information.

The records may be provided to me electronically at this email address: CivilDefenseBook@gmail.com.

Sincerely,

A handwritten signature in blue ink, appearing to read "MK", is positioned above the name Michael Mabee.

Michael Mabee

Enclosure: NERC email and letter, dated April 30, 2018

civildefensebook@gmail.com

From: Ed Kichline <Ed.Kichline@nerc.net>
Sent: Monday, April 30, 2018 1:39 PM
To: foia-ceii@ferc.gov
Cc: civildefensebook@gmail.com; toyia.johnson@ferc.gov
Subject: Response to FOIA No. FY18-075
Attachments: Response to FOIA-2018-75 (Docket NP18-7-000).pdf

Please find attached NERC's response to the above-captioned Request under the Freedom of Information Act.

Respectfully submitted,

Edwin G. Kichline

Ed Kichline

Senior Counsel and Director of Enforcement Oversight

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April 30, 2018

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: Response to FOIA-2018-75 (Docket No. NP18-7-000)

Dear Ms. Bose:

The North American Electric Reliability Corporation (“NERC”) hereby objects to release of the identity of the Unidentified Registered Entity (“URE”) subject to the NERC Notice of Penalty filed in Docket No. NP18-7-000, as sought in Freedom of Information Act (“FOIA”) Request FOIA-2018-75.

NERC is compelled to object to this FOIA Request, because the Federal Energy Regulatory Commission (“Commission”) has instructed NERC not to divulge the identity of entities that have violated NERC Critical Infrastructure Protection (“CIP”) Reliability Standards. The Commission’s expectation that NERC should not identify entities violating CIP Reliability Standards is longstanding but is 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 (...).” *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 a URE sanctioned for violations of CIP Reliability Standards).

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