

Federal Energy Regulatory Commission
Washington, DC 20426

MAR 20 2019

Re: FOIA FY19-30
Notice of Intent to Release

VIA E-MAIL AND REGULAR MAIL

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Dear Sirs and Madam:

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 Michael Mabee pursuant to the Freedom of Information Act (FOIA).¹ Mr. Mabee seeks to obtain the non-public "NERC Full Notice of Penalty" ("non-public NOP") which includes the names of unidentified registered entities (UREs), including: NP10-140-000; NP1-139-000; NP10-138-000; NP10-137-000; NP10-136-000; NP10-135-000; NP10-134-000; NP10-131-000; NP10-130-000 and NP10-150-000.²

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 sought, the request will be processed on a rolling basis, with these initial

In reviewing the request in its entirety and based on telephone conversations with Mr. Mabee, staff has determined that he is primarily interested in the names of the UREs associated with various dockets. On February 8, 2019, Commission staff notified you and the relevant UREs of the request and provided an opportunity to comment pursuant to 18 C.F.R. § 388.112. You submitted comments on February 15, 2019, generally objecting to release of the non-public NOP, as well as the identity of the UREs. Commission staff has and is continuing to receive input from the relevant UREs.

Identities of UREs

In order to determine whether it is appropriate to release the identity of a URE named in a document, I must consider the following factors: the nature of Critical Infrastructure Protection (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 violations; whether the violations were 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 FOIA Exemption 3³ or FOIA Exemption 7(F)⁴ is appropriate. *See Garcia v. U.S. DOJ*, 181 F. Supp. 2d 356, 378 (S.D.N.Y. 2002) (stating that “[i]n 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).

NP10-139-000

The public version of the Notice of Penalty in NP10-139-000 was filed on July 6, 2010. Based on my application of the various factors discussed above, I determine that the disclosure of the name of the URE is appropriate. To begin, I note that any violations have been mitigated. Further, a significant amount of time has elapsed since the violations, and a follow-up audit was conducted since the filing of the Notice. Lastly, FERC technical staff recommended that disclosure of the URE is appropriate in this case.

docket numbers addressed first.

³ 5 U.S.C. § 552(b)(3) (protecting from disclosure certain information protected by statute).

⁴ 5 U.S.C. § 552(b)(7)(F) (protecting from disclosure records or information compiled for law enforcement purposes that could reasonably be expected to endanger the life or physical safety of an individual).

A copy of the first page 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).

Commission staff continues to assess docketed cases addressed in my February 8, 2019 letter. As appropriate, additional Notices of Intent to Release may be issued, as well as additional Submitters' Rights Letters to interested UREs, to address the remaining information sought in the FOIA request.

Sincerely,

A handwritten signature in black ink that reads "Leonard M. Tao". The signature is written in a cursive style with a large, stylized initial "L".

Leonard Tao
Director
Office of External Affairs

cc Michael Mabee
bcc