

Federal Energy Regulatory Commission  
Washington, DC 20426

JUN 13 2019

Re: FOIA FY19-30  
Second Notice of Intent to  
Release

**VIA E-MAIL AND REGULAR MAIL**

Edwin G. Kichline  
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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).<sup>1</sup> Mr. Mabee is seeking the identity of the Unidentified Registered Entities (URE) associated with the following Notice of Penalty dockets:<sup>2</sup> NP10-130-000; NP10-131-000 NP10-134-000; NP10-135-000; NP10-136-000; NP10-137-000; NP10-138-000; NP10-139-000; NP10-140-000; and NP10-150-000.<sup>3</sup>

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

<sup>2</sup> The request references numerous docket numbers. However, given the volume of information requested, Mr. Mabee's request is being processed on a rolling basis.

<sup>3</sup> While NP10-150-000 was identified within the February 8, 2019 Notice of Submitters' Rights letter, reference to this docket number was a typographical error. The

On February 8, 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 objecting to the release of the identities of the UREs generally (with the exception of NP10-139).<sup>4</sup> Additionally, FERC received feedback from certain UREs. The information provided by NERC and the UREs was considered in making the determinations below.

#### Identities of UREs

A case-by-case assessment of the request for the identity of each URE must consider the following: the nature of the CIP violation, including whether there is a Technical Feasibility Exception (TFE) associated with the 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).

The public versions of the Notices of Penalty in NP10-130, NP10-131, NP10-134, NP10-137, NP10-138, and NP10-140 were filed on July 6, 2010. Based on an application of the various factors discussed above, disclosure of the names of the UREs in connection with these dockets is appropriate.<sup>5</sup> In this regard, it is notable that from a cyber-security perspective, the violations associated with these dockets were non-technical in nature. Additionally, a significant amount of time has elapsed since the

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docket that should have been referenced was NP10-159-000. With that said, NERC noticed the error and provided feedback in connection with the release of the URE identity associated with NP10-159. The URE associated with NP10-159 also provided feedback.

<sup>4</sup> The identity of the URE associated with NP10-139 has been released to the requestor.

<sup>5</sup> As to NP10-135, NP10-136, and NP10-159, Commission staff review is ongoing.

violations. Copies of the public versions of the Notices of Penalty with the corresponding names of the UREs 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 the remaining docketed addressed in my February 8, 2019 letter and will provide a response in due course.

Sincerely,

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

Leonard Tao  
Director  
Office of External Affairs

Cc Michael Mabee

Bcc