

Federal Energy Regulatory Commission
Washington, D.C. 20426

SEP 17 2019

Re: FOIA FY19-99
Denial

VIA E-MAIL AND REGULAR MAIL

Michael Mabee

[REDACTED]
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CivilDefenseBook@gmail.com

Dear Mr. Mabee:

This is a response to your correspondence received on August 5, 2019, in which you requested information pursuant to the Freedom of Information Act (FOIA), and the Federal Energy Regulatory Commission's (Commission) FOIA regulations, 18 C.F.R. § 388.108 (2019). Specifically, you "seek the 'NERC Notice of Penalty' version which includes the name of the registered entity...for the following docket numbers: NP19-4; NP19-5; NP19-6; NP19-7; NP19-9; NP19-10; NP19-11; NP19-12; NP19-14; and NP19-15."

Before making a determination as to whether this information is appropriate for release under FOIA, a case-by-case assessment of the requested information must consider the following: the nature of the CIP violation, including whether there is a Technical Feasibility Exception involved that does not allow the URE to fully meet the CIP requirements; whether vendor-related information is contained in the NOP; whether mitigation is complete; the content of the public and non-public versions of the Notice of Penalty; the extent to which the disclosure identity of the URE and other information 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 NOP. An application of these factors will dictate whether a particular FOIA exemption, including 7(F) and/or Exemption 3, is appropriate. *See Garcia v. US. 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).

Based on the application of the various factors discussed above, I conclude that disclosing the unredacted Notice of Penalty, including the identity of the UREs associated with these dockets, would create a risk of harm or detriment to life, physical safety, or security because the specified UREs could become the target of a potentially bad actor. Therefore, the information is protected from disclosure under FOIA Exemption 7(F). *See* 5 U.S.C. § 552(b)(7)(F) (protecting law enforcement information

where release "could reasonably be expected to endanger the life or physical safety of any individual."). Additionally, the information is protected under FOIA Exemption 3. See the Fixing America's Surface Transportation Act, Pub. L. No. 114-94, § 61003 (2015) (specifically exempting the disclosure of CEII and establishing applicability of FOIA Exemption 3, 5 U.S.C. § 552(b)(3)). Accordingly, the unredacted Notice of Penalties in FERC docket numbers NP19-4; NP19-5; NP19-6; NP19-7; NP19-9; NP19-10; NP19-11; NP19-12; NP19-14; and NP19-15 will not be disclosed.

As provided by FOIA and 18 C.F.R. § 388.110 of the Commission's regulations, any appeal from this determination must be filed within 90 days of the date of this letter. The appeal must be in writing, addressed to James P. Danly, General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, and clearly marked "Freedom of Information Act Appeal." Please include a copy to Charles A. Beamon, Associate General Counsel, General and Administrative Law, at the same address.

You also have the right to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services ("OGIS"). Using OGIS services does not affect your right to pursue your appeal. You may contact OGIS by mail at Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740- 6001; email at ogis@nara.gov; telephone at 301-837-1996; facsimile at 301-837-0348; or toll-free at 1-877-684-6448.

Sincerely,



Leonard Tao
Director
Office of External Affairs

Cc

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