

FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D. C. 20426

OCT 25 2019

Re: Freedom of Information Act
Appeal, FOIA No. FY19-30

OFFICE OF THE GENERAL COUNSEL

VIA E-MAIL AND U.S MAIL

Michael Mabee

[REDACTED]
[REDACTED]
CivilDefenseBook@gmail.com

Dear Mr. Mabee:

This letter responds to your correspondence received on September 13, 2019, in which you assert that your request pursuant to the Freedom of Information Act (FOIA) and the Federal Energy Regulatory Commission's (Commission) FOIA regulations, designated as FOIA FY19-30, has been subject to a "constructive denial."

Background

On January 16, 2019, you requested information pertaining to numerous Notice of Penalty (NOP) dockets. Following a review of the request in its entirety, and based on staff discussions with you via telephone, staff understands that your request is ultimately for the names of the UREs associated with the dockets. According to your request, there are 190 docket numbers covered under FOIA FY19-30, with a total of 1,384 UREs.

On February 8, 2019, with notice to you, Leonard M. Tao, Director of the Office of External Affairs issued a Submitters' Rights Letter, notifying the relevant UREs of your request concerning dockets: NP10-130, NP10-131, NP10-134, NP10-135, NP10-136, NP10-137, NP10-138, NP10-139, NP10-140, and NP10-159,¹ and provided them opportunity to comment pursuant to 18 C.F.R. § 388.112.

On March 20, 2019, Director Tao issued NERC a Notice of Intent to Release as to the identity of the URE in Docket No. NP10-139, which was subsequently released to you. On June 13, 2019, Director Tao issued a Notice of Intent to Release as to the identities of the UREs in NP10-130, NP10-131, NP10-134, NP10-137, NP10-138, and NP10-140. which were also subsequently provided to you. Staff is continuing to process the other dockets associated with FOIA FY19-30.

¹ As you are aware, given the large number of dockets associated with your request, and the logistical challenges in notifying and receiving feedback from the large number of UREs associated with your request, it is being process on a rolling basis in batches of NOP dockets.

Analysis

Notably, FOIA FY19-30 is not your only FOIA request pending with the Commission. You have submitted related requests, including: FOIA FY19-19² (seeking URE identities associated with various dockets); FOIA FY19-56 (seeking certain NERC comments); FOIA FY19-61 (seeking documents concerning alleged discussions between FERC and NERC); and FOIA FY19-99 (seeking NOPs associated with certain dockets with the identities of the UREs disclosed). The Commission has either completed these requests or, as with FOIA FY19-30, is processing them on a rolling basis. Further, staff is also assisting with answering the appeals you have filed in connection with several of your requests for my review and consideration. Moreover, your pending requests are only a small fraction of the total number of FOIA requests being processed by staff.

As discussed in Director Tao's previous determination letters, given the sensitive nature of the information and the unique circumstances of each situation, a case-by-case assessment is necessary in each and every one of your FOIA requests. In these case-by-case assessments, we must consider a variety of factors relevant to the impact of the disclosure of a URE identity on the bulk electric system. Given staff's total workload, including your other pending requests and appeals, these case-by-case assessments are a time consuming, but necessary, process.

In sum, under these circumstances, a careful rolling review of the information is both necessary and appropriate. *See S. Yuba River Citizens League v. Nat'l Marine Fisheries Serv.*, No. Civ. S-06-2845, 2008 U.S. Dist. LEXIS 107177, 47 (E.D. Cal. June 20, 2008) (supporting the practice of releasing documents on a rolling basis); *Hinton v. FBI*, 527 F. Supp. 223, 225 (E.D. Penn. 1981) (noting that rolling responses preserve the government's right to carefully review material while promoting FOIA's disclosure goals). For these reasons, your appeal is denied.

Judicial review of this decision is available to you in the United States District Court for the judicial district in which you live, or in the United States District Court for the District of Columbia, which would be the location of the data that you seek. You may also seek mediation from the Office of Government Information Services (OGIS). Using OGIS services does not affect your right to pursue litigation. You may contact OGIS by mail at Office of Government Information Services, National Archives and

² Contemporaneously with the filing of the instant appeal, you also filed a similar appeal in FOIA FY19-19.

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,



James F. Danly
General Counsel

cc:

Edwin G. Kichline
Senior Counsel and Director of Enforcement Oversight
North American Electric Reliability Corporation
1325 G Street N.W. Suite 600
Washington, D.C. 20005
edwin.kichline@nerc.net

Sonia Mendonca
Vice President, Deputy General Counsel, and Director of Enforcement
North American Electric Reliability Corporation
1325 G Street N.W. Suite 600
Washington, D.C. 20005
Sonia.mendonca@nerc.net