


Federal Energy Regulatory Commission
Washington, D.C. 20426

FEB 19 2020

Re: FOIA FY20-43
Response Letter - Denial

VIA E-MAIL AND U.S MAIL

Michael Mabee


CivilDefenseBook@gmail.com

Dear Mr. Mabee:

This is a response to your correspondence received on January 6, 2020, 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 (2020). Your request is for the NERC Notice of Penalty versions which include the names of the registered entities associated with the following docket numbers: NP19-16-000; NP19-17-000; NP19-18-000; NP20-2-000; NP20-3-000; and NP20-6-000.

Based on staff's internal assessment, disclosure of the non-public NOPs, including the identities of the URES, is not appropriate. Accordingly, as discussed further below, the documents and identities will be withheld pursuant to Exemption 3 and Exemption 7(F).

Identities of URES

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 Critical Infrastructure Protection (CIP) violation, including whether there is a Technical Feasibility Exception involved that does not allow the Unidentified Registered Entity (URE) to fully meet the CIP requirements; whether vendor-related information is contained in the Notices of Penalty (NOP); whether mitigation is complete; the content of the public and non-public versions of the NOP; the extent to which the disclosure of the identity of the URE and other information would be useful to someone seeking to cause harm; whether a successful 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. 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).

Based on the application of the various factors discussed above, I conclude that disclosure of the non-public NOPs, including the identities of the UREs, 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 requested documents, including the names of the UREs associated with the foregoing dockets, 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.

By law, this letter must contain above-stated notice of a right to appeal this response; however, because this FOIA request is in litigation as part of *Mabee v. F.E.R.C.*, Civ. A. No. 19-3448 (KBJ) (D.D.C.), please direct any questions or concerns you have regarding this response to Assistant U.S. Attorney April Denise Seabrook at april.seabrook@usdoj.gov or (202) 252-2525.

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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" and a distinct "M" and "Tao".

Leonard Tao
Director
Office of External Affairs