

Federal Energy Regulatory Commission
Washington, D.C. 20426
January 29, 2021

Re: FOIA FY19-30 and FOIA
FY19-19 (Rolling)
Response Letter – Denial

VIA ELECTRONIC MAIL ONLY

Michael Mabee



CivilDefenseBook@gmail.com

Dear Mr. Mabee:

This is a rolling response to your correspondence received in January 2019, in which you requested information pursuant to the Freedom of Information Act (FOIA), and the Federal Energy Regulatory Commission's (Commission) FOIA regulations. *See* 5 U.S.C. § 552 (2018); 18 C.F.R. § 388.108 (2020). Your request is for the names of the Unidentified Registered Entities (UREs) associated with various public dockets, including: NP10-159; NP10-160; NP11-1; NP11-4; NP11-218; NP11-234; NP10-135; NP10-136; NP17-13; and NP17-26. Based on staff's internal assessment, disclosure of the UREs associated with these dockets is not appropriate. Accordingly, as discussed further below, the 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 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 disclosing the identities 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* 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 names of the UREs associated with the foregoing dockets will not be disclosed.

On November 18, 2019, you filed suit in the U.S. District Court for the District of Columbia asserting claims in connection with this FOIA request. *See Mabee v. Fed. Energy Reg. Comm'n.*, Civil Action No. 19-3448 (KBJ) (D.D.C.). Because this FOIA request is currently in litigation, this letter does not contain information regarding administrative appeal of the response to the FOIA request.

For any further assistance or to discuss any aspect of your request, you may contact Assistant United States Attorney April D. Seabrook by email at april.seabrook@usdoj.gov, by phone at (202) 252-2525, or by mail at United States Attorney's Office – Civil Division, U.S. Department of Justice, 555 Fourth Street, N.W., Washington, D.C. 20530.

Sincerely,

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Lindsee Gentry
Director
Office of External Affairs

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