

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

MICHAEL MABEE, )

*Plaintiff,* )

v. )

FEDERAL ENERGY REGULATORY )  
COMMISSION, )

*Defendant.* )

Civil Action No. 19-3448 (FYP)

**JOINT STATUS REPORT**

Pursuant to the Court’s December 9, 2021, Minute Order, Defendant, the Federal Energy Regulatory Commission (“FERC” or “the Agency”), and Plaintiff, Michael Mabee (“Plaintiff”), by and through their respective undersigned counsel, respectfully submit the following Joint Status Report.

1. This case concerns three (3) Freedom of Information Act (“FOIA”) requests filed by Plaintiff seeking the identities of Unidentified Registered Entities (“URE”) associated with numerous FERC Notice of Penalty and related dockets.

2. As set forth in Plaintiff’s Complaint, early in this matter, the Parties negotiated the manner in which FERC would address Plaintiff’s FOIA requests:

Plaintiff has in good faith negotiated with the staff of FERC and consented to a substantial reduction in the scope of his FOIA requests. Plaintiff’s requests were for the “NERC Full Notice of Penalty version which includes the name of the registered entity.... A Notice of Penalty can range from a few pages to hundreds of pages. The 253 FERC Dockets covered under Plaintiff’s FOIA request could potentially cover thousands of pages of documents. The FERC staff proposed, and Plaintiff agreed to reduce the scope of the FOIAs to the public cover page of each [public] Notice of Penalty with the name(s) of the violator(s) and the docket number inserted on the page. This reduces the number of pages from potentially many thousands...

*See* Plaintiff's Complaint, ECF No. 1, at ¶ 25.

3. On January 28, 2020, the Court issued a Minute Order ("Jan. 28th Order") directing FERC to "process a minimum of 10-15 dockets per month and ... issue a response to Plaintiff's FOIA requests on the 30th day of each month ... until production is complete." The Jan. 28th Order also required FERC to file a monthly status report regarding the processing of Plaintiff's FOIA requests on the 7th day of each month and the parties to file a joint status report every third month.

4. Following FERC's filing of its Emergency Motion to Amend Order Setting Processing Schedule, the Court issued an Order on October 19, 2021, amending the Jan. 28th Order to require Defendant to complete processing of the remaining dockets by January 31, 2022, with the other aspects of the Jan. 28th Order relating to status reports remaining in place. *See* ECF No. 35.

5. On December 9, 2021, the Court issued a Minute Order stating, in part, that "[u]pon consideration of the representation in the [37] Joint Status Report that all documents in the case are expected to be processed by January 31, 2022, the parties are directed to file another joint status report on or before February 14, 2022, proposing a schedule for the litigation of any remaining issues in the case."

#### *Processing*

6. Based on FERC staff's diligent review and audit of materials in this matter, on January 31, 2022, FERC completed its processing of dockets that are the subject of this litigation.

#### *Bates Labeling*

7. Plaintiff has requested that FERC provide Bates labeled documents of all response and determination letters issued by the Agency. FERC staff is in the process of compiling such

materials. However, given the volume of materials, the parties FERC staff requests until March 4, 2022, to complete such preparation. FERC notes that Plaintiff is already in possession of all response and determination letters, and accompanying documents as to each Notice of Penalty, if any.

*Comments by NERC and UREs in Response to Submitters' Rights Letters*

8. In those instances in which FERC was contemplating release of the name of a URE(s) in connection with the public version of a notice of penalty, it provided NERC, as well as the relevant UREs with a submitters' rights letter to comment on the potential release.

9. Plaintiff has requested to review all submitters' rights letters submitted by NERC, as well as by UREs as part of this litigation, without making a formal discovery or FOIA request for such documents. While NERC generally submitted comments, written comments by UREs were the exception.

10. FERC will provide copies of NERC's comments to Plaintiff, but will withhold the relatively few comments submitted by UREs that are protected by FOIA Exemptions 3, 4, and/or 7(F).

*Proposed Briefing Schedule*

11. With respect to briefing schedule, the parties propose the following briefing schedule:

- (a) FERC to file its motion for summary judgment on or before May 2, 2022.
- (b) Plaintiff to file his opposition to FERC's motion for summary judgment and his cross-motion for summary judgment on or before June 13, 2022.
- (c) FERC to file its reply brief and its response to Plaintiff's cross-motion for summary judgment on or before July 15, 2022.
- (d) Plaintiff to file his reply brief on or before August 15, 2022.

Dated: February 14, 2022

Respectfully submitted,

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