

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHAEL MABEE,

Plaintiff,

v.

FEDERAL ENERGY REGULATORY
COMMISSION,

Defendant.

Civil Action No. 19-3448 (ACR)

JOINT STATUS REPORT

Pursuant to the Court’s April 4, 2023, 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 Notices 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. 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.

4. On May 11, 2022, the Agency filed its Motion for Summary Judgment. ECF No. 41. Plaintiff opposed and filed a cross-motion, and the two motions were fully briefed as of September 27, 2022. ECF No. 49. Subsequently, this Court denied the motions without prejudice on April 4, 2023, and ordered the Parties to meet and confer "to resolve or narrow the disputes between them."

5. The core dispute between the parties is the application of Exemptions 3 and 7(F) to the Agency's withholding of the identities of Unidentified Registered Entities. *See, e.g.*, ECF No. 41, *generally*.

6. On September 27, 2023, the Parties met in a hybrid meeting at the U.S. Attorney's Office for approximately two hours in an attempt to narrow the issues. Present in person were Plaintiff and his counsel Peter Sorenson, as well as AUSA Kartik Venguswamy as counsel for the Agency; participating via videoconference on behalf of the Agency were Marcos Araus, Nneka Frye, and Charles Beamon. Despite their reasonable and good faith efforts, the Parties were not able to reach an agreement as to whether the withheld information qualified under Exemptions 3 and 7(F).

7. After two further telephone conferences between undersigned counsel, the Parties met again via videoconference on November 1, 2023, for a further twenty-five minute discussion. Present were Plaintiff and his counsel Peter Sorenson, as well as AUSA Kartik Venguswamy as counsel for the Agency, and Marcos Araus, Nneka Frye, and Kevin Bell for the Agency. In the intervening month, the Agency had reevaluated a sampling of the withheld information to

determine whether the Agency would change its position, while Plaintiff had reevaluated his request to see whether he was willing to reduce the number or type of entities he wished to have disclosed. Again, the Parties were unable to overcome their disagreement on the legal interpretation of the two Exemptions at issue.

8. The Parties, through undersigned counsel, conducted one final telephone conference in addition to exchanging emails, in order to finalize their proposal for *in camera* review and to reduce the Parties' positions to writing.

9. In light of the Parties' inability to narrow the scope further, the Parties respectfully request that this Court rule on the cross-motions for summary judgment. As the legal issues, analysis, and Party positions have not changed since those motions were briefed, the Parties believe that the briefs appropriately put forth their positions; requiring the resubmission of briefs would be inefficient and unlikely to change the arguments before the Court. Accordingly, the Parties respectfully suggest that this Court order the Parties to refile their Motions and Oppositions with the current date and attaching, without any changes, the Declarations, Exhibits, and all other documents previously filed, in order to bring the motions properly before the Court.

10. In accordance with this Court's Minute Order of April 4, 2023, the Parties suggest as follows should the Court wish to review the challenged redactions: Upon this Court's request, Plaintiff shall identify a sample of 20 of the 253 records at issue, from which the Agency shall select 10 and provide them to this Court for *in camera* review.

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Dated: December 5, 2023

Respectfully submitted,

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