

Federal Energy Regulatory Commission
Washington, D.C. 20426

APR 02 2019

Re: FOIA FY19-19 (Rolling)
Denial (NP14-30, NP14-37, and
NP14-39) – Second Response
Letter

VIA E-MAIL AND U.S MAIL

Michael Mabee



CivilDefenseBook@gmail.com

Dear Mr. Mabee:

This is a second response to your correspondence received on December 19, 2018, and amended on January 4, 2019, 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 (2018). In reviewing the request in its entirety and based on staff discussions with you via telephone, your request is primarily for the name of the UREs associated with various dockets, including: NP14-29-000; NP14-30-000; NP14-32-000; NP14-37-000; NP14-39-000; and NP14-41-000.¹

On January 18, 2019, Commission staff notified you, as well as the relevant UREs, of the request and provided an opportunity to comment pursuant to 18 C.F.R. § 388.112. NERC submitted comments on January 28, 2019, objecting to the release of the identity of the UREs generally. Additionally, a number of trade groups submitted comments also objecting to disclosure of the URE identities. Finally, Commission staff received feedback from some of the relevant UREs.

On February 28, 2019, I issued a Notice of Intent to Release as to the identities of the UREs in NP14-32 and NP14-41, which were subsequently provided to you. This letter addresses NP14-30, NP14-37, and NP14-39.

Identities of UREs

A case-by-case assessment of the requested information must consider the following: the nature of the Critical Infrastructure Protection violation; whether


¹ As you are aware, given the volume of dockets in your request, this FOIA response will be processed on a rolling basis.

mitigation is complete; the content of the public and non-public versions of the Notice of Penalty; the extent to which the disclosure of the pertinent URE identity would be useful to someone seeking to cause harm; whether an 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 Notice of Penalty. 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 application of the various factors discussed above, I conclude that disclosing the identity of the UREs in NP14-30, NP14-37, and NP14-39, in combination with the information contained in the public versions of the Notices of Penalty, 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. *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.”); *see also* 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 names of the UREs associated with NP14-30, NP14-37, and NP14-39 will not be disclosed.

We are continuing to process your request, and staff will issue another Submitters’ Rights letter to NERC addressing additional dockets covered by your request, with a blind courtesy copy to the relevant UREs.

Sincerely,

A handwritten signature in black ink, appearing to read "Leonard Tao", with a stylized flourish at the end.

Leonard Tao

Director

Office of External Affairs

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

bcc