

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

MICHAEL MABEE,)	
)	
Plaintiff,)	
)	Civil Action No. 19-3448 (KBJ)
v.)	
)	
FEDERAL ENERGY REGULATORY)	
COMMISSION,)	
)	
Defendant.)	
_____)	

JOINT STATUS REPORT

Pursuant to the Court’s January 28, 2020 Minute Order, Defendant the Federal Energy Regulatory Commission (“FERC”) and Michael Mabee (“Plaintiff”), by and through their respective undersigned counsel, submit the following Joint Status Report in the above-referenced matter.

Joint Statement Regarding Relevant Background and Status

1. The above-captioned 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 (“NOP”) dockets.
2. 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.”
3. The Jan. 28th Order also requires FERC to file a monthly status report regarding the processing of Plaintiff’s FOIA requests on the 7th day of each month.
4. Finally, beginning March 7, 2020, the Jan. 28th Order requires the parties to meet, confer, and file a Joint Status Report, and thereafter every third month.

5. On January 16, 2020, FERC provided Plaintiff with a determination as to thirteen (13) dockets. On Friday, February 7, 2020, FERC filed its status report, advising the Court of the same.

**Defendant’s Status Report Regarding Processing of Dockets
During February 2020 And Other Issues**

6. On February 26, 2020, FERC provided Plaintiff with a determination as to the following twelve (12) additional dockets:

NP11-2-000	NP14-19-000	NP14-23-000
NP14-16-000	NP14-20-000	NP14-24-000
NP14-17-000	NP14-21-000	NP14-25-000
NP14-18-000	NP14-22-000	NP14-26-000

7. Based on its internal assessments, FERC denied the release of the URE identities associated with the foregoing twelve (12) dockets. *See* Joint Status Report, Doc. 9 at ¶¶ 10-14 (describing assessment process).

8. On March 2, 2020, FERC issued a “Submitter’s Rights Letter” in connection with NP11-3-000 to the North American Electric Reliability Corporation (“NERC”), as well as the underlying URE(s) associated with this docket.¹

9. FERC fully anticipates that it will process ten (10) or more additional dockets during the month of March, and will file its next status report on Tuesday, April 7, 2020.

10. FERC has no other issues to bring to the Court’s attention regarding the litigation at this time.

¹ “A Submitter’s Rights letter, which is issued pursuant to the Agency’s regulations, is sent to NERC and the underlying URE(s) in those instances in which the agency determines that additional input from NERC and/or the underlying URE(s) is necessary in order to make a final determination as to whether disclosure is appropriate.” *See* 18 C.F.R. 388.112

11. Plaintiff has previously asked that FERC bates label its responses to the FOIA request. Accordingly, on March 4, 2020, FERC re-issued its prior productions with bates labeling affixed to the documents. FERC has advised Plaintiff that it would prefer to wait until the end of the production to bates label any additional FOIA responses produced in this case, as it will be far more efficient than bates labeling the materials in small batches at the issuance of each response. Defendant also notes that Plaintiff has not identified any urgency in the need for bates labeled documents.
12. With respect to the issues raised by Plaintiff below, Defendant objects to Plaintiff's request that the Court order production of copies of the responses to Submitter's Rights Letters. To begin, these documents are not responsive to Plaintiff's FOIA request (and Plaintiff does not even allege that they are responsive). Moreover, to the extent that a URE submits written comments in response to a Submitter's Rights Letter, production of such comments would require substantial review and redactions – including redaction of the identity of the responding URE, any information that might reveal the identity, and any information that would disclose the docket number to which it relates.² In this regard, producing an unredacted version of a URE's comments would necessarily result in a disclosure of its identity and potentially sensitive information – the very issues on which FERC seeks input. In sum, Plaintiff's request will do nothing but slow down FERC's processing of the dockets that are the subject of the instant litigation by requiring the Agency to spend more time and resources redacting documents that are not even the subject of the pending FOIA requests associated with this case. Finally, Plaintiff is already well aware of the general position of

² For example, if FERC produces any unredacted comments received from a URE in connection with NP11-3-000, *see* paragraph 8 above, then Plaintiff will then know the URE's identity.

NERC – the company that issues the NOPs about which Plaintiff’s FOIA requests seek information – regarding this matter. In a prior unrelated FOIA submitted to FERC, Plaintiff already requested and received comments submitted by NERC, which generally objected to the release of certain URE identities.³

Plaintiff’s Status Report And Other Issues

13. Plaintiff respectfully requests that Defendant provide bates stamped records each time it releases records to Plaintiff. Despite requesting this over the past two months, Defendant has only recently (last week) provided bates stamped records. Defendant, see above, wants to wait until the end of the production schedule to provide any additional bates paginated records. Plaintiff respectfully requests the Court to order ongoing bates pagination of released records, which will help make a complicated case less so.
14. In Paragraph 8, Defendant describes that on March 2, 2020 it sent out a, “Submitter’s Rights Letter” to “the North American Electric Reliability Corporation, as well as the underlying URE(s) associated with this docket.” Plaintiff requests that the Court order that Defendant provide Plaintiff with copies of the responses to any “Submitter’s Rights Letters” associated with the dockets at issue in this lawsuit. In the past, Defendant has stated that if Plaintiff wishes to acquire the records, then he must file a separate FOIA request for these responses, even though the responses are relevant to Plaintiff’s underlying

³ Plaintiff has submitted approximately six (6) FOIA requests to FERC seeking various information relating to Critical Infrastructure Protection (“CIP”) NOPs. *See* FOIA FY19-19 (seeking URE identities associated with various dockets); FOIA FY19-30 (seeking URE identities associated with various dockets); FOIA FY19-56 (seeking certain NERC comments); FOIA FY19-61 (seeking documents concerning alleged discussions between FERC and NERC); FOIA FY19-99 (seeking NOPs associated with certain dockets); FOIA FY20-54 (seeking URE identities associated with certain dockets). Plaintiff was provided with NERC’s comments in response to a submitter’s rights letter in connection with FOIA FY19-56.

FOIA requests. In other words, Defendant seems to require that Plaintiff file FOIA requests for the responses to his FOIA request at issue in this case.

Dated: March 9, 2020

Respectfully submitted,

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