

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MICHAEL MABEE,

Plaintiff,

v.

FEDERAL ENERGY REGULATORY
COMMISSION,

Defendant.

Civil Action No. 19-3448 (UNA)

JOINT STATUS REPORT

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

DEFENDANT’S REPORT:

Statement Regarding Relevant Background and Status

1. The above-captioned case concerns three (3) Freedom of Information Act (“FOIA”) requests filed by Plaintiff Michael Mabee (“Plaintiff”) seeking the identities of Unidentified Registered Entities (“URE”) associated with numerous FERC Notice of Penalty and related 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 and the parties to file a joint status report every third month.

**Defendant's Status Report Regarding Processing of Dockets
During August 2021**

NP13-39

4. On Friday, August 20, 2021, FERC issued a Notice of Intent to Release the public version of the Notice of Penalty associated with NP13-39, along with the names of certain UREs associated with this docket inserted on the first page.¹

5. On Thursday, August 30, 2021, FERC issued a Release Letter, disclosing the identity of two UREs associated with NP13-39 on the first page of the public version of the Notice of Penalty.

6. On Thursday, September 2, 2021,² FERC provided Plaintiff with a response as to the remaining UREs contained in NP13-39. Based on its internal assessments, *see* Joint Status Report, Doc. 9 at ¶¶ 10-14, FERC denied the release of the remaining URE identities associated with NP13-39.

NP12-12

7. On August 10, 2021, FERC issued a revised Notice of Intent to Release the public version of the Notice of Penalty associated with NP12-12, along with the name of one URE associated with this docket inserted on the first page.

8. On Thursday, August 30, 2021, FERC issued a Release letter, disclosing the identity of one URE associated with NP12-12 on the first page of the public version of the Notice of Penalty.

¹ The Notices of Penalty discussed herein address numerous entities, thus requiring FERC staff to engage in a separate analysis as to each URE contained in each docket.

² The formal denial as to these remaining UREs should have been sent on August 30, 2021 and was inadvertently sent out on September 2, 2021.

9. Plaintiff was previously informed of the denial as to the remaining UREs contained in NP12-12 via correspondence sent on June 30, 2021.

NP12-18; NP12-44; NP13-33; NP13-41; NP13-51; NP13-46; and NP-14-29

10. On Wednesday, June 30, 2021, FERC provided Plaintiff with a response to his FOIA requests as to the following seven (7) dockets: *NP12-18; NP12-44; NP13-33; NP13-41; NP13-51; NP13-46; and NP-14-29*. Based on its internal assessments, *see* Joint Status Report, Doc. 9 at ¶¶ 10-14, FERC denied the release of the URE identities associated with the foregoing seven (7) dockets.

NP12-47

11. On Tuesday, August 31, 2021,³ FERC provided Plaintiff with a response to his FOIA request as to docket NP12-47. Based on its internal assessments, *see* Joint Status Report, Doc. 9 at ¶¶ 10-14, FERC denied the release of the URE identities associated with NP12-47.

Other Issues

12. There are approximately 19 dockets associated with this litigation that remain for processing by FERC staff. However, all of these dockets involve multiple UREs, thus requiring FERC staff to engage in multiple analyses for each URE contained in each docket. While FERC staff have been able to maintain its current pace of completing 10-15 dockets per month, *see* Jan. 28th Order, it anticipates that it will not be able to satisfy its minimum requirement during the month of September. In the event it appears that FERC will be unable to process 10 dockets during the month of September, it intends to file a motion for extension with the Court. In this regard,

³ This denial should have been sent out on August 30, 2021 and was inadvertently sent out on August 31, 2021.

counsel for Plaintiff has advised that he will not agree to an extension, nor a reduction in dockets to be processed each month.

PLAINTIFF'S REPORT:

13. Plaintiff will object to any request for an extension as described in paragraph 12.

14. Plaintiff originally filed his FOIA requests with Defendant on December 18, 2018 (FOIA # FY19-19), January 12, 2019 (FOIA #FY19-30) and August 3, 2019 (FOIA # FY19-99). The three FOIA requests covered a total of 253 Federal Energy Regulatory Commission dockets in which the names of the regulatory violators had been withheld from the public, Congress and state regulators. Thus, Defendant has been aware of the specific 253 dockets associated with these three FOIA requests for 2.7 years, 2.6 years and 2.1 years respectively.

15. Defendant requested in the Joint Status Report of January 13, 2020 [Document 9] that "FERC estimates that it will be able to process 5-10 dockets per month." Plaintiff requested "that the Court order FERC to process 25 dockets per month until the production is complete." Both sides had full opportunity to make their respective arguments.

16. On January 28, 2020 the Court issued the following order: "Defendant shall process a minimum of 10-15 dockets per month and shall issue a response to Plaintiff's FOIA requests on the 30th day of each month or the next business day if the 30th falls on a weekend or holiday, until production is complete."

17. Plaintiff points out that this lawsuit was necessitated to begin with by Defendant's unreasonable delays in processing these FOIA requests. Prior to the lawsuit being filed, Defendant processed an average of less than 2 dockets per month and would have happily taken 10.5 years to

process Plaintiff's FOIA requests. Only because Plaintiff filed suit and the Court ordered "Defendant shall process a minimum of 10-15 dockets per month" has FERC done the bare minimum – 10 dockets exactly per month.

18. The Court should not allow Defendant to move the goal post now. Defendant could have made these arguments last year in the Joint Status Report when the parties made their positions known and the Court issued its January 28, 2020 Minute Order.

19. Defendant has known since the FOIAs were filed that some of the dockets involved multiple "Unidentified Registered Entities." Each of Plaintiff's three FOIA requests contained a detailed table that listed each of the 253 dockets individually including the number of entities believed to be covered in each docket.

20. Thus, Defendant has known about the composition of these dockets since the beginning. This is not new information they have just discovered. This issue has been argued and decided. The Court should not entertain any further delays by Defendant in processing of these FOIA requests.

21. This case was originally assigned to the Honorable Ketanji Brown Jackson who has since resigned from the Court and who has been elevated to the United States Court of Appeals for The District of Columbia Circuit. Plaintiff respectfully requests that a judge be assigned to this case.

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Dated: September 7, 2021 Respectfully submitted,

/s/ C. Peter Sorenson
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