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FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

JUN 7 2017

Re: FOIA No. FY17-64,  
Response Letter

**ELECTRONIC AND REGULAR MAIL**

John Greenewald, Jr.

*The Black Vault*



john@greenewald.com

Dear Mr. Greenewald:

This is a response to your correspondence received on April 25, 2017, in which you requested information pursuant to the Freedom of Information Act (FOIA)<sup>1</sup>, and the Federal Energy Regulatory Commission's (Commission) FOIA regulations, 18 C.F.R. § 388.108. Specifically, you requested the following:<sup>2</sup>

- A copy of the "FERCipedia Intro Presentation" as archived on the "FERCipedia PROCESSES" page on the FERCipedia website [Request No. 1];
- A copy of the "Meeting Minutes" as archived on the "FERC PROCESSES" page on the FERCipedia website [Request No 2];
- A copy of the "PETROLEUM" page as archived on the "Petroleum" page on the FERCipedia website [Request No. 3]; and
- A copy of the "FERCipedia Document Library" as referenced on the "FERCipedia User Aids" pages on the FERCipedia website [Request No. 4].

Commission staff searched its non-public files and identified six (6) materials which appear to be responsive. As discussed in more detail below, with the exception of the "Meeting Minutes" (Request No. 2 above), the responsive materials are enclosed.

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<sup>1</sup> 5 U.S.C. § 552, *as amended* by the FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (2016).

<sup>2</sup> You filed four separate requests, which were consolidated under FOIA No. 2017-64.

In response to Request No. 1, there is no file named "FERCipedia Intro Presentation" archived on the "FERC PROCESSES" page. However, enclosed is a .pdf copy of the FERCipedia Intro Presentation which is found elsewhere on the FERCipedia website.<sup>3</sup>

As to Request No. 3, enclosed with this letter are screenshots of the "Petroleum" page and the "Petroleum Home" page on the FERCipedia website. Regarding Request No. 4, there is no file named "FERCipedia Document Library" on the "FERCipedia User Aids" page. However, Commission staff did identify screenshots of the materials contained in the "FERCipedia Document Library" and the "FERCipedia User Aids," which are being provided.<sup>4</sup> While it is well established that an agency is not required to create a document in response to a FOIA request, these screenshots are being provided as a courtesy. The Commission has no obligation to respond to similar requests in the future.

As to Request No. 2, the Meeting Minutes, which are archived elsewhere on the FERCipedia website, contain information protected from disclosure pursuant to FOIA Exemption 5.<sup>5</sup> FOIA Exemption 5 protects from disclosure "intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency."<sup>6</sup> More specifically, FOIA Exemption 5 incorporates various privileges, including the deliberative process privilege, which is at issue here.

Courts have consistently held that three policy purposes constitute the basis for the FOIA Exemption 5 deliberative process privilege: (1) to encourage open, frank discussions on matters of proposed policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons

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<sup>3</sup> Portions of the presentation reflecting an internal "URL" have been redacted pursuant to FOIA Exemption 7(F) due to concerns that if such information fell into the wrong hands, it could compromise the Commission's IT system and potentially result in the disclosure of, among other things, CEII.

<sup>4</sup> The names of agency personnel contained in materials responsive to Request Nos. 3 and 4 have been redacted pursuant to FOIA Exemption 6.

<sup>5</sup> There is no file named "Meeting Minutes" archived on the "FERC PROCESSES" page on the FERCipedia website.

<sup>6</sup> 5 U.S.C. § 552(b)(5).

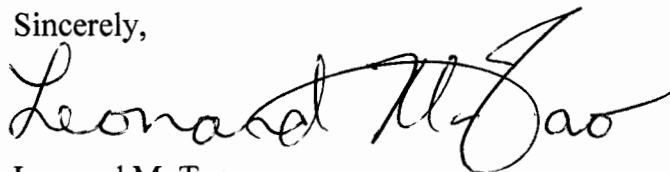
and rationales that were not in fact ultimately the grounds for an agency's action. *See Russell v. Dep't of the Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982); *see also Environmental Protection Agency v. Mink*, 410 U.S. 73, 87 (1972) (recognizing that "[i]t would be impossible to have any frank discussions of legal or policy matters in writing if all such writings were to be subjected to public scrutiny").

Here, the Meeting Minutes are precisely the type of information FOIA Exemption 5 was created to protect. Not only would release of the document risk chilling future staff discussion on FERCIpedia, it could cause public confusion by disclosing analyses that ultimately did not form part of the final agency analysis released to the public.

The material that is being released is enclosed. As provided by the FOIA and 18 C.F.R. §388.110(a)(1) of the Commission's regulations, any appeal from this determination must be filed within 90 days of the date of this letter. The appeal must be in writing, addressed to David L. Morenoff, General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C., 20426, and clearly marked "Freedom of Information Act Appeal." Please include a copy to Charles A. Beamon, Associate General Counsel, General and Administrative Law, at the same address.

You also have the right to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services (OGIS). Using OGIS services does not affect your right to pursue your appeal. You may contact OGIS by mail at Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at (301) 837-1996; facsimile at (301) 837-0348; or toll-free at 1-877-684-6448.

Sincerely,



Leonard M. Tao  
Director  
Office of External Affairs

Enclosures (5)