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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL J. AGUIRRE,

Plaintiff,

v.

FEDERAL ENERGY REGULATORY COMMISSION,

Defendant.

Case No. '15CV1702 GPC KSC

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF; PRODUCTION OF FOIA RECORDS

INTRODUCTION

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff MICHAEL J. AGUIRRE for his complaint against defendant UNITED STATES FEDERAL ENERGY REGULATORY COMMISSION ("FERC"), alleges as follows:

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, to compel production of agency records, concerning communications between FERC and Southern California Edison ("SCE") regarding the Staff Notice of Alleged Violations dated January 22, 2014, which Defendant has improperly withheld from Plaintiff.

2. Plaintiff's request dated February 18, 2015, sought production of all investigative reports, information, and documents for the investigation of SCE in Commission Staff's Notice of Alleged Violations dated January 22, 2014, and any documents and information related to the Order Approving Stipulation and Consent Agreement found at 149 FERC ¶ 61,061 (Docket No. IN14-8-000). Prompt release of the requested information is important because of the immediate public interest in this information.

3. On March 9, 2015, the parties agreed to narrow the scope of the request to "email communications between FERC Staff and SCE regarding the Staff Notice of Alleged Violations dated January 22, 2014."

4. Plaintiff has a right of access to the requested information under 5 U.S.C. § 552(a)(3), and there is no legal basis for Defendant's denial of such access.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United States, in particular, 5 U.S.C. § 552. In addition, this Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), under which, "the district court of the United States in the district in which the complainant resides, or has his principal place of

business…has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant," because, among other things, Plaintiff lives in this District.

6. Venue is proper in this District pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1931 because, among other things, Plaintiff resides within is in this District.

PARTIES

7. Plaintiff Michael J. Aguirre is, and at all times herein mentioned was, a resident of the state of California and the Southern District of California. Plaintiff is investigating the data, reports, and other documents related to the September 8, 2011, Southwest Blackout including the Stipulation and Consent Agreement between FERC and SCE issued October 21, 2014 (assigned Docket No. IN-14-8-000, and attached hereto as Exhibit 1) where FERC found SCE violated Reliability Standard PRC-001-1 R4 by not adequately coordinating the intertie separation scheme at the San Onofre switchyard with protection systems including (1) the acceleration limits within the turbine control systems on two SONGS generators; and (2) the Under Frequency Load Shedding ("UFLS") program of SDG&E.

8. Defendant Federal Energy Regulatory Commission ("FERC") is an independent United States agency and has possession of the documents Plaintiff seeks. FERC is responsible for regulating the transmission of energy (such as electricity, oil, and natural gas) across state lines. FERC is also responsible for protecting the reliability of high voltage interstate transmission system through mandatory reliability standards.

BACKGROUND

9. On the afternoon of September 8, 2011, an eleven minute system disturbance occurred in the Pacific Southwest, which led to cascading outages and ultimately left 2.7 million customers without power. During those eleven minutes, the entirety of San Diego was without power, which constituted approximately 1.4

million San Diego Gas & Electric (SDG&E) customers. The blackout left millions of SDG&E customers without air conditioning on a sweltering September afternoon.

10. In addition to the SDG&E customers affected, approximately 1.1 million Comisión Federal de Electricidad (CFE) customers; 146,000 Imperial Irrigation District (IID) customers; and 70,000 Arizona Public Service (APS) customers were without power, some for multiple hours extending into the next day. Due to the outages, some schools and businesses were forced to close; flights and public transportation were disrupted; water and sewage pumping stations lost power; and beaches were forced to close due to sewage contamination. Millions went without air conditioning on a day where temperatures in the Imperial Irrigation District service territory reached 115 degrees Fahrenheit.

THE REQUEST AND EXHAUSTION OF REMEDIES

11. By letter dated February 18, 2015, Plaintiff requested information related to the investigation of SCE in Commission Staff's Notice of Alleged Violations dated January 22, 2014.

12. By letter dated February 19, 2015, Defendant confirmed receipt of the FOIA request, assigned the request the reference number FOIA-2015-48, and promised "every effort will be made to respond to your FOIA request within twenty business days or by 3/18/2015."

13. By communication dated March 9, 2015, Plaintiff narrowed the request scope to email communication between FERC Staff and SCE regarding the Staff Notice of Alleged Violations dated January 22, 2014. A copy of an email confirming this communication dated March 11, 2015 is attached hereto as Exhibit 2.

14. By letter dated March 18, 2015, Defendant notified Plaintiff of an extension of time in accordance with Section 388.110(b) to consult with other components of the agency having substantial subject-matter interest therein.

Defendant stated it expected to send an initial determination of the request by April 1, 2015.

15. On March 31, 2015, Leonard M. Tao, Director of the Office of External Affairs, informed Plaintiff that 374 documents identified by FERC as responsive would be withheld in their entirety pursuant to FOIA Exemption 7(A).

16. By letter dated April 8, 2015, Plaintiff appealed the denial of the request. A copy of this letter is attached hereto as Exhibit 3.

17. By letter dated May 22, 2015, Defendant made a discretionary release of twenty responsive emails, with the names of non-senior level FERC staff redacted to protect their identities. Defendant stated it anticipated ruling on the appeal as to the remaining documents within the next 30 days. A copy of this letter is attached hereto as Exhibit 4.

18. By letter dated July 16, 2015, Defendant granted in part and denied in part Plaintiff's April 8, 2015 appeal. Defendant determined that 73 additional emails could be released with the names and email addresses of lower level Commission staff redacted pursuant to FOIA Exemption 6. Of these 73 emails, Defendant withheld 16 attachments in their entirety under FOIA exemption 7(A), 13 of which were also withheld under FOIA Exemption 4; and withheld 3 under FOIA Exemption 7(E). Defendant's letter advised that judicial review was available to Plaintiff in the United States District Court for the judicial district in which he lives. A copy of this letter is attached hereto as Exhibit 5.

19. The FOIA request seeks information, including all investigative reports, information, and documents for the investigation of SCE including email communication between FERC Staff and SCE regarding the Staff Notice of Alleged Violations dated January 22, 2014.

20. Having exhausted his administrative remedies, Plaintiff brings this suit to compel FERC to discharge its obligations under FOIA so that the public can seek information as to what caused the largest power failure in California history.

21. The public has a significant and legitimate interest in the investigation of possible violations of reliability standards which outweighs concealment of records.

22. As the holder of the records, FERC has an obligation to the people to provide transparency of its communications with investor owned utilities ("IOUS") such as SCE.

23. FERC is obligated to release the records requested under FOIA unless it can be shown that the records are exempt from disclosure.

TO DATE, FERC HAS FAILED TO PRODUCE THE DOCUMENTS

24. Under FOIA, FERC was required to respond to the February 18, 2015, request by Tuesday, March 18, 2015, which is 20 business days after the date in which Plaintiff submitted the request. Under the same calculation, after the scope of the request was narrowed on March 9, 2015, a response from FERC was required by April 8, 2015, 20 business days after the scope was narrowed.

25. Plaintiff has a statutory right to the records requested.

FERC'S USE OF FOIA EXEMPTIONS WAS UNLAWFUL

26. FERC claims that the requested responsive documents are protected under FOIA Exemption 7(A). FERC withheld information about SCE to prevent the disclosure of documents that may be pertinent to investigative processes. However, there was no current investigation when FERC denied Plaintiff's request for the documents. Since there was no pending investigation, FERC's use of FOIA Exemption 7(A) was improper.

27. FOIA Exemption 4 is also inapplicable. FERC claims that there are no pending investigations in this case.

28. FOIA Exemption 7(E) was improperly claimed as well. Disclosure of the information is necessary to inform the public about the shutdown of the SONGS nuclear units. The information is also necessary to prevent similar incidents from occurring in the future.

FIRST CAUSE OF ACTION

DECLARATORY JUDGMENT

29. The allegations made in the paragraphs above are fully alleged here by reference.

30. FOIA instructs the federal government, including FERC, to publicly release communications with SCE.

31. FERC has not provided the requested records to Plaintiff.

32. Plaintiff seeks declaratory judgment that FERC produce Plaintiff's requested records immediately pursuant to FOIA.

SECOND CAUSE OF ACTION

VIOLATION OF FOIA

33. The allegations made in the paragraphs above are fully alleged here by reference.

34. Plaintiff seeks an order directing FERC to release the requested records.

35. Plaintiff has exhausted his administrative remedies with respect to receiving a response to the records requested.

36. FOIA instructs the federal government, including FERC, to publicly release its records.

37. Upon substantially prevailing, Plaintiff should be awarded reasonable attorneys' fees under 5 U.S.C. § 552(a)(4)(E).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests this Court:

1. Declare that FERC's failure to release the requested documents was unlawful;

2. Order Defendant to release the requested records to Plaintiff;

3. Expedite this proceeding as provided for in 28 U.S.C. § 1657;

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4. Award plaintiff costs and reasonable attorneys fees in this action, as provided in 5 U.S.C. § 552(a)(4)(E); and

5. Grant such other and further relief as this Court may deem just and proper.

REQUEST FOR JURY

Plaintiff hereby requests a jury trial in this action.

Respectfully submitted,

AGUIRRE & SEVERSON, LLP

Dated: July 31, 2015

Maria C. Severson

149 FERC ¶ 61,061
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, and Tony Clark.

Southern California Edison Company Docket No. IN14-8-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued October 21, 2014)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement), the North American Electric Reliability Corporation (NERC), and Southern California Edison Company (SCE). This order is in the public interest because it resolves on fair and reasonable terms an investigation of SCE, conducted by Enforcement in coordination with NERC and the Commission's Office of Electric Reliability (OER), into possible violations of Reliability Standards associated with SCE's operation of a portion of the Bulk Power System (BPS) and a blackout that occurred on September 8, 2011. SCE agrees to pay a civil penalty of $650,000, of which $250,000 will be paid to the United States Treasury and NERC, divided in equal amounts, and $400,000 will be invested in reliability enhancement measures that go above and beyond mitigation of the violations and the requirements of the Reliability Standards. SCE also agrees to commit to mitigation and compliance measures necessary to mitigate the violation described in this Agreement, and to make semi-annual compliance reports to Enforcement and NERC for at least one year.

I. Background

2. SCE, a wholly-owned subsidiary of Edison International, is an investor-owned utility providing electricity in central, coastal, and southern California. Among other NERC registrations, SCE operates as a Transmission Owner (TO) and Operator (TOP) within the California Independent System Operator's (CAISO) Balancing Authority area, and has delegated part of its responsibilities as TOP to CAISO under a Coordinated Functional Registration. SCE owns approximately 5,490 circuit miles of transmission lines, including 500, 230, and 161 kV lines. At the time of the event, SCE owned more than 5,600 MW of generation, including a majority share in the San Onofre Nuclear Generating Station (SONGS) in Southern California.[1] SCE's peak load exceeds 22,000 MW. SCE is subject to the Commission's regulation under section 215 of the Federal Power Act (FPA).[2]

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[1] In June 2013, SONGS permanently ceased power operations.

[2] 16 U.S.C. § 824o (2012).

3. On March 16, 2007, in Order No. 693,[3] the Commission approved the initial Reliability Standards, which became mandatory and enforceable within the contiguous United States on June 18, 2007.

4. The investigation of SCE arose out of a system disturbance that occurred on the afternoon of September 8, 2011 in the Pacific Southwest, which resulted in cascading outages and left approximately 2.7 million customers (equivalent to five million or more individuals) without power, some for multiple hours extending into the next day. The total load loss for the event was in excess of 30,000 MWh. The event started with a three-phase fault which led to the loss of Arizona Public Service Company's Hassayampa-N. Gila 500 kV transmission line (H-NG). This transmission line is a segment of the Southwest Power Link (SWPL), a major transmission corridor transporting power in an east-west direction, from generators in Arizona, through Imperial Irrigation District's (IID) service territory, into Southern California.

5. With the SWPL's major east-west corridor broken by the loss of H-NG, power flows instantaneously redistributed throughout the electric system in the Pacific Southwest and Southern California, increasing flows through lower voltage systems parallel to the SWPL as power continued to flow on a hot day during hours of peak demand.

6. These redistributed flows traveled through IID's and Western Area Power Administration-Desert Southwest's (Western-DSW) facilities, onto Western Electricity Coordinating Council (WECC)[4] Path 44, an aggregation of five 230 kV transmission lines that deliver power in a north-south direction from SCE's territory in Los Angeles to San Diego. The increased power flows parallel to the SWPL, together with lower than peak generation levels in California and Mexico, led to significant voltage deviations and transmission equipment overloads. The flow redistributions, voltage deviations, and resulting overloads had a cascading effect, as transmission and generation equipment tripped offline in a relatively short time period. Just seconds before the blackout, Path 44 carried all flows into San Diego as well as parts of Arizona and Mexico. This excessive loading on Path 44 initiated an intertie separation scheme owned and operated by SCE at

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[3] *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g*, Order No. 693-A, 120 FERC ¶ 61,053 (2007).

[4] At the time of the event, WECC was registered with NERC as the Reliability Coordinator (RC) for all of the entities affected by the event, as well as serving as the Regional Entity (RE) under a delegation agreement with NERC. Since the event, the Regional Entity and Reliability Coordinator functions have been bifurcated, with WECC remaining the Regional Entity, and Peak Reliability becoming the independent Reliability Coordinator. *See Order on Compliance*, 146 FERC ¶ 61,092 (2014) (accepting compliance filings submitted by NERC and WECC and eliminating all final obstacles to bifurcation).

the San Onofre switchyard. Initiation of this intertie separation scheme separated San Diego Gas & Electric (SDG&E) from Path 44, contributed to tripping the SONGS nuclear units offline, and eventually resulted in the complete blackout of San Diego and Comisión Federal de Electricidad's (CFE) Baja California Control Area in Mexico.

7. Before the September 8 event, system conditions had never exceeded the threshold for triggering the intertie separation scheme at the San Onofre switchyard, and SCE had never conducted any studies to assess the scheme's impact on reliability or the scheme's impact on an already severely compromised system.

8. Operation of the scheme simultaneously opened all five 230 kV transmission lines—Path 44—connecting SCE and SDG&E, as it was designed to do, and the resulting cut in power to SDG&E's system caused a rapid frequency decline indicative of a severe imbalance between generation and load in SDG&E's system. This rapid frequency decline affected SDG&E's Underfrequency Load Shedding (UFLS) program. Prior to this point in the event, SDG&E had already lost its intertie to the east, and with the opening of Path 44, SDG&E was effectively separated from the rest of the Western Interconnection.

9. The operation of the separation scheme under the extreme power flow conditions resulted in a sudden change in the angle of the generator rotors at SONGS. This resulted in the activation of turbine control logic to prevent over speed of the equipment which tripped both SONGS units.

II. Investigation

10. On September 9, 2011, the Commission and NERC announced a joint inquiry to determine how the blackout occurred and to make recommendations to avoid similar situations in the future. The inquiry team, comprised of Commission and NERC staff, used on-site visits and interviews, detailed computer modeling, event simulations, and system analyses to make its findings and recommendations for preventing similar events in the future. The inquiry determined that entities responsible for planning and operating the BPS were not prepared to ensure reliable operation or prevent cascading outages in the event of a single contingency. On May 1, 2012, the inquiry team published a report entitled *Arizona-Southern California Outages on September 8, 2011, Causes and Recommendations* (the Report), which is hereby incorporated by reference.[5] The Report discusses a detailed sequence of events, simulations, and findings related to the causes of the cascading outages. The Report also makes twenty-seven recommendations related to next-day planning, seasonal planning, near- and long-term planning, situational

[5] *Arizona-Southern California Outages on September 8, 2011, Causes and Recommendations* (April 2012), *available at* http://www.ferc.gov/legal/staff-reports/04-27-2012-ferc-nerc-report.pdf.

awareness, consideration of bulk electric system (BES) equipment, System Operating Limits (SOLs) and Interconnection Reliability Operating Limits (IROLs), and protection systems.

11. Following publication of the Report, Enforcement, OER, and NERC staff reviewed the data gathered during the inquiry for compliance implications. At the direction of the Commission, Enforcement initiated non-public investigations of several entities, including SCE, under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2014), which were conducted jointly with NERC.

12. Enforcement and NERC determined that SCE violated the Protection and Control (PRC-) group of Reliability Standards. The PRC standards cover a range of topics related to the protection and control of power systems, including the design, coordination, and maintenance of functional protection systems.

13. Enforcement and NERC determined that SCE failed to adequately coordinate the intertie separation scheme at the San Onofre switchyard with protection systems, including (1) the acceleration limits within the turbine control systems on the two SONGS generators; and (2) the UFLS program of its neighbor, SDG&E, in violation of Reliability Standard PRC-001-1 R4. Enforcement and NERC found SCE's violation to be a serious deficiency undermining reliable operation of the BPS.

III. Stipulation and Consent Agreement

14. Enforcement, NERC, and SCE resolved this matter by means of the attached Agreement. SCE stipulates to the facts recited in the Agreement and agrees to pay a civil penalty of $650,000, of which $250,000 will be paid to the United States Treasury and NERC, divided in equal amounts, and $400,000 will be invested in reliability enhancement measures that go above and beyond the requirements of the Reliability Standards, as described in the Agreement. SCE neither admits nor denies that its actions constituted violations of the Reliability Standards.

15. SCE also agrees to additional mitigation measures, and to submit to compliance monitoring, as specified in the Agreement.

16. In consideration of the appropriate sanction, Enforcement considered that SCE has made significant efforts to date to address reliability concerns identified in the inquiry and investigation and also by SCE on its own initiative. SCE also fully and comprehensively cooperated with Enforcement and NERC during the investigation.

IV. Determination of the Appropriate Sanctions

17. The civil penalty amount is consistent with the Penalty Guidelines.[6] Enforcement considered that the event caused a loss of 10,000 or more MWh of firm load, and SCE

[6] *Enforcement of Statutes, Orders, Rules and Regulations,* 132 FERC ¶ 61,216 (2010).

was allocated a share of the base penalty. The civil penalty amount reflects credit for SCE's full cooperation during the course of the investigation as well as credits for avoiding a trial-type hearing and having an effective compliance program.

18. The Commission concludes that the penalties and other sanctions set forth in the Agreement are a fair and equitable resolution of this matter and are in the public interest. The Commission also concludes that the reliability enhancement measures set forth in the Agreement will enhance the reliability of the BPS and are therefore also fair and in the public interest.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission. Commissioner Bay is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern California Edison Company) Docket No. IN14-8-000

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. Staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission), the North American Electric Reliability Corporation (NERC), and Southern California Edison Company (SCE) enter into this Stipulation and Consent Agreement (Agreement) to resolve a non-public investigation conducted by Enforcement and NERC pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2014). The investigation examined possible violations of NERC Reliability Standards by SCE related to a system event in the Pacific Southwest on September 8, 2011 (September 8 event or event). SCE neither admits nor denies that it violated the Reliability Standard described in the Agreement, but agrees to pay a total civil penalty of $650,000, of which $250,000 will be paid to the United States Treasury and NERC, divided in equal amounts, and $400,000 will be invested, subject to Enforcement and NERC approval, by SCE in reliability enhancement measures identified below that go above and beyond the Agreement's mitigation commitments or what that Reliability Standards require (Reliability Enhancements). SCE also commits to mitigation and compliance measures, subject to compliance monitoring, as detailed in the Agreement.

II. STIPULATED FACTS

2. Enforcement, NERC, and SCE hereby stipulate and agree to the following facts.

A. SCE

3. SCE, a wholly-owned subsidiary of Edison International, is an investor-owned utility providing electricity in central, coastal, and southern California. Among other NERC registrations, SCE operates as a Transmission Owner (TO) and Operator (TOP) within the California Independent System Operator's (CAISO) Balancing Authority area, and has delegated part of its responsibilities as TOP, including seasonal, next-day, and current-day planning, to CAISO under a

Coordinated Functional Registration.[1] SCE owns approximately 5,490 circuit miles of transmission lines, including 500, 230, and 161 kV lines. At the time of the event, SCE owned more than 5,600 MW of generation, including a majority share in the San Onofre Nuclear Generating Station (SONGS) in Southern California.[2] SCE's peak load exceeds 22,000 MW.

B. Event Description

4. During an 11-minute period on the afternoon of September 8, 2011, a system disturbance occurred in the Pacific Southwest, resulting in cascading outages and leaving approximately 2.7 million customers without power, some for multiple hours extending into the next day. The total load loss for the event was in excess of 30,000 MWh. The event started with a three-phase fault which led to the loss of Arizona Public Service's (APS's) Hassayampa-N. Gila 500 kV transmission line (H-NG). This transmission line is a segment of the Southwest Power Link (SWPL), a major transmission corridor transporting power in an east-west direction, from generators in Arizona, through the service territory of Imperial Irrigation District (IID), into Southern California.

5. With the SWPL's major east-west corridor broken by the loss of H-NG, power flows instantaneously redistributed throughout the electric system in the Pacific Southwest and Southern California, increasing flows through lower voltage systems parallel to the SWPL as power continued to flow on a hot day during hours of peak demand.

6. These redistributed flows traveled through IID's and Western Area Power Administration – Desert Southwest's (Western-DSW's) territories onto Western Electricity Coordinating Council (WECC)[3] Path 44, an aggregation of five 230 kV

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[1] JRO00009 was originally entered into on September 11, 2008 and most recently updated on May 24, 2012. JRO00009 delineates compliance responsibility for the Standards and Requirements associated with the TOP function between CAISO and SCE.

[2] In June 2013, SONGS permanently ceased power operations.

[3] At the time of the event, WECC was registered with NERC as the Reliability Coordinator (RC) for all of the entities affected by the event, as well as serving as the Regional Entity (RE) under a delegation agreement with NERC. Since the event, the Regional Entity and Reliability Coordinator functions have been bifurcated, with WECC remaining the Regional Entity, and Peak Reliability becoming the independent Reliability Coordinator. *See Order on Compliance,* 146 FERC ¶ 61,092 (2014) (accepting compliance filings submitted by NERC and WECC and eliminating all final obstacles to bifurcation). The Agreement will

transmission lines that deliver power in a north-south direction from SCE's territory in Los Angeles to San Diego Gas & Electric (SDG&E). The increased power flows parallel to the SWPL, together with lower than peak generation levels in California and Mexico, led to significant voltage deviations and transmission equipment overloads. The flow redistributions, voltage deviations, and resulting overloads had a cascading effect, as transmission and generation equipment tripped offline in a relatively short time period. Just seconds before the blackout, Path 44 carried all flows into San Diego as well as parts of Arizona and Mexico. This excessive loading on Path 44 initiated an intertie separation scheme, owned and operated by SCE, located at the San Onofre switchyard.[4] CAISO is responsible for many of the TOP functions for SCE under a Coordinated Functional Registration. Initiation of the intertie separation scheme at the San Onofre switchyard separated SDG&E from Path 44, contributed to tripping the SONGS nuclear units offline, and eventually resulted in the complete blackout of San Diego and Comisión Federal de Electricidad's Baja California Control Area.

7. SCE's role in the September 8 event centers on its ownership and operation of the intertie separation scheme at the San Onofre switchyard that initiated approximately 10 minutes and 40 seconds into the 11-minute event. Operation of the scheme simultaneously opened all five 230 kV transmission lines—Path 44—connecting SCE and SDG&E, as it was designed to do, and the resulting cut in power to SDG&E's system caused a rapid frequency decline indicative of a severe imbalance between generation and load in SDG&E's system. This rapid frequency decline affected SDG&E's Underfrequency Load Shedding (UFLS) program. Prior to this point in the event, SDG&E had already lost its intertie to the east, and with the opening of Path 44, SDG&E was effectively separated from the rest of the Western Interconnection. Before the September 8 event, system conditions had never exceeded the threshold for triggering the intertie separation scheme at the San Onofre switchyard, and SCE had never conducted any studies to assess the scheme's impact on reliability or the scheme's impact on an already severely compromised system.

8. The operation of the separation scheme under the extreme power flow conditions resulted in a sudden change in the angle of the generator rotors at SONGS. This resulted in the activation of turbine control logic to prevent over speed of the equipment which tripped both SONGS units.

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refer to WECC when relevant to the event, and will otherwise refer to the relevant function (RE or RC) rather than using the entity names WECC or Peak Reliability.

[4] Since the September 8 event, Enforcement and NERC have referred to this intertie separation scheme as the SONGS Separation Scheme.

III. INQUIRY AND INVESTIGATION

9. On September 9, 2011, the Commission and NERC announced a joint inquiry to determine how the blackout occurred and to make recommendations to avoid similar situations in the future. The inquiry team, comprised of Commission and NERC staff, used on-site visits and interviews, detailed computer modeling, event simulations, and system analyses to make its findings and recommendations for preventing similar events in the future. The inquiry determined that entities responsible for planning and operating the Bulk-Power System (BPS) were not prepared to ensure reliable operation or prevent cascading outages in the event of a single contingency. On May 1, 2012, the inquiry team published a report entitled *Arizona-Southern California Outages on September 8, 2011, Causes and Recommendations* (the Report), which is hereby incorporated by reference.[5] The Report discusses a detailed sequence of events, simulations, and findings related to the causes of the cascading outages. The Report also makes twenty-seven recommendations related to next-day planning, seasonal planning, near- and long-term planning, situational awareness, consideration of Bulk Electric System (BES) equipment, system operating limits (SOLs) and Interconnection Reliability Operating Limits (IROLs), and protection systems.

10. Following publication of the Report, Enforcement and NERC reviewed the data gathered during the inquiry for compliance implications. As a result of that review, Enforcement and NERC initiated non-public investigations of several entities, including SCE, under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2014). Enforcement and NERC determined that SCE violated Reliability Standard PRC-001-1 R4 and found that this violation undermined the reliability of the BPS and contributed to the September 8 event. Enforcement and NERC recognized, however, that after the event, and during the inquiry and investigation, SCE voluntarily began making improvements in its planning and operations, and implementing recommendations from the Report, that addressed many of the findings arising from the Report. In addition, SCE fully cooperated with Enforcement and NERC during the investigation.

11. As part of the investigation, Enforcement and NERC reviewed SCE's compliance program and discovered that SCE satisfies the criteria for an effective compliance program under the Commission's Penalty Guidelines.[6] Enforcement

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[5] *Arizona-Southern California Outages on September 8, 2011, Causes and Recommendations* (April 2012), *available at* http://www.ferc.gov/legal/staff-reports/04-27-2012-ferc-nerc-report.pdf.

[6] *Enforcement of Statutes, Orders, Rules and Regulations,* 132 FERC ¶ 61,216, § 1B2.1 (2010).

and NERC considered the following elements of SCE's compliance program: (1) SCE's NERC Compliance Program office is staffed by seventeen full time employees devoted to ensuring compliance with each Reliability Standard; (2) SCE conducts an annual self-assessment of its overall NERC compliance as well as monthly assessments of compliance with specific Reliability Standards; (3) Five of SCE's senior Officers are a part of SCE's NERC Executive Steering Team (EST). The EST team members are fully engaged in the compliance program and attend monthly status meetings with the director of the compliance program; and (4) SCE employees attend annual training sessions on NERC compliance and have opportunities to report and raise compliance issues, including through an anonymous Hotline maintained by a third party.

IV. VIOLATION

12. Enforcement and NERC determined that SCE violated Reliability Standard PRC-001-1 R4 because prior to the September 8 event it did not adequately coordinate the intertie separation scheme at the San Onofre switchyard with protection systems, including (1) the acceleration limits within the turbine control systems on the two SONGS generators; and (2) the UFLS program of its neighbor, SDG&E. Prior to the event, SCE had not conducted studies to assess the scheme's impact on reliability. Prior to the event, SCE also had not conducted studies to assess the scheme's impact on the acceleration of the SONGS units, or the impact to an already severely compromised system. As a result, SCE did not know how the initiation of the scheme would impact reliability, including whether the scheme would result in the tripping of the SONGS generators or how it might affect the ability of SDG&E's UFLS program to arrest extreme frequency decline, as described in paragraphs 6, 7, and 8 above.

V. REMEDIES AND SANCTIONS

13. SCE stipulates to the facts as described in Section II of the Agreement, but neither admits nor denies Enforcement's and NERC's findings that its conduct violated the Reliability Standard specified in Section IV. For purposes of settling any and all civil and administrative disputes within the jurisdiction of the Commission arising from reliability issues related to the September 8 event and Enforcement and NERC's investigation, SCE agrees to the remedies set forth in the following paragraphs.

A. Civil Penalty

14. SCE shall pay a total civil penalty of $650,000, of which $250,000 shall be paid, divided in equal amounts, to the United States Treasury and NERC within ten days of the Effective Date of the Agreement. Enforcement and NERC agree to give SCE a partial civil penalty offset for the remaining $400,000 in exchange for

SCE agreeing to implement the Reliability Enhancements set forth in Section V.B. The value of the Reliability Enhancements is expected to substantially exceed the amount of the offset.

B. Reliability Enhancements

15. In exchange for the $400,000 offset, as Reliability Enhancements, SCE shall provide the RE and/or RC with three Full-Time Equivalent (FTE) technical employees for a total of 6,240 hours to assist the RE and/or RC with their efforts in response to the September 8 event.

16. As part of the Reliability Enhancements, SCE employees will participate in regional study groups and various RE, RC, and/or NERC reliability initiatives, created in response to and for the purpose of improving reliability after the September 8 event. SCE, the RE, and/or RC will agree on the skill set of the employees to be shared and the employees' projects and tasks.

17. The scope and nature of the projects and tasks to be performed by the aforementioned SCE employees shall be approved by Enforcement and NERC, such approval not to be unreasonably withheld. SCE shall complete the Reliability Enhancements by December 31, 2016.

18. If SCE has not performed the Reliability Enhancements by December 31, 2016, or determines, prior to December 31, 2016, that it cannot reach an agreement with the RE and/or RC on the projects or tasks to be performed, SCE shall subtract from $400,000 the cash value of the services, if any, already performed, and pay the remaining sum in equal shares to the United States Treasury and NERC. The calculation of the sum due to Treasury and NERC, including the cash value of the services, and the identification of the services to be credited, are subject to review and approval by Enforcement and NERC.

C. Completed and Required Mitigation

19. SCE commits to the following actions, designed to mitigate the Reliability Standard violations and to improve overall reliability of the BES. As indicated below, SCE affirms that it has already completed most of the mitigation measures and shall complete all remaining mitigation measures no later than December 31, 2015, unless otherwise stated in this Section. In those instances where SCE has already implemented mitigation measures prior to entering into the Agreement, it shall continue operating under the practices and procedures implemented as part of the mitigation, until such time as it implements improved practices and procedures, as determined by Enforcement and NERC. SCE will report on the status of all mitigation measures described in this Section and submit evidence of

status and progress in its compliance monitoring reports to be submitted to Enforcement and NERC pursuant to Section V.C of the Agreement.

i. Mitigation Related to Protection Systems

Protection System Coordination[7]

20. SCE has completed multiple mitigation measures and has also agreed to implement multiple additional mitigating measures aimed at improving its coordination of Covered Protection Systems, including intertie overload separation schemes.[8]

21. Following the September 8 event, SCE undertook an expedited technical and physical evaluation of all its intertie overload separation schemes, to ensure that such schemes and the schemes' settings were properly coordinated across its transmission system. Based on this evaluation and to the extent necessary to ensure proper coordination, SCE changed the settings on some schemes, and disabled and removed others.

22. In addition to any requirements under the Reliability Standards related to protection systems, starting in 2014, SCE agrees to conduct a detailed study of twenty percent of its existing and planned Covered Protection Systems each year with 100 percent of the studies to be completed by December 31, 2018. SCE will prioritize its assessment of intertie overload separation schemes and will complete its assessment of such schemes by December 31, 2015. This assessment shall consider (1) the purpose and limitations of Covered Protection Systems; (2) the necessity of Covered Protection Systems; (3) the classification of Covered Protection Systems; (4) coordination of Covered Protection Systems with other devices and systems; (5) impact of Covered Protection Systems on internal and external elements; (6) whether Covered Protection Systems have unintended reliability consequences; (7) whether SCE's Underfrequency Load Shedding program is effective and consistent with the RE's Off-Nominal Frequency Load

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[7] This section on Protection System coordination applies to the following Protection Systems: (1) internal to SCE's system, Special Protection Systems (including intertie overload separation schemes), overload Protection Systems on transmission equipment, and overload Protection Systems that studies show affect the BPS; and (2) external to SCE's system, Protection Systems that are known to affect SCE's operations (referred to as "Covered Protection Systems").

[8] SCE has identified its intertie overload separation schemes that remain in service, and Enforcement, NERC, and SCE maintain a list of such schemes confidentially.

Shedding plan; and (8) affected generators' response to activation of Covered Protection Systems.

23. SCE further agrees to share relevant information, including Covered Protection System settings, from the foregoing assessments with impacted entities and the Reliability Coordinator. To the extent SCE learns from the assessments that any Covered Protection Systems have degraded or have the potential to not operate as designed, SCE will immediately share this information with impacted entities and the Reliability Coordinator.

Effect of Protection Systems on Transmission Facility Loadability

24. SCE agrees to implement mitigation measures aimed at ensuring that its protection system relay settings do not limit the loadability of its transmission facilities. Specifically, in its 2016 Annual Transmission Reliability Assessment, and each year thereafter, SCE will review its transmission facility SOLs to ensure that they account for protection system relay settings and that they are equal to the most limiting operating criteria during all timeframes, including restoration. SCE will also identify instances where its relay trip points are set too close to transmission facility emergency ratings and to develop plans to mitigate such instances.

Protection System Training

25. SCE agrees to broaden its protection system training program. SCE has provided its transmission operators training on internal protection systems since before the September 8 event. Within six months of the Effective Date of the Agreement, SCE agrees to review this training to ensure it covers the purpose and limitations of Covered Protection Systems, the settings of Covered Protection Systems, and the impact of Covered Protection Systems on internal and external elements. SCE also agrees to expand this training within one year of the completion of the assessment described in Paragraph 22 to cover external protection systems, as identified by SCE, the CAISO, or any adjacent entity, that are likely to impact SCE's system reliability.

ii. Mitigation Related to Long-Term Planning

Consideration of Critical System Conditions in Long-Term Planning Assessments

26. Within one year of the Effective Date of the Agreement, SCE agrees to implement several steps (described below in paragraphs 27-30) to ensure that its long-term planning assessments consider critical system conditions, including expected system transfers above firm, expected internal and external generation dispatch, the impact of internal and external facilities, transmission facilities

operated below 100 kV, local distribution facilities operated below 100 kV that are known to impact the BPS, and the impact of active protection and control devices.

27. Regarding expected system transfers above firm, SCE agrees to include in its long-term studies additional sensitivities by varying generation and load to stress system transfers.

28. To ensure it considers expected internal and external generation dispatch levels in its long-term planning studies, SCE agrees to simulate combinations of various generator outages in its transmission area as well as neighboring areas that could impact its system.

29. SCE also agrees to improve its long-term planning process by ensuring that it considers internal and external facilities operated below 100 kV, where those facilities operate in parallel with facilities above 100 kV or have the potential to affect BPS reliability.[9] For example, SCE agrees to begin utilizing the RE's new base case coordination system to develop cases that include 69 kV facilities and to monitor contingencies involving facilities operated at 69 kV and above in SDG&E's, IID's, and APS's territories that have an impact on SCE's system.

30. SCE agrees to update its contingency files of its various Special Protection Systems (SPS)/Remedial Action Schemes (RAS) for its annual long-term planning studies. Also, it will continue to support the work and respond to data requests of the RE's Modeling SPS and Relays Ad-hoc Task Force to incorporate selected relays into base cases.

Analyses and Benchmarking of Past Planning Studies

31. On a going forward basis, SCE agrees to benchmark annually the prior year's planning studies against actual system operating conditions and look and account for higher stress conditions not captured in its annual assessments, such as unusual generation and import patterns, higher than expected load patterns, and contingencies that may have occurred and were not evaluated. SCE agrees to share information from its benchmarking analyses with impacted entities, CAISO, and the Reliability Coordinator.

iii. Mitigation Related to Situational Awareness

Greater Coordination to Improve Situational Awareness

[9] Inclusion of transmission facilities operated below 100 kV in the mitigation measures pursuant to the Agreement shall have no effect on any current or future analysis regarding whether these facilities comprise part of the BPS.

32. SCE agrees to implement various mitigating measures to improve its coordination efforts with neighboring entities as a way of strengthening its situational awareness. When provided with additional system information for coordination, SCE will have greater capability to assess information, including in the next-day and real-time timeframes, that could impact its system.

33. When released by Peak Reliability for usage, SCE agrees to ensure that its operators and operating engineers utilize, on a daily basis, relevant elements of Peak Reliability's new data sharing portal, which contains next-day studies, historical archives, and data from the Western Interconnection Synchrophasor Project. When released for entity use by Peak Reliability the phasor measurement data will provide operators visibility of system conditions in near real-time and may enable early detection of problems that could lead to cascading outages.

Expanded Situational Awareness

34. To the extent SCE has not already done so, within six months of the Effective Date of the Agreement, SCE also agrees to undertake efforts to identify internal and external elements that impact its portion of the BPS, including facilities operated below 100 kV. In addition, to the extent it has not already done so, SCE agrees to identify all internal elements, including elements operated below 100 kV, that impact external BPS elements, and to notify impacted entities and the Reliability Coordinator of such elements. All such elements shall be included in its models for monitoring in its seasonal, next-day, current-day, and real-time studies. SCE has also received and continues to receive Inter-Control Center Communications Protocol (ICCP) data from neighbors to further improve its transmission models with real-time, verified data on facilities that impact its system.

Response to Impaired Situational Awareness

35. Within six months of the Effective Date of the Agreement, SCE agrees to improve its procedures for responding to the impairment of its monitoring capabilities. These procedures maintain plans for the loss of SCADA/EMS, RTCA, and the loss of communication. They also cover plans for communicating with the Reliability Coordinator and neighboring entities in case SCE loses situational awareness. SCE also agrees to revise its procedures governing the exchange of information regarding the loss or change in service status of critical facilities with the Reliability Coordinator and other impacted entities. SCE will complete operator training on all of these new processes within one year of the Effective Date of the Agreement.

D. Compliance Monitoring

36. SCE shall make semi-annual reports to Enforcement and NERC until all of the mitigation measures and Reliability Enhancements, identified in the Agreement, have been fully implemented and verified by Enforcement and NERC. The first semi-annual report shall cover the first six month period after the Effective Date of the Agreement and shall be submitted to Enforcement and NERC staff within thirty days of the expiration of that period. The subsequent report(s) shall be due in six month increments thereafter. Each report shall detail the following: (1) actions taken as of the date of the report to satisfy the terms of the Agreement, including all mitigation items and Reliability Enhancements; (2) actions taken to improve reliability compliance, including investments in new measures and training activities during the reporting period; and (3) any additional violations of Reliability Standards that have occurred and whether and how SCE has addressed those new violations. The reports must include an affidavit executed by an officer of SCE that the compliance reports are true and accurate and also include corroborative documentation or other satisfactory evidence demonstrating or otherwise supporting the content of these reports. Enforcement and NERC staff may require additional semi-annual reporting if circumstances indicate the need for further monitoring or if SCE has not yet completed all the mitigation measures described in this Section.

VI. TERMS

37. The "Effective Date" of the Agreement shall be the date on which the Commission issues an order approving the Agreement without material modification. When effective, the Agreement shall resolve all reliability matters relating to the September 8 event within the jurisdiction of the Commission, and that arose on or before the Effective Date, as to SCE or any affiliated entity.

38. Commission approval of the Agreement without material modification shall release SCE and forever bar the Commission and NERC from holding SCE, any affiliated entity, and any successor in interest to SCE liable for any and all administrative or civil claims arising out of the reliability issues related to the September 8 event or conduct addressed and stipulated to in the Agreement that occurred on or before the Agreement's Effective Date.

39. Failure to make timely civil penalty payments or to comply with the mitigation, Reliability Enhancements, and monitoring agreed to herein, or any other provision of the Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act (FPA), 16 U.S.C. §792, *et seq.*, and may subject SCE to additional action under the enforcement provisions of the FPA.

40. If SCE does not make the civil penalty payment described above at the time

agreed by the parties, interest payable to the United States Treasury and NERC shall begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19(a)(2)(iii) (2014) from the date that payment is due, in addition to the penalty specified above and any other enforcement action and penalty that the Commission or NERC may take or impose.

41. The Agreement binds SCE and its agents, successors, and assignees. The Agreement does not create any additional or independent obligations on SCE, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in the Agreement.

42. The signatories to the Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement, NERC, or SCE has been made to induce the signatories or any other party to enter into the Agreement.

43. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and Enforcement, NERC, and SCE shall not be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement, NERC, and SCE.

44. SCE agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under the Federal Power Act. SCE waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

45. The Agreement can be modified only if in writing and signed by Enforcement, NERC, and SCE, and any modifications will not be effective unless approved by the Commission.

46. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity and accepts the Agreement on the entity's behalf.

47. The undersigned representative of SCE affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement and NERC in express reliance on those representations.

48. The Agreement may be signed in counterparts.

49. The Agreement is executed in triplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:

Larry D. Gasteiger
Acting Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: October 7, 2014

Charles A. Berardesco
Senior Vice President, General Counsel and Corporate Secretary
North American Reliability Corporation

Date: 10/01/2014

Pete Dietrich
Senior Vice President , Transmission & Distribution
Southern California Edison Company

Date: 09/22/2014

2

Michael Aguirre

From: Michael Watson <Michael.Watson@ferc.gov>
Sent: Wednesday, March 11, 2015 3:04 PM
To: maguirre@amslawyers.com
Cc: Toyia Johnson; Brenda Greer
Subject: FOIA Request Fy-2015-48 re:alleged violations of Southern California Edison

Hi Mr. Aguirre,

This is to confirm our conversation on Monday (March 9, 2015) whereby we agreed that the Agency will narrow your original FOIA request, and will now only search for email communications between FERC Staff and Southern California Edison regarding the Staff Notice of Alleged Violations dated January 22, 2014.
Please contact me at (202) 502-8909 if you have any questions. Thank you.

Michael Watson
Federal Energy Regulatory Commission

AGUIRRE & SEVERSON, LLP
ATTORNEYS AT LAW

501 West Broadway, Suite 1050
San Diego, CA 92101
Telephone (619) 876-5364
Facsimile (619) 876-5368

Michael J. Aguirre, Esq.
maguirre@amslawyers.com

April 8, 2015

David L. Morenoff
General Counsel
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: FREEDOM OF INFORMATION ACT APPEAL

Dear Mr. Morenoff:

As provided by the FOIA and 18 CFR 388.110(a)(1) of FERC's regulation, I am appealing the decision to provide no records in response to the FOIA request described below after delaying the response and leading me to believe records would be produced. If this appeal is not granted, an immediate lawsuit will be filed to obtain them.

FERC has acknowledged that on February 18, 2015, I filed a FOIA request all investigative reports, information and documents for the investigation of Southern California Edison Company (SCE) in Commission Staff's Notice of Alleged Violations dated January 22, 2014, and any documents and information related to the Order Approving Stipulation and Consent Agreement found at 149 FERC ¶ 61,061 (Docket No. IN14-8-000). FERC also acknowledged in a conversation between myself and Commission staff on March 9, 2015, the request was narrowed to email communications between FERC Staff and SCE regarding the Staff Notice of Alleged Violations dated January 22, 2014."

No prejudice will be suffered by FERC in any on-going investigation. The incident in question occurred in going on 4 years ago. FERC has already issued sanctions in the case, albeit minor ones with regard to SCE. Withholding documents that are subject to disclosure under FOIA later produced under court order subjects FERC to having to pay legal fees. We live in San Diego, which is the primary population center that suffered the blackout. We have a deep and vital interest in learning what your investigation showed, including whether an adequate investigation was conducted. Please honor our request and provide the requested documents.

Thank You,

Michael J. Aguirre

cc: Charles A. Beamon,
Associate General Counsel, General and Administrative Law

4

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

MAY 22 2015

RECEIVED
MAY 26 2015
By

OFFICE OF THE GENERAL COUNSEL

Re: Freedom of Information Act
Appeal, FOIA No. FY15-48

VIA CERTIFIED MAIL
Michael Aguirre, Esq.
Aguirre and Severson, LLP
501 West Broadway
Suite 1050
San Diego, CA 92101
maguirre@amslawyers.com

Dear Mr. Aguirre:

This letter responds to your April 8, 2015 appeal of the denial of your request filed pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2012), and the Federal Energy Regulatory Commission's (Commission or FERC) FOIA regulations, 18 C.F.R. § 388.110 (2015).

Background

On February 18, 2015, you requested copies of all investigative reports, information, and documents for the investigation of Southern California Edison Company (SCE) in Commission Staff's Notice of Alleged Violations dated January 22, 2014. You also requested that the Commission provide any documents and information related to the Order Approving Stipulation and Consent Agreement found at 149 FERC ¶ 61,061 (Docket No. IN14-8-000). On March 9, 2015, in a conversation with FERC staff, you agreed to narrow the scope of your request to "email communications between FERC Staff and SCE regarding the Staff Notice of Alleged Violations dated January 22, 2014."

On March 31, 2015, Leonard M. Tao, Director of the Office of External Affairs (Director), identified 374 responsive documents that he withheld in their entirety pursuant to FOIA Exemption 7(A).[1] In support of that decision, the Director stated that public

[1] 5 U.S.C. § 552(b)(7)(A) (which protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings.").

release of the 374 documents could be harmful to ongoing investigations conducted by the Commission's Office of Enforcement relating to the September 8, 2011 blackout of the Pacific Southwest.[2]

On Appeal, you argue that release of the information will not cause harm to any on-going FERC investigation because sanctions have already been issued against SCE and the incident happened almost four years ago. Without addressing the actual merits of your appeal at this time, I have determined to make a discretionary release of 20 responsive emails, which are enclosed. The names of non-senior level FERC staff have been redacted to protect their identities. I anticipate ruling on your appeal as to the remaining documents within the next 30 days.

Judicial review of this determination is available to you in the United States District Court for the judicial district in which you live, or in the United States District Court for the District of Columbia, which is the location of the documents that you seek. You may also seek mediation from the Office of Government Information Services (OGIS). Using OGIS services does not affect your right to pursue litigation. 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; telephone at (301) 837-1996; facsimile at (301) 837-0348; or toll-free at 1-(877) 684-6448.

Sincerely,

David L. Morenoff
General Counsel

Certified Mail Receipt No. 7002 0860 0001 4096 0975

[2] A further examination of the documents has revealed that there are approximately 305 responsive emails to your initial request, some of these 305 documents may be duplicates.

5

RECEIVED
JUL 20 2015
By

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D. C. 20426

OFFICE OF THE GENERAL COUNSEL

JUL 16 2015

Re: Freedom of Information Act Appeal, FOIA No. FY15-48

VIA CERTIFIED MAIL
Michael Aguirre, Esq.
Aguirre and Severson, LLP
501 West Broadway
Suite 1050
San Diego, CA 92101
maguirre@amslawyers.com

Dear Mr. Aguirre:

This letter responds to your correspondence received April 8, 2015, in which you appeal the March 31, 2015 denial of your request filed pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2012), and the Federal Energy Regulatory Commission's (FERC or Commission) FOIA regulations, 18 C.F.R. § 388.110 (2015). For the reasons set forth below, I am granting your appeal in part and denying it in part.

Background

On February 18, 2015, you requested certain information related to the investigation of Southern California Edison Company (SCE) in Commission Staff's Notice of Alleged Violations dated January 22, 2014 (Docket No. IN14-8-000). On March 9, 2015, you narrowed the scope of your request to "email communications between FERC Staff and SCE regarding the Staff Notice of Alleged Violations dated January 22, 2014."

On March 31, 2015, Leonard M. Tao, Director of the Office of External Affairs (Director), informed you that the 374 responsive documents[1] would be withheld in their entirety pursuant to FOIA Exemption 7(A).[2] In support of that decision, the Director

[1] A further examination of the documents revealed that there are 153 responsive emails, not 374. The remaining emails were found to be either non-responsive to your request or duplicates.

[2] Exemption 7(A) protects from disclosure "records or information compiled for law enforcement purposes, but only to the extent that production of such law enforcement records or information . . . could reasonably be expected to interfere with enforcement proceedings." 5 U.S.C. § 552(b)(7)(A)

stated that public release of the documents could be harmful to ongoing investigations conducted by the Commission's Office of Enforcement (OE) relating to the September 8, 2011 blackout of the Pacific Southwest.

In your April 8, 2015 appeal, you presented two arguments in support of release of the information: (1) that release of the information will not cause harm to any on-going FERC investigation because sanctions have already been issued against SCE and (2) no prejudice would result because the incident happened almost four years ago. In response to your appeal, Commission staff reviewed the documents again, and determined that 20 could be released. On May 22, 2015, I made a discretionary release to you of those documents.[3]

Discussion

After review of the responsive material and relevant law, I have determined that 73 additional emails may be released to you with the names of lower level Commission staff and their email addresses redacted pursuant to FOIA Exemption 6.[4] Sixteen (16) of the above 73 emails contain attachments that are withheld in their entirety under FOIA Exemption 7(A), 13 of which are also covered by FOIA Exemption 4[5], and three of which are also covered by FOIA Exemption 7(E).[6] These email attachments consist of draft settlements, draft stipulations, and data requests. The 73 redacted emails are enclosed.

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[3] I advised you that I would rule on the remaining documents in approximately 30 days. In a subsequent conversation with Commission staff, you agreed to an extended deadline of July 17, 2015.

[4] Exemption 6 provides that an agency should not disclose "personnel...and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. § 552(b)(6).

[5] Exemption 4 protects from disclosure "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." 5 U.S.C. § 552(b)(4)

[6] Exemption 7(E) affords protection to all law enforcement information that "would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law." 5 U.S.C. § 552(b)(7)(E).

In addition to the 16 attachments noted above, 80 emails are also being withheld in their entirety under FOIA Exemptions 7(A) and 4. These emails consist of draft settlement documents, settlement negotiations, and SCE data responses.

FOIA Exemption 7(A)

On May 26, 2015, the Commission approved the sixth and final settlement agreement to arise out of the September 8, 2011 blackout, effectively terminating the Commission's investigation into SCE. Although FOIA Exemption 7(A) is normally used to protect a pending investigation, it may also be invoked when an investigation has been terminated if the agency retains oversight or some other continuing enforcement-related responsibility. *U.S. Dep't of Justice, Department of Justice Freedom of Information Act Reference Guide, August 2009 ed. pg. 533.* In this case, while the investigation has concluded, the content of the withheld documents as described above, if disclosed, would nevertheless be harmful to enforcement interests. Particularly, there is continuing agency oversight and agency enforcement-related responsibility. For example, SCE has agreed to semi-annual compliance filings for at least one year, and that it must make reports to the OE and the North American Electric Reliability Corporation (NERC) until all of the mitigation measures and Reliability Enhancements have been fully implemented and verified by OE.

Release of the withheld material could reveal sensitive information about enforcement investigative processes with regard to SCE, and could allow other entities to craft their compliance filings to conceal relevant information. Protecting this information helps to promote forthright compliance filings that are not strategically tailored to hide important information that may reveal additional violations. Accordingly, as to the above 16 attachments and 80 emails, I am upholding the Director's invoking of FOIA Exemption 7(A), even though the investigation has ended.

FOIA Exemption 4

Although not invoked by the Director, in addition to FOIA Exemption 7(A), I find that FOIA Exemption 4 is applicable to the 80 emails noted above and 13 of the 16 attachments because they contain confidential detailed financial or commercial information that is not customarily released to the public. These documents include SCE's responses to Commission data requests, and draft settlement proposals exchanged between the Commission and SCE during the course of the investigation which reveal confidential settlement negotiations. As stated in *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974), commercial or financial information may be protected from release if it is "likely to have either of the following effects: (1) impair the Government's ability to obtain necessary information in the future; or (2) cause

substantial harm to the competitive position of the person from whom the information was obtained."

Release of the confidential commercial and settlement documents could subject SCE to competitive disadvantage. Moreover, divulging confidential aspects of settlement negotiations would make it difficult for the government to reach joint resolutions in furtherance of the public interest. *See, e.g., M/A-Com Info. Systems, Inc. v. U.S. Dep't of Health & Human Servs.*, 656 F. Supp. 691, 692 (D.D.C. 1986) (finding that it is in the public interest to encourage settlement negotiations and that disclosure of confidential commercial information would impair the government's ability to carry out its duties). Accordingly, in addition to FOIA Exemption 7(A), 13 of the 16 withheld attachments and 80 withheld emails are also protected from disclosure pursuant to FOIA Exemption 4.

FOIA Exemption 7(E)

Similarly, although not invoked by the Director, three of the 16 attachments (investigative data requests) are protected from disclosure by FOIA Exemption 7(E) in addition to FOIA Exemption 7(A). These documents contain, consist of, or reflect FERC enforcement techniques and procedures that are confidential and must remain so in order to preserve their effectiveness. "Rather than requiring a highly specific burden of showing how the law will be circumvented, exemption 7(E) only requires that the [agency] demonstrate logically how the release of the requested information might create a risk of circumvention of the law." *Blackwell v. FBI*, 646 F.3d 37, 42 (D.C. Cir. 2011), *quoting Mayer Brown LLP v. IRS*, 562 F.3d 1190, 1194 (D.C. Cir. 2009), *see also Williston Basin Interstate Pipeline Co. v. FERC*, 1989 U.S. Dist. LEXIS 3970 (D.D.C. April 17, 1989) (finding portions of a regulatory audit describing the significance of each page in the audit report, investigatory technique used, and auditor's conclusions to constitute "the functional equivalent of a manual of investigative techniques."). Disclosure of this information would reveal enforcement staff's strategy and focus in addressing potential violations of law.

In addition, disclosure of this information could undermine the Commission's investigative communications with the other entities involved and hinder their future cooperation. Moreover, sharing the information about the specifics of the Commission's investigative techniques or methodology concerning SCE could undermine FERC's ability to monitor and investigate other entities for violations that may be found through the compliance monitoring. Accordingly, in addition to FOIA Exemption 7(A), three of the 16 withheld attachments are also protected pursuant to FOIA Exemption 7(E).

Conclusion

The Director's determination is hereby affirmed in part and reversed in part. Judicial review of this determination is available to you in the United States District Court for the judicial district in which you live, or in the United States District Court for the District of Columbia, which is the location of the documents that you seek. You may also seek mediation from the Office of Government Information Services (OGIS). Using OGIS services does not affect your right to pursue litigation. 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; telephone at 301-837-1996; facsimile at 301-837-0348; or toll-free at 1-877-684-6448.

Sincerely,

David L. Morenoff
General Counsel

Certified Mail Receipt No. 7002 0860 0001 4095 4875