

Federal Energy Regulatory Commission (FERC)  
Chief Freedom of Information Act Officer Report  
Chief FOIA Officer - Julia Bovey  
March 15, 2010



**I. Steps Taken to Apply the Presumption of Openness**

**1. Describe below the steps your agency has taken to ensure that that presumption is being applied to all decisions involving the FOIA. This section should include a discussion of the range of steps taken by your agency to apply this presumption, from publicizing the President's FOIA Memorandum and Attorney General's FOIA Guidelines and providing training on them, to implementing the presumption in response to FOIA requests and administrative appeals, with examples or statistics illustrating your agency's action in making discretionary releases of records or partial releases when full disclosure is not possible.**

President Obama's FOIA Memorandum and Attorney General Holder's FOIA Guidelines have been posted to the FERC web page as an indicator to members of the public that FERC embraces the spirit of these directives wholeheartedly. The Chief FOIA Officer implemented mandatory training for all FERC employees to emphasize the important role of each employee in the FOIA process. Each employee was provided with copies of the directives and advised that they must be attentive, conduct extensive searches and were reminded that we are bound by timelines that are imposed by FOIA Statutory regulations. Staff was advised that documents relating to Exemption 5 material would only be withheld in instances when "foreseeable harm" is a factor.

During FY2009 three partial releases and one full discretionary release were made of Exemption 5 material. The determination regarding the full release was based upon the fact that the material was dated in 1982 and no reasonable expectation of foreseeable harm could be justified. During FY2008 five requests were withheld in full based upon Exemption 5 material.

Internal processing procedures were amended to involve each Office Director in the FOIA process. Office Directors are now notified of each request that is sent to their Department and are required to provide their signature indicating that they are aware of the responsive material that has been provided for the request.

**2. Report whether your agency shows an increase in the number of requests where records have been released in full or where records have been released**

## **in part when compared with those numbers in the previous year's Annual FOIA Report.**

A comparison of the statistics in FERC's FY2008 and FY2009 Annual FOIA report do not indicate an increase the number of documents that were released in full. However it does indicate that 24% of requests were partially granted in FY2009. This is a 3% increase over the number of requests that were partially granted in FY2008. While the Commission has always strived to be transparent and make as many releases as possible, this increase can be directly attributed to FERC's more focused efforts to evaluate documents that contain Exemption 5 material. FERC now routinely takes the age of the material into consideration when rendering a determination regarding the release of documents.

Breakdown of disclosures:

FY2008: Full - **39** Partial - **21**

FY2009 - Full - **23** Partial - **27**

## **II. Steps Taken to Ensure that Your Agency has an Effective System for Responding to Requests**

Daily briefings are conducted with the Chief FOIA Officer to discuss new requests, upcoming timelines and other pertinent FOIA issues.

FERC currently has an effective system in place to process and respond to FOIA requests. This includes having an online FOIA request form on our webpage. Requests may also be submitted via e-mail, fax and mail. All incoming requests are reviewed by the FOIA Liaison for the agency to ensure that it is a proper request. When necessary, the requester is contacted to clarify or provide additional information regarding the request. In instances when requesters have provided specific information, such as a document accession number, company name, docket number or date, the FOIA Liaison will conduct a preliminary search in the FERC E-Library to confirm that the material can only be obtained through the FOIA process. If the material is identified as public material, the requester is notified via e-mail and provided a link to the material. If the request is a valid FOIA request, a record is created in the Microsoft Access database. The database is also used to assign a unique tracking number. The request is sent via e-mail to the appropriate search office. Several enhancements have been added to this process which includes utilizing an additional agency database, the Activity Management Tracking System (ATMS), to properly identify the appropriate office and also requiring that the Office Director be notified via e-mail of each new request. The request is forwarded via e-mail to the FOIA point of contact for the search office and the review

office. The search office is directed to provide responsive material and a recommendation within three business days along with a cover memo that must be signed by the Office Director. Responsive documents are provided to the FOIA Liaison for a quality review. The FOIA package is then provided to the Office of General Counsel, General Administrative Law, for legal review. Upon completion of an extensive review the GAL staff prepares notifications to submitters of responsive material, prepare redactions, as necessary and provide recommendations regarding the release of documents and advise Chief FOIA Officer of applicable FOIA exemptions. The Chief FOIA Officer conducts a final review of the FOIA package and meets with GAL staff to discuss requests, as necessary. The FOIA Liaison completes the processing of each request by sending information to via e-mail, sending a hard copy or DVD to the requester via the U.S. Postal Service. During FY2009 approximately 50% of the responsive material was provided electronically to requesters. We continue to strive to increase the amount of material that we provide to requesters in electronic format and then add documents to the FERC webpage.

### **III. Steps Taken To Increase Proactive Disclosures**

In an effort to increase proactive disclosures FERC has posted many documents of interest on the FERC webpage. The list below is a partial listing of material that has been posted since January 1, 2009.

- FERC staff publishes a special 2010 edition of The *FERC ADR News Newsletter*
- FERC approves settlement on FRCC's role in Florida Blackout [News Release](#) | [Order](#) 
- **Item E-4:** FERC explores efficient integration of renewables into the grid [News Release](#) | [Chairman's Statement](#) | Commissioner's Statement: [Moeller's](#) and [Spitzer's](#) | [NOI](#) 
  - » Visit our [Renewable Energy](#) section
- **Item E-3:** FERC seeks information on broader transparency in electric markets [News Release](#) | [NOI](#) 
  - » Visit our [EQR](#) section
- **Item M-1 and M-2:** FERC makes enforcement process transparent, accessible to public [News Release](#) | [Chairman's Statement](#) | Commissioner's Statement: [Kelly's](#), [Moeller's](#) and [Spitzer's](#) | [Decision M-1](#)  | [Policy Statement M-2](#) 
  - » Visit our [Enforcement](#) section
- [2009 Report on Enforcement](#) 
- **Items G-3, G-4, G-5:** FERC launches investigations into pipeline rates [News Release](#) | [Chairman's Statement](#) | [Chairman's Statement](#) | Decisions: [G-3](#) , [G-4](#)  and [G-5](#) 

- **Item E-27:** FERC approves stimulus financing arrangement for Montana-Alberta tie [News Release](#) | [Decision](#) PDF
- FERC clears reliability penalty orders [News Release](#) | [Notice](#) PDF | [Decision](#) PDF
- FERC approves settlement, \$25 million fine for FPL's 2008 Blackout [News Release](#) | [Decision](#) PDF
- FERC approves record \$30 million settlement in ETP market manipulation case [News Release](#) | [Settlement](#) PDF | [Notice of Settlement](#) PDF
- **Item E-1:** FERC acts to expand demand response with new measurement standards [News Release](#) | [NOPR](#) PDF
  - » Visit our [Demand Response](#) section
- FERC signs agreement with India's Central Electricity Regulatory Commission [News Release](#) | [MOU](#) PDF
- [State of the Markets 2008 Report](#) PDF
- FERC, Maine sign first East coast hydrokinetics agreement [News Release](#) | [MOU](#)
- FERC approves \$7.5 million civil penalty in Amaranth case [News Release](#) | [Decision](#) PDF
- **Item E-3:** FERC adopts policy for development of Smart Grid [News Release](#) | [Chairman's Statement](#) | Commissioner's Statement: [Kelly's](#) and [Spitzer's](#) | [Policy Statement](#) PDF
  - » Visit our [Smart Grid](#) Section
- FERC orders NYISO, neighboring markets to develop loop flow solutions [News Release](#) | [Decision](#) PDF
- New FERC study assesses state-by-state potential for demand response [News Release](#) | [Chairman's Statement](#) | Commissioner's Statement: [Kelly's](#), [Moeller's](#) and [Spitzer's](#) | [Presentation](#) PDF | [Report](#) PDF Visit our [National Assessment of Demand Response Potential](#) Section
- FERC, Washington sign MOU for Hydrokinetic Energy Projects [News Release](#) | [MOU](#) PDF
- **Item E-33:** FERC approves funding plan for major international transmission project [News Release](#) | [Chairman's Statement](#) | Commissioner's Statement: [Moeller's](#) and [Spitzer's](#) | [Decision](#) PDF
- Secretary Salazar, FERC Chairman Wellinghoff sign agreement to spur renewable energy on the U.S. Outer Continental Shelf [News Release](#) PDF | [MOU](#) PDF

The FERC e-library is a database on our webpage that provides a listing of all filings and submittals for proceedings. It provides access to over two million documents with over 10 million pages that have been archived over more than 20 years. It contains electronic versions of

documents issued by FERC from 1989 to present, microfilm of documents for 1981 to 1995, native files electronically submitted from November 2000 to present. Members of the public can readily access public material in the e-library. <http://www.ferc.gov/docs-filing/elibrary.asp>

The FERC webpage includes grouping by various industries, new releases, Policy Statements, Memorandums of Understanding, Staff reports, Federal Statutes, Major Orders and Regulations, settlements, and court cases. <http://www.ferc.gov/>

Members of the public may also register and sign up for eSubscription to receive real time notification of issuances, filings, news releases and correspondence in docketed proceedings at FERC. <http://www.ferc.gov/docs-filing/esubscription.asp>

#### **IV. Steps Taken To Greater Utilize Technology**

##### **1. Does your agency currently receive requests electronically.**

Yes, requests can be submitted by utilizing the FERC online FOIA request form: <http://www.ferc.gov/legal/ceii-foia/foia/efoia.asp>

Or requests can be submitted via e-mail by sending requests to: [FOIA-CEII@ferc.gov](mailto:FOIA-CEII@ferc.gov)

##### **2. If not, what are the current impediments to your agency establishing a mechanism to receive requests electronically.**

N/A

##### **3. Does your agency track requests electronically.**

Yes. However, we have negotiated a contract with FOIA Public Tracker. This FOIA software will permit FERC to conduct electronic tracking and other FOIA tasks more efficiently.

##### **4. If not, what are the current impediments to your agency utilizing a system to track requests electronically.**

N/A

##### **5. Does your agency use technology to process requests.**

Yes. Redactions are currently being made utilizing Adobe redactions software and manually. FERC is currently utilizing Microsoft Access to track FOIA requests. However, we have negotiated a contract with FOIA Public Tracker that will greatly enhance our ability to process requests electronically.

**6. If not, what are the current impediments to your agency utilizing technology to process requests.**

N/A

**7. Does your agency utilize technology to prepare you agency Annual FOIA Report.**

Yes. We currently use Microsoft Access database and convert the data into Excel spreadsheets to prepare statistics for the Annual FOIA report. We have negotiated a contract with FOIA Public Tracker that will provide software to automate the creation of the Annual report.

**8. If not, what are the current impediments to your agency utilizing technology in preparing your Annual FOIA Report.**

N/A

**V. Steps Taken to Reduce Backlogs and Improve Timeliness in Responding to Requests**

**1. If you have a backlog, report here whether your backlog is decreasing. That reduction should be measured both in terms of the numbers of backlogged requests and administrative appeals that remain pending at the end of the fiscal year, and in terms of the age of those requests and appeals.**

FERC had no backlog of requests or appeals for FY2008 or FY2009.

**2. If there has not been a reduction in the backlog describe why that has occurred and what steps your agency is taking to bring about a reduction.**

N/A

**3. Describe the steps your agency is taking to improve timeliness in responding to requests and to administrative appeals.**

FERC is continuing its efforts to offer agency wide training to convey the importance of providing responsive documents in a timely manner. All submitters are notified of FOIA requests via e-mail, as well as regular mail, and are strongly encouraged to provide responses within five business days via e-mail.