

Federal Energy Regulatory Commission

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fee waiver issue under §388.109(b)(6), unless the requester has provided a written statement agreeing to pay some or all fees pending the outcome of the waiver question.

(b)(1) *Multitrack processing.* Upon receipt of a request, the Director, Office of External Affairs, will place the request in one of three tracks for processing:

(i) Track One—records that are readily identifiable and were previously cleared for release (including those subject to multiple requests and placed in the Public Reference Room);

(ii) Track Two—records that are readily identifiable, and require limited review; and

(iii) Track Three—complex and/or voluminous records requiring a significant search and/or review.

(2) Each track specified in paragraph (b)(1) of this section will be processed on a first in, first out basis, where practicable. A requester may modify a request to obtain processing on a faster track.

(c)(1) *Timing of response.* Except as provided in paragraphs (c)(4) and (d)(3) of this section, within 20 working days after receipt of the request for agency records, the Director, Office of External Affairs, will comply with the request or deny the request in whole or in part, and will notify the requester of the determination, of the reasons for a decision to withhold any part of a requested document, and of the right of the requester to appeal any adverse determination in writing to the General Counsel or General Counsel's designee.

(2) The Director, Office of External Affairs, will attempt to provide records in the form or format requested, where feasible, but will not provide more than one copy of any record to a requester.

(3) Any determination by the Director, Office of External Affairs, to withhold information will, where feasible, indicate the approximate volume of information withheld, and will indicate, for partially-released materials, where redactions have been made, unless to do so would harm an interest protected by a FOIA exemption.

(4) The time limit for the initial determination required by paragraph (c)(1) of this section may be extended as set forth in §388.110(b).

(d)(1) *Expedited processing.* A requester may seek expedited processing on the basis of a compelling need. Expedited processing will be granted if the requester demonstrates that:

(i) Failure to obtain the records on an expedited basis can reasonably be expected to pose an imminent threat to the life or physical safety of an individual, or

(ii) In the case of a requester primarily engaged in the dissemination of information, there is an urgency to inform the public concerning Federal Government activity.

(2) A request for expedited processing under this section must be supported with detailed credible documentation, including a statement certified to be true and correct to the requester's best knowledge and belief.

(3) The Director, Office of External Affairs, will decide within 10 calendar days of receipt of the request whether it is eligible for expedited processing. The Director will notify the requester of the reasons for denial of expedited processing and of the right of the requester to appeal to the General Counsel or General Counsel's designee.

(e) The procedure for appeal of denial of a request for Commission records, or denial of a request for expedited processing, is set forth in §388.110.

[Order 488, 53 FR 1473, Jan. 20, 1988, as amended by Order 562, 58 FR 62521, Nov. 29, 1993; Order 597, 63 FR 5453, Feb. 3, 1998]

§ 388.109 Fees for record requests.

(a) *Fees for records available through the Public Reference Room—1) General rule.* The fee for finding and duplicating records available in the Commission's Public Reference Room will vary depending on the size and complexity of the request. A person can obtain a copy of the schedule of fees in person or by mail from the Public Reference Room. This schedule is also available on the Commission's Web site. Copies of documents also may be made on self-service duplicating machines located in the Public Reference Room. In addition, copies of data extracted from the Commission's files through electronic media are available on a reimbursable basis, upon written request to the Public Reference Room.

(2) Stenographic reports of Commission hearings are made by a private contractor. Interested persons may obtain copies of public hearing transcripts from the contractor at prices set in the contract, or through the search and duplication service noted above. Copies of the contract are available for public inspection in the Public Reference Room.

(3) Copies of transcripts, electronic recordings, or minutes of Commission meetings closed to public observation containing material nonexempt pursuant to §375.206(f) of this chapter are also available at the actual cost of duplication or transcription.

(b) *Fees for records not available through the Public Reference Room (FOIA or CEII requests).* The cost of duplication of records not available in the Public Reference Room will depend on the number of documents requested, the time necessary to locate the documents requested, and the category of the persons requesting the records. The procedures for appeal of requests for fee waiver or reduction are set forth in §388.110.

(1) *Definitions:* For the purpose of paragraph (b) of this section.

(i) *Commercial use* request means a request from or on behalf of one who seeks information for a use or purpose that furthers commercial trade, or profit interests as these phrases are commonly known or have been interpreted by the courts in the context of the Freedom of Information Act.

(ii) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program of scholarly research.

(iii) *Noncommercial scientific institution* refers to an installation that is not operated on a commercial basis and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iv) *Representatives of the news media* refers to any person actively gathering news for an entity that is organized

and operated to publish or broadcast news to the public. The term *news* means information that is about current events that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when the periodicals can qualify as disseminations of “news”) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g. electronic dissemination of newspapers through telecommunication services), such alternative media may be included in this category. A *freelance* journalist may be regarded as working for a news organization if the journalist can demonstrate a solid basis for expecting publication through that organization, even though the journalist is not actually employed by the news organization. A publication contract would be the clearest proof, but the Commission may also look to the past publication record of a requester in making this determination.

(2) *Fees.* (i) If documents are requested for commercial use, the Commission will charge the employee’s hourly pay rate plus 16% for benefits for document search time and for document review time, and 15 cents per page for duplication. Commercial use requests are not entitled to two hours of free search time or 100 free pages of reproduction of documents.

(ii) If documents are not sought for commercial use and the request is made by an educational or non-commercial scientific institution, whose purpose is scholarly or scientific research, or a representative of the news media, the Commission will charge 15 cents per page for duplication. There is no charge for the first 100 pages.

(iii) For a request not described in paragraphs (b)(2)(i) or (ii) of this section, the Commission will charge the employee’s hourly pay rate plus 16 percent for benefits for document search and 15 cents per page for duplication. There is no charge for the first 100 pages of reproduction and the first two

hours of search time will be furnished without charge.

(iv) The Director, Office of External Affairs, will normally provide documents by regular mail, with postage prepaid by the Commission. However, the requester may authorize special delivery, such as express mail, at the requester's own expense.

(v) The Commission, or its designee, may establish minimum fees below which no charges will be collected, if it determines that the costs of routine collection and processing of the fees are likely to equal or exceed the amount of the fees. If total fees assessed by Commission staff for a Freedom of Information Act request are less than the appropriate threshold, the Commission may not charge the requesters.

(vi) Payment of fees must be by check or money order made payable to the U.S. Treasury.

(vii) Requesters may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When the Commission reasonably believes that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading assessment of fees, or otherwise reasonably believes that two or more requests constitute a single request, the Commission may aggregate any such requests accordingly. The Commission will not aggregate multiple requests on unrelated subjects from a requester. Aggregated requests may qualify for an extension of time under § 388.110(b).

(3) *Fees for unsuccessful search.* The Commission may assess charges for time spent searching, even if it fails to locate the records, or if records located are determined to be exempt from disclosure. If the Commission estimates that search charges are likely to exceed \$25, it will notify the requester of the estimated amount of search fees, unless the requester has indicated in advance willingness to pay fees as high as those anticipated. The requester can meet with Commission personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(4) *Interest—notice and rate.* The Commission will assess interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

(5) *Advance payments.* The Commission will require a requester to make an advance payment, *i.e.*, payments before work is commenced or continued on a request, if:

(i) The Commission estimates or determines that allowable charges that a requester may be required to pay are likely to exceed \$250. The Commission will notify the requester of the estimated cost and either require satisfactory assurance of full payment where the requester has a history of prompt payment of fees, or require advance payment of charges if a requester has no history of payment; or

(ii) A requester has previously failed to pay a fee charged in a timely fashion. The Commission will require the requester to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Commission will begin to process a new request or a pending request from that requester. When the Commission requires advance payment or an agreement to pay under this paragraph, or under § 388.108(a)(5), the administrative time limits prescribed in this part will begin only after the Commission has received the required payments, or agreements.

(c) *Fee reduction or waiver.* (1) Any fee described in this section may be reduced or waived if the requester demonstrates that disclosure of the information sought is:

(i) In the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Not primarily in the commercial interest of the requester.

(2) The Commission will consider the following criteria to determine the public interest standard:

(i) Whether the subject of the requested records concerns the operations or activities of the government;

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(ii) Whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) Whether disclosure of the requested information will contribute to public understanding; and

(iv) Whether the disclosure is likely to contribute significantly to public understanding of government operations or facilities.

(3) The Commission will consider the following criteria to determine the commercial interest of the requester:

(i) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(ii) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(4) This request for fee reduction or waiver must accompany the initial request for records and will be decided under the same procedures used for record requests.

(d) *Debt collection.* The Commission will use the authorities mandated in the Debt Collection Act of 1982, 31 U.S.C. 3711, 3716–3719 (1982), including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage payment of outstanding unpaid FOIA invoices.

(e) *Annual adjustment of fees—1) Update and publication.* The Commission, by its designee, the Executive Director, will update the fees established in this section each fiscal year. The Executive Director will publish the fees in the FEDERAL REGISTER.

(2) *Payment of updated fees.* The fee applicable to a particular Freedom of Information Act request will be the fee in effect on the date that the request is received.

[Order 488, 53 FR 1473, Jan. 20, 1988, as amended by Order 597, 63 FR 5454, Feb. 3, 1998; Order 640, 65 FR 33448, May 24, 2000; Order 625, 67 FR 21996, May 2, 2002; Order 648, 69 FR 41191, July 8, 2004; 72 FR 63985, Nov. 14, 2007; 73 FR 45609, Aug. 6, 2008]

§ 388.110 Procedure for appeal of denial of requests for Commission records not publicly available or not available through the Public Reference Room, denial of requests for fee waiver or reduction, and denial of requests for expedited processing.

(a)(1) A person whose request for records, request for fee waiver or reduction, or request for expedited processing is denied in whole or part may appeal that determination to the General Counsel or General Counsel's designee within 45 days of the determination. Appeals filed pursuant to this section must be in writing, addressed to the General Counsel of the Commission, and clearly marked "Freedom of Information Act Appeal." Such an appeal received by the Commission not addressed and marked as indicated in this paragraph will be so addressed and marked by Commission personnel as soon as it is properly identified and then will be forwarded to the General Counsel. Appeals taken pursuant to this paragraph will be considered to be received upon actual receipt by the General Counsel.

(2) The General Counsel or the General Counsel's designee will make a determination with respect to any appeal within 20 working days after the receipt of such appeal. An appeal of the denial of expedited processing will be considered as expeditiously as possible within the 20 working day period. If, on appeal, the denial of the request for records, fee reduction, or expedited processing is upheld in whole or in part, the General Counsel or the General Counsel's designee will notify the person making the appeal of the provisions for judicial review of that determination.

(b)(1) *Extension of time.* In unusual circumstances, the time limits prescribed for making the initial determination pursuant to § 388.108 and for deciding an appeal pursuant to this section may be extended by up to 10 working days, by the Secretary, who will send written notice to the requester setting forth the reasons for such extension and the date on which a determination or appeal is expected to be dispatched.

(2) The extension permitted by paragraph (b)(1) of this section may be