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Description of document: Federal Energy Regulatory Commission (FERC) employee record: Summary of Landowner Helpline Purpose, Role, and Processes, 2015

Requested date: 30-March-2017

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Source of document: Freedom of Information Act Request  
FOIA Public Liaison  
Office of External Affairs  
888 First Street, NE  
Washington, DC 20426  
Fax: 202-208-2106  
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FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

**JUL 21 2017**

Re: FOIA No. FY17-76,  
Determination Letter

**VIA EMAIL AND REGULAR MAIL**

On March 30, 2017, you filed a request for information pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a) *as amended by* the FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 (2016), and the Federal Energy Regulatory Commission's (Commission) FOIA regulations, specifically 18 C.F.R. § 388.108 (2017). Specifically, you requested a copy of the employee handbook or manual or guide used by employees for providing service on the FERC Landowner Helpline.

A search of the Commission non-public files identified four internal staff documents that may be responsive to your request:

1. Summary of Landowner Helpline Purpose, Role, and Processes (Updated 2/10/2015) (Summary);
2. Knowledge Management [Document] – Intake Function for Landowner Helpline;
3. Office of Administrative Law Judges and Dispute Resolution Standard Operating Procedures for the Landowner Helpline; and
4. Draft Summary of Landowner Helpline Purpose, Role, and Processes.

Item 1<sup>1</sup> is being released in part. The names of lower-level agency staff have been redacted pursuant to FOIA Exemption 6, which protects files the disclosure of which would constitute a clearly unwarranted invasion of privacy.<sup>2</sup>

Items 2 - 4 will be withheld pursuant to FOIA Exemption 5, which protects from disclosure "inter-agency or intra-agency memorandums or letters which would not be

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<sup>1</sup> Note that the Summary is two years old. Many of the processes listed are no longer in place, and are being updated through Item No. 4.

<sup>2</sup> 5 U.S.C. § 552(b)(6).

available by law to a party other than an agency in litigation with the agency.”<sup>3</sup> FOIA Exemption 5 incorporates various privileges, including the deliberative process privilege, which is at issue here. Courts have consistently held that three policy purposes constitute the basis for the FOIA Exemption 5 deliberative process privilege: (1) to encourage open, frank discussions on matters of proposed policy between subordinates and superiors; (2) to protect against premature disclosure of proposed policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency’s action. *See Russell v. Dep’t of the Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982); *see also EPA v. Mink*, 410 U.S. 73, 87 (1972) (recognizing that “[i]t would be impossible to have any frank discussions of legal or policy matters in writing if all such writings were to be subjected to public scrutiny.”).

Items 2 – 4 are draft policies that are in the process of being edited. None of the documents have been issued to staff, and they are pre-decisional in nature. Such information fits squarely within the definition of FOIA Exemption 5. Not only would release risk chilling future staff discussion, it could cause public confusion by disclosing deliberations that ultimately do not form part of the official policy.

Furthermore, any factual portions of the documents are so inextricably intertwined with the deliberative matter that disclosure would reveal the pre-decisional deliberations. *See In re Sealed Case*, 121 F.3d 729, 737 (D.C. Cir. 1997); *Mead Data Central, Inc. v. United States Dep’t of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977) (recognizing that FOIA Exemption 5 protects all communications including purely factual material that would expose to public view an agency’s decision-making process). For these reasons, Items 2 – 4 must be withheld in their entirety.

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

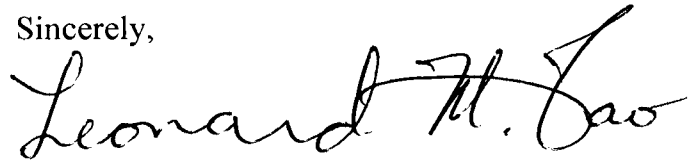
You have the right to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services (OGIS). Using OGIS services does not affect your right to pursue your appeal. You may contact OGIS by mail at Office of Government Information Services, National Archives and Records

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<sup>3</sup> 5 U.S.C. § 552(b)(5).

Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; email at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at (301) 837-1996; facsimile at (301) 837-0348; or toll-free at 1 (877) 684-6448.

Sincerely,

A handwritten signature in black ink that reads "Leonard M. Tao". The signature is written in a cursive style with a large, sweeping initial "L".

Leonard Tao  
Director  
Office of External Affairs

Prepared by [REDACTED]  
Created 1/20/2015  
Updated 1/21-22/2015, 1/26-28/2015  
Updated 2/10/2015

### Summary of Landowner Helpline Purpose, Role, and Processes

- d. We do not have a stake in the outcome of the issues in dispute.
- e. Often, we are the first people callers will have spoken to outside of the company. Callers may be surprised that we are real people (not an automated machine) who picks up the phone and can help them.
- f. It is important to listen to the callers concerns, without judgment or evaluation, and let them explain their perspective. If we contact the company, we do the same with a company representative.
- g. By working with a neutral third-party, parties to a dispute are empowered to craft their own solution to their conflict. ADR is voluntary and the parties retain control over the process. The underlying principle of ADR is that parties forfeit no rights and lose no legal alternative otherwise available to them if they use ADR to resolve a dispute.

#### IV. How landowners learn about the Landowner Helpline: (subject to change)

- a. Potentially affected landowners receive informational mailings that include the Commission's Landowner Helpline phone number for inquiries and disputes.
- b. On [ferc.gov](http://www.ferc.gov) home page under "Need Assistance."
- c. On [ferc.gov](http://www.ferc.gov) under "Legal Resources." <http://www.ferc.gov/legal/adr.asp>.



**Tree Trimming & Vegetation Management:** To submit related issues/questions please use our [Online Form](#)

**FERC's Alternative Dispute Resolution Helpline:** Toll Free: 1-844-238-1560 | Email: [ferc.adr@ferc.gov](mailto:ferc.adr@ferc.gov)

**Landowner Helpline:** Toll Free: 1-877-337-2237 | Email: [LandownerHelp@ferc.gov](mailto:LandownerHelp@ferc.gov)

Legal Resources >> [Alternative Dispute Resolution](#)

#### Alternative Dispute Resolution

TEXT SIZE S M L

##### Overview

When parties are involved in a conflict, they may initially attempt to resolve the matter themselves. If they are unable to do so, the traditional dispute resolution process is to engage in litigation. Thus, they turn the problem over to a judge to decide who is right, who is wrong (i.e., who has the better position). However, alternative dispute resolution (ADR) offers a variety of methods to resolve the matter through settlement

#### CONTACT

**ADR Helpline**  
Toll-free: 1-844-238-1560  
FAX: 202-219-2730  
Email: [ferc.adr@ferc.gov](mailto:ferc.adr@ferc.gov)

**Landowner Helpline**  
Toll-free: 1-877-337-2237  
FAX: 202-219-2730  
Email: [landownerhelp@ferc.gov](mailto:landownerhelp@ferc.gov)

#### V. How we receive Landowner Helpline calls:

- a. Calls come in through the \*6651 phone line. Callers dial 1-877-FERC-ADR (1-877-337-2237). Individuals also email the [LandownerHelp@ferc.gov](mailto:LandownerHelp@ferc.gov) for questions.
- b. The Office of Enforcement (OE) Hotline transfers calls to \*6651 if callers indicate they are a landowner. Often, these calls relate to non-jurisdictional matters such as electric/gas bills. Refer these callers to their State Public Service Commission.
- c. Landowners also share the Helpline contact information with their neighbors who have contacted us in the past.

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### Summary of Landowner Helpline Purpose, Role, and Processes

- d. We return missed calls when callers leave voice messages. Unless the phone number is known number to us (e.g. related to a current case) we do not return the missed call.
  - i. When we return the call and there is no voice mail, we try again a few hours later. If we are not able to reach the person after a second try, we document this information in ATMS and close the inquiry.
  - ii. When we return the call, leave a voice message, and the person does not call back, we do not need to call them again. Often, callers are able to resolve their stated concerns on their own and do not call us back. Document this information in ATMS and close the inquiry.

#### VI. When we receive calls to the Landowner Helpline:

- a. Conduct intake (use intake form):
  - i. What is the caller's name?
  - ii. Who is the caller? (Landowner, company, etc)
  - iii. Have they contacted and spoken with the company? If not, suggest they do and call the Helpline back if that is not successful.
  - iv. What is the issue of concern?
  - v. What are they looking for, what do they want?
  - vi. What company? \*Jurisdictional?
  - vii. What is the project name?
- b. FERC jurisdictional? We must understand the variety of issues that callers present to determine whether the matter is jurisdictional.
  - i. Inter v. Intrastate transmission of energy
  - ii. Construction of oil pipelines is not a FERC issue; construction over natural gas pipeline is a FERC issue
  - iii. Rates & Markets are FERC issues
  - iv. Vegetation Management are FERC issues. The Commission has guidance on tree trimming for electric lines. On FERC.gov under "For Citizens."  
<http://www.ferc.gov/for-citizens/for-citizens.asp>
  - v. Most Restorations are FERC issues
  - vi. Hydro facilities are FERC issues
  - vii. Electric Grid Interconnection disputes are FERC issues
- c. What is the docket number?
  - i. When callers do not know the name of the project or docket number, this requires significantly more work. We need to determine this information before we can begin to address the issue.
    - 1. How? OEP provides a project list of active compliance cases. If we know the name of the company, we can look at the active compliance list and determine the project name and OEP Project manager.
    - 2. We can also find the project information (docket number) on the company's website.
- d. Explain confidentiality and voluntariness of the process

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Summary of Landowner Helpline Purpose, Role, and Processes

- e. Explain Alternative Dispute Resolution
  - i. We provide a service. We are available to facilitate communication between parties and work toward a resolution of the issues in dispute.
  - ii. Dispute resolution: problem solving and decision making in the context of conflict.
  
- VII. What is not within the Commission's jurisdiction? Callers should contact their State PUCs.
  - a. Although sometimes jurisdictional lines are unclear, we must respect jurisdiction as best as we can.
  - b. The appropriate jurisdictional agency knows best how to deal with an issue within their jurisdiction.
  - c. The proper jurisdictional agency has the ability to enforce their regulations.
    - i. Retail electric bills
    - ii. Construction and operation of oil pipelines
    - iii. Fracking
    - iv. Construction of electric power lines
    - v. Electric distribution lines.
  
- VIII. What to do after intake:
  - a. If appropriate, contact the Project Manager in the Office of Energy Projects (PM).
    - i. If the landowner raises restoration concerns that may be a compliance issue.
    - ii. If the company is still in pre-filing and the landowner wants to speak with the project manager.
    - iii. If we have questions about the project and do not have a contact at the company.
  - b. For Hydropower Concern: Forward to [REDACTED], extension: [REDACTED], e-mail: [REDACTED]@ferc.gov.
    - i. The Hydro division prefers to deal with hydro issues themselves. We write up the issues and refer the case to [REDACTED]. [REDACTED] will then have the appropriate person take the case.
    - ii. The folks in DHAC are good about contacting landowners directly, giving them relevant information, and answering their questions. Most often, the DHAC will handle the call/dispute and we don't hear from the landowner again. Sometimes, DHAC will refer a case back to us if they think ADR might be better suited for the issues.
    - iii. We explain to landowners that the hydro division likes to handle disputes and other issues themselves. I always get permission from the landowner to share their information with DHAC and haven't had any issue with that. Usually, [REDACTED] or someone from DHAC will close the loop with us when they resolve a matter we referred to them.

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### Summary of Landowner Helpline Purpose, Role, and Processes

- c. If appropriate, we provide assistance on how to access information, answer questions about the Commission's jurisdiction, or direct the called to an appropriate resource (in or outside of the Commission, depending on the question).
- d. If appropriate, we contact the company directly to open the lines of communication. We let the company know that the landowner contacted us, what issues they have raised, and ascertain whether the company is interested in pursuing an ADR process. Allow the company to give their perspective. Often, the company contact needs to perform research on their end.
  - i. We have found that contacting an attorney or land manager at the company (instead of the land agent) is most effective.
  - ii. Land agents move from one project to another project regularly.
  - iii. Many landowners say they deal with 4-5 different land agents over the course of a project.
- e. Make sure to ask both parties if they have said anything they do not want shared. Protecting confidentiality is crucial.
- f. Input the information gathered into the ATMS tracking system.
  - i. Follow the instructions provided and make sure to capture all necessary details.
  - ii. We update the ATMS tracking system as we go.
  - iii. The tracking system is a privileged and confidential system. It is a "Protected Dispute Resolution communication."

### IX. What if the issues are ripe for ADR/facilitated resolution?

- a. If an interest exists, we can convene the parties and explain the ADR options available to them. We perform most of our ADR work over the phone.
- b. During the convening session, we act as a guide, helps the parties understand the process, and get the process started.
- c. Our role is to facilitate communication between the parties in dispute to explore interests and work toward a resolution. Dispute resolution is problem solving and decision making in the context of conflict.

### X. How to conduct an ADR process/facilitated resolution:

- a. We perform ADR/facilitated resolution processes over the phone.
- b. We talk with the parties on joint or private caucus calls to ensure that parties understand each other's concerns, remain focused on the problems, and generate options for resolution.
- c. Just like in-person mediation, the mediator must abide by the same practitioner tools in telephonic ADR, such as "active listening," advanced planning for the ADR structure of the call to keep the conversation organized, and empathy if parties vent.
- d. Listening actively becomes a fundamental ADR tool when parties are not face-to-face and cannot see non-verbal cues, such as facial expressions or body language. We must clarify parties' statements to understand their issues.



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- e. We act thoughtfully and quickly, based on what is heard on the call, to neutralize any hostile statements or personal attacks made by a party on the other end of the line. We must be equipped to turn negative dialogue into more productive exchanges among the parties, the neutral, and others.

XI. How do we classify ADR processes for Landowner Helpline cases? (Please refer to the Appendix to the Helpline Report)

- a. In mediation, the neutral works with the parties to help them identify and understand interests, explore options, and achieve an agreement. This often involves a written agreement and compensation. Mediations usually take weeks, if not months, for the parties to come to an agreement.
- b. In conciliation, the neutral opens the line of communication between parties to clarify misunderstandings and pave the way for the parties to resolve their dispute. This often involves an agreement in principle or agreement to do work in the future. Compensation does not have to occur.

XII. When we complete an ADR process/facilitated resolution:

- a. We send a survey (we will need to update this)
  - i. We have guidance on when to send a survey and how to track responses
  - ii. The survey asks parties about satisfaction in the process, time and money savings, and for general feedback.
- b. Update the ATMS tracking system. Update comments.
- c. Write up a neutral case summary of ADR case for the Landowner Helpline Report.
  - i. Use CCAR Model. Examples in Helpline Report IX.
- d. Was the matter "Environmental?"
  - i. Land restoration issues, erosion, vegetation management, air/noise quality?

XIII. What is the purpose of the ATMS tracking system?

- a. We regularly report on casework efforts for required reports such as the OMB-CEQ report, Report to the President, Commission budget reports, and Landowner Helpline reports. We use the system to track our case information and then we analyze it for the reports.
- b. Tracking allows us to maintain current information about a case, update as needed, and refer back to in the event that a case returns to us.
- c. Tracking allows us to identify areas of improvement and areas of concern.
  - i. Sometimes we notice a large number of calls/disputes related to a particular project, land agent, or company. If this occurs, we bring this information to the attention of OEP, through the appropriate channels.

XIV. What information do we track?

- a. Receive training from [REDACTED] (IT department) who will provide detailed information about the ATMS tracking system.

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- b. We also have guidance on relevant terms. We are updating the document to reflect the transition from the ACCESS database to ATMS.

XV. What information do we report?

- a. We report the total number of matters we address (ADR and inquiry).
- b. We report the number and percent of matters by sector (gas, electric, oil, hydro).
- c. We report the number and percent of matters by process used (conciliation, mediation, inquiry).
- d. We report the number and percent of matters by outcome (ongoing, on hold, resolved, not resolved).

XVI. What information from the casework do we use in reports?

- a. In all the reports except the Helpline report, we use general information about the number and percentage of cases that were from a particular sector, the percentage of cases that fell under a certain process, and outcomes etc.
- b. For the Helpline Report, we identify how many cases come from each company. This report is privileged and non-public. The report is only circulated to the Chairman, Commissioners, and Directors of Offices within the Commission.
  - i. In the Appendix, we write up neutral summaries of the ADR cases we completed during that reporting period. These neutral write-ups follow the Challenge, Content, Action, Result (CCAR) Model.

XVII. What information do we not use in reports?

- a. We never identify landowner names or any other identifying information about the landowners or companies.
- b. Except for the Landowner Helpline report, we never identify companies in other reports.

XVIII. Majority of Complaints: See below for charts detailing these three themes (Prepared by DRS staff).

- a. Quality of Life
- b. Post-Construction Restoration
- c. Compensation

**Type of Concern:**

a. **QUALITY OF LIFE RESPONSE CHART**

Potential Issue	Construction Phase Generally	Suggested Response
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Prepared by [REDACTED]  
 Created 1/20/2015  
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Summary of Landowner Helpline Purpose, Role, and Processes

Noise Concerns at Compressor Station	Throughout	Refer to Office of Energy Projects to determine if above 55 decibels; could also try contacting company see if they have been communicating with landowner
Scope of Easement (Use)	Throughout and post-construction	Refer to the easement itself for restrictions; however, generally speaking landowner may plant shrubs or anything else that does not pose a safety concern such as a large structure or a tree with roots (concern is roots will touch lines)
Rights & Responsibilities (Protest)	Pre-construction	E-comment; E-library; intervener; "for citizens" link; and may even open communication between landowner and company
Rights & Responsibilities (General)	Before, throughout, post	"For Citizens" link; company in some instances required to provide info
Surface & Safety Concerns	Before, throughout, post	Refer to Pipeline Hazardous Materials and Safety Administration (PHMSA)
Regulation of Depth and Width	Throughout	Refer to PHMSA
Surveying land	Before	May be an issue of trespass as the laws vary state to state
Protesting Application	Before	E-comment; e-filing; mail to: Kimberly D. Bose, Secretary Federal Energy Regulatory Commission, 888 1 <sup>st</sup> Street, NE, Room 1A, Washington, DC 20426 Also landowners may subscribe to E-subscription to receive filings on the case such as NOA

**Type of Concern:**

**1. POST-CONSTRUCTION RESTORATION RESPONSE CHART**

Issue	Phase Generally	Suggested Response
Re-Vegetation	Post	Contact the company; contact Office of Energy Projects (OEP) for PM to determine compliance
Monitoring Re-growth	Post	""
Erosion	Post	""

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Summary of Landowner Helpline Purpose, Role, and Processes

Compliance	Post	""
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**Type of Concern:**

**2. COMPENSATION RESPONSE CHART**

<b>Issue</b>	<b>Phase Generally</b>	<b>Suggested Response</b>
Easement/ROW compensation	Pre-Construction; most likely post issuance of Certificate of PN from the Commission	“Just Compensation” is really outside of FERC’s jurisdiction and is a question for the judiciary to answer (i.e. state or federal court depending on which will have jurisdiction over the land). However, it may be helpful to suggest certain considerations that the landowner can take into account when negotiating. Things to consider include profits received from current land use and nature and extent of disruption that the easement or ROW will impose upon the landowner.
Compensation for damages (restoration phase)	Post-Construction	Contacting company and OEP will be helpful