

ONE HUNDRED TWELFTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115

Majority (202) 225-2927
Minority (202) 225-3641

October 11, 2012

The Honorable Jon Wellinghoff
Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Dear Chairman Wellinghoff:

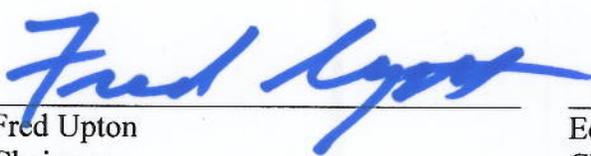
On September 20, 2012, the Federal Energy Regulatory Commission (“FERC” or “Commission”) announced the establishment of a new Office of Energy Infrastructure Security (“OEIS”). The stated mission of this new office is to, among other purposes, “provide leadership, expertise and assistance to the Commission to identify, communicate and seek comprehensive solutions to potential risks to FERC-jurisdictional facilities” from cyber attacks and physical threats.

The protection of the nation’s critical infrastructure, including those facilities subject to FERC jurisdiction, such as the bulk-power system, pipelines, and hydropower facilities, is vital to the country’s economic well-being and the safety and security of our citizens. The Committee on Energy and Commerce, in its oversight role, continues to assess the critical infrastructure planning and protection efforts of the appropriate federal agencies, oversee the protection, mitigation and resiliency efforts of private asset owners, and evaluate opportunities to better secure critical infrastructure, such as through improved information sharing.

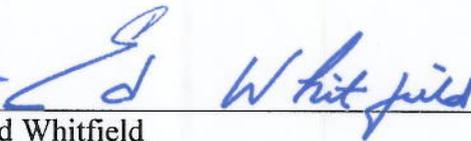
The Committee shares the goals of the Commission to ensure the nation’s energy infrastructure is protected from physical and cyber threats and we look forward to learning more about the objectives of the OEIS. Accordingly, please find attached to this letter questions seeking additional information regarding the scope, responsibilities, and jurisdiction of the OEIS. Also attached are instructions relating to this information request.

Please provide the written responses and any related documents by no later than three weeks from the date of this letter. Thank you for your prompt attention. Should you have any questions, please Patrick Currier of the Majority Committee staff at (202) 225-2927.

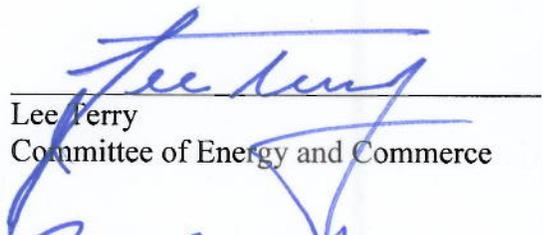
Sincerely,



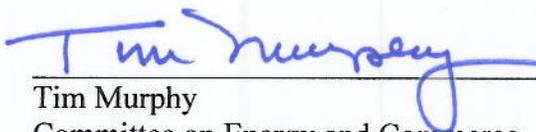
Fred Upton
Chairman
Committee on Energy and Commerce



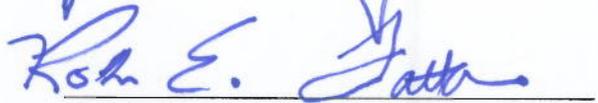
Ed Whitfield
Chairman
Subcommittee on Energy and Power



Lee Terry
Committee of Energy and Commerce



Tim Murphy
Committee on Energy and Commerce



Bob Latta
Committee on Energy and Commerce

cc: The Honorable Henry A. Waxman, Ranking Member
Committee on Energy and Commerce

The Honorable Bobby L. Rush, Ranking Member
Subcommittee on Energy and Power

Attachments

INFORMATION & DOCUMENT REQUESTS

FERC Office of Energy Infrastructure Security

1. What is the jurisdiction of the Office of Energy Infrastructure Security (OEIS) and on what specific statutory authority does FERC rely to establish and fund this new office?
2. Does the establishment of this new office rest on an interpretation of the Commission's authority under the Federal Power Act that is in any way different from the interpretation of its authority that the Commission has employed to date?
3. Is it the Commission's view that any of its authority to address reliability issues related to cybersecurity or physical security stems from any statutory provision or administrative authority other than Section 215 of the Federal Power Act? If so, please describe such authority.
4. What statutory responsibilities will the office carry out? Please identify these responsibilities for each of the Commission's industry programs, including electric, hydropower, natural gas and oil.
5. Section 215 of the Federal Power Act gives FERC authority over the "bulk-power system," as such term is defined in that section of law. Does the Commission believe that the authority of the OEIS will extend beyond the bulk power system? If so, to what additional facilities, such as generation or distribution facilities, and matters will it extend, and pursuant to what authority?
6. Will the OEIS perform any functions or have any responsibilities that FERC is not already performing? If so, please identify such functions and the authority under which such functions will be carried out.
7. What is the anticipated budget for the OEIS?
 - a. Will OEIS require any additional funding from Congress? If so, how much, and for what purpose(s)?
 - b. How much funding is the Commission currently spending on the functions and responsibilities that will now be conducted by the OEIS?

8. What is the anticipated staffing of the OEIS?
 - a. Please identify the divisions or branches of the Offices of Electric Reliability, Enforcement and Energy Markets and Rates that will be reassigned to OEIS.
 - b. If new positions are to be created, please identify the number of new employees anticipated, the purpose of each position, and any budget authorization relied upon for such positions.
9. The proposed OEIS would appear to overlap with functions performed by the Department of Energy (DOE) acting as the sector-specific federal agency for energy in the Government Coordinating Council. Please explain how the functions to be performed by OEIS will differ from those currently being performed by DOE as the sector-specific federal agency for energy.
10. What coordination or other agreements have been established or agreed to in principle with other federal agencies, including DOE and the Department of Homeland Security?
11. Will the functions to be performed by the OEIS include the review and analysis of real-time or close to real-time security threat information?
 - a. Would such threat information come from government or private sector sources?
 - b. What safeguards will be put in place to ensure that information that may be shared by private sector entities with OEIS is not shared within the Commission for regulatory and enforcement purposes?
12. The FERC press release announcing the formation of OEIS stated that the office would develop “recommendations for identifying, communicating and mitigating potential cyber and physical security threats and vulnerabilities” to energy infrastructure.
 - a. For whom would these “recommendations” be developed? The Commission?
 - b. Will such recommendations be issued as Commission orders?
 - c. Does FERC believe it has authority (beyond approving NERC consensus-based standards under Section 215 of the Federal Power Act) to compel jurisdictional entities to implement OEIS recommendations regarding cyber or other threats?
 - d. If OEIS issues recommendations to industry, what obligation will a jurisdictional entity be under to follow the recommendations? If none, what assurances are in place to separate this effort from FERC’s enforcement and compliance efforts?

- e. Has the Commission evaluated what legal consequences could arise, whether through enforcement or through liability to third parties, from an entity declining to follow OEIS “recommendations” for identifying and communicating threats?
 - f. How will recommendations provided by OEIS to industry differ from recommendations often included in alerts, advisories, and notices issued by the North American Electric Reliability Corporation (NERC)?
13. Chairman Wellinghoff recently stated that OEIS will coordinate with NERC.
- a. Please describe FERC’s consultation with NERC in the planning, development, and formal establishment of the OEIS.
 - b. Please explain how OEIS will coordinate with NERC’s critical infrastructure department and NERC’s Electricity Sector Information Sharing and Analysis Center (ES-ISAC).
14. The Commission is charged with approving reliability standards, including Critical Infrastructure Protection (CIP) standards, developed by NERC and enforcing compliance with such standards.
- a. Does the Commission believe that the establishment of the OEIS in any way alters the Commission’s authority to review, approve, and enforce electric reliability standards?
 - b. Does the creation of the OEIS indicate a new or different role for the Commission in the setting of standards submitted by NERC? How and to what extent? Under what authority?
15. Section 215(d)(5) of the Federal Power Act provides authority for FERC to, on its own motion, order NERC to develop reliability standards, including standards related to cybersecurity. Will OEIS recommend cybersecurity standards to be considered?
16. Did the Commission receive recommendations from any non-governmental entities, such as owners of critical energy infrastructure, to reorganize to form a separate office such as the OEIS? If so, please identify such entities and provide a copy of any written materials, including emails, that the Commission received recommending the establishment of a separate office to serve this function.

RESPONDING TO COMMITTEE DOCUMENT REQUESTS

In responding to the document request, please apply the instructions and definitions set forth below:

INSTRUCTIONS

1. In complying with this request, you should produce all responsive documents that are in your possession, custody, or control or otherwise available to you, regardless of whether the documents are possessed directly by you.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual named in the request has been, or is currently, known by any other name, the request should be read also to include such other names under that alternative identification.
4. Each document should be produced in a form that may be copied by standard copying machines.
5. When you produce documents, you should identify the paragraph(s) and/or clause(s) in the Committee's request to which the document responds.
6. Documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. Indicate the office or division and person from whose files each document was produced.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph(s) and/or clause(s) of the request to which the documents are responsive, should be provided in an accompanying index.
8. Responsive documents must be produced regardless of whether any other person or entity possesses non-identical or identical copies of the same document.
9. The Committee requests electronic documents in addition to paper productions when possible. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, back up tape, or removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), you should consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above.

10. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party.

11. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.

12. The request is continuing in nature and applies to any newly discovered document, regardless of the date of its creation. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.

13. All documents should be bates-stamped sequentially and produced sequentially. In a cover letter to accompany your response, you should include a total page count for the entire production, including both hard copy and electronic documents.

14. Two sets of the documents should be delivered to the Committee, one set to the majority staff in Room 316 of the Ford House Office Building and one set to the minority staff in Room 564 of the Ford House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.

15. In the event that a responsive document is withheld on any basis, you should provide the following information concerning any such document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; (e) the relationship of the author and addressee to each other; and (f) any other description necessary to identify the document and to explain the basis for not producing the document.

16. If the request cannot be complied with in full, it should be complied with to the extent possible, which should include an explanation of why full compliance is not possible.

17. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; (2) documents responsive to the request have not been destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee since the date of receiving the Committee's request or in anticipation of receiving the Committee's request, and (3) all documents identified during the search that are responsive have been produced to the

Committee, identified in a privilege log provided to the Committee, as described in (15) above, or identified as provided in (10) above.

DEFINITIONS

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail ("e-mail"), instant messages, calendars, contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, power point presentations, spreadsheets, and work sheets. The term "document" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendices thereto. The term "document" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. A document bearing any notation not part of the original text is considered to be a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "documents in your possession, custody or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that have been placed in the possession, custody, or control of any third party.
3. The term "communication" means each manner or means of disclosure, transmission, or exchange of information, in the form of facts, ideas, opinions, inquiries, or otherwise, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, e-mail, instant message, discussion, release, personal delivery, or otherwise.
4. The terms "and" and "or" should be construed broadly and either conjunctively or disjunctively as necessary to bring within the scope of this request any information which might

otherwise be construed to be outside its scope. The singular includes the plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, limited liability corporations and companies, limited liability partnerships, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, other legal, business or government entities, or any other organization or group of persons, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.

7. The terms "you" or "your" means and refers to you as a natural person and the Federal Energy Regulatory Commission (the "FERC" or "Commission") and any of the offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the FERC; and includes any other person(s) defined in the document request letter.

8. The term "FERC" or "Commission" refers to the Federal Energy Regulatory Commission and any of its offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, or any other persons acting on behalf or under the control or direction of the FERC.