

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF THE CHAIRMAN

November 5, 2012

The Honorable Fred Upton
Chairman
U.S. House of Representatives
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Upton:

I want to thank you for your interest in the Commission's new Office of Energy Infrastructure Security (OEIS). The new office is designed to provide leadership, expertise, and assistance to the Commission in identifying, communicating, and seeking comprehensive solutions to significant potential cyber and physical security risks to the energy infrastructure under the Commission's jurisdiction.

The creation of OEIS is a response to the growing cyber and physical security threats that necessitate a significantly more agile and focused approach than we have used in the past. Because of the widespread and serious consequences that a successful cyber or physical security attack may bring, it is important that swift, consistent, and effective action be taken by entities to prevent such attacks. This office will not require mandatory actions and will not have the imperative of enforcement or compliance actions.

The office will concentrate its efforts and resources in four areas. First, OEIS is charged with developing recommendations for identifying and communicating mitigating alternatives for potential cyber and physical security threats to Commission jurisdictional energy infrastructure using our existing statutory authorities. Second, OEIS will offer assistance, expertise and advice to other federal and state agencies, jurisdictional utilities, and Congress for identifying and communicating mitigating alternatives for cyber and physical security threats to Commission jurisdictional energy infrastructure. Third, the Office will participate in interagency and intelligence-related coordination and collaboration efforts with appropriate federal, state agencies and industry representatives on cyber and physical security matters related to Commission jurisdictional energy infrastructure. Fourth, OEIS will conduct outreach to

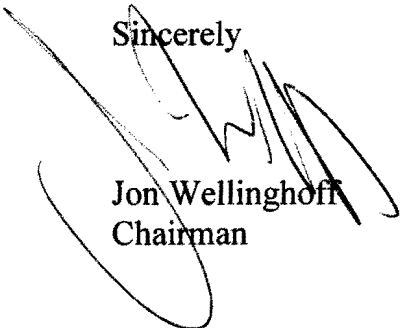
improve the exchange of information with private sector owners, users and operators of the energy delivery systems, regarding identification, communication and mitigation of cyber and physical threats to Commission jurisdictional energy infrastructure.

The key benefit of a stand-alone office focused on energy infrastructure security is that it leverages the existing resources of the Commission with the resources of other government agencies and private industry in a coordinated, focused manner. The creation of this new office is due to the Commission's recognition of the increasingly inter-related nature of the energy infrastructure under the Commission's jurisdiction, including cyber interconnections.

I want to emphasize, however, that OEIS' work will be complementary to, not a replacement of, FERC's existing regulatory processes for reliability. Thus, OEIS is intended to enhance our ability to protect the reliability of the bulk power system.

I am happy to answer any additional questions you might have.

Sincerely



Jon Wellinghoff
Chairman

Enclosure

**Answers to Information and 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?

OEIS will work within the Commission's current authorities, including under the Federal Power Act, the Natural Gas Act, and the Interstate Commerce Act within each of the infrastructure areas that it regulates: the Bulk Power System, oil and gas pipelines, liquefied natural gas (LNG) facilities and hydropower. Because the new office will concentrate key security expertise within the Commission's program offices into a central location, FERC will not require additional funding above that which was appropriated in the previous budget.

2. Does 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?

No.

3. Is it the Commission's view that any of its authority to address reliability issues related to cybersecurity of 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.

. The Commission will not address reliability issues outside of its jurisdiction.

4. What statutory responsibility will the office carry out? Please identify these responsibilities for each of the Commission's industry programs, including electric, hydropower, natural gas, and oil.

Although OEIS will provide focus and expert assistance to the Commission for its statutory duties regarding cyber and physical security issues within each of the program areas, it will not be responsible for Commission orders or enforcement actions. A primary objective of OEIS will be to collaborate with the infrastructure owners/operators, and other regulatory and government authorities (on both federal and state levels), to identify current and emerging defense and mitigation strategies for cyber and physical threats.

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?

OEIS does not have any independent authority. The Commission will not act on recommendations from OEIS that would be outside of its jurisdiction.

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.

No. Creating the new office focuses the cyber and physical expertise of the Commission of all of the infrastructures it regulates into a single office thereby leveraging the Commission's current capabilities and separating the Commission's collaborative efforts from the Commission's regulation and enforcement processes.

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)?

The Commission does not anticipate requiring additional funding.

- b. How much funding is the Commission currently spending on the functions and responsibilities that will now be conducted by OEIS

The Commission currently spends approximately 2.2 million dollars on expenses for functions and responsibilities that will be transferred to OEIS.

8. What is the anticipated staffing of the OEIS
 - a. Please identify the divisions or branches of the Office of Electric Reliability, Enforcement, and Energy Markets and Rates that will be reassigned to OEIS.

Initial staffing of the office will be 20 employees. No divisions or branches of any other office are being 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.

No new positions are being created to staff OEIS. Rather, fifteen selected staff members from existing offices are being transferred to OEIS and five agency vacancies are being assigned to supplement these transfers.

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?

The new office will continue to work with and support DOE in its role as the sector-specific agency for energy in the Government Coordinating Council.

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?

The Commission has signed MOUs concerning cybersecurity with the Nuclear Regulatory Commission (available at <http://www.ferc.gov/legal/maj-ord-reg/mou/mou-us-nucr-09.pdf>).

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?
- Would such threat information come from government or private sector sources?
 - 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?

Staff from OEIS will participate in interagency and intelligence-related coordination and collaboration efforts with appropriate federal, state agencies and industry representatives on cyber and physical security matters related to Commission jurisdictional energy infrastructure as-needed. This could include review and analysis of security threats in real-time. In some cases, the information could originate with the Commission while in other cases, it could come from government or private sector sources.

Any regulatory action, such as standards development oversight or enforcement, will be conducted by the other program offices of the Commission.

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.
- For whom would these recommendations be developed? The Commission?
 - Will such recommendations be issued as Commission orders?
 - 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)?

a. As has been stated earlier, the recommendations would be developed for the Commission, other federal and state agencies, regulators, and infrastructure owners and operators.

b. OEIS will not develop Commission orders.

c. FERC's regulatory and enforcement authority is defined by the Federal Power Act, the Natural Gas Act, and the Interstate Commerce Act. Any Commission action that relies on OEIS recommendations will be pursuant to its statutory authority.

d. See the answer to c above.

e. No.

f. OEIS staff will continue to work with NERC, assisting with the alerts that they issue to industry. Any OEIS actions will not be a replacement of these alerts issued by 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).

a. As the ERO, NERC's responsibility is defined in Section 215 of the Federal Power Act and limited to the Bulk Power System, and OEIS will continue to coordinate with NERC on these matters related to the Bulk Power System. Considering that this system will be a part of the infrastructure on which OEIS will focus, NERC was informed prior to the public announcement of OEIS.

b. The Office of Electric Reliability (OER), not OEIS, will continue to review the reliability and security standards developed by NERC for the Bulk Power System. The Office of Enforcement, not OEIS, will continue to enforce these standards in coordination with the delegated enforcement authority that NERC and the Regional Entities have under Section 215 of the Federal Power Act. OEIS will work with NERC as well as the other stakeholders, agencies and regulatory authorities to focus on the identification of threats and effective mitigation strategies to address them.

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 reliability standards?
 - b. Does the creation of the OEIS indicate a new or different role for the Commission in setting of standards submitted by NERC? How and to what extent? Under what authority?

a and b. No, OEIS will not be responsible for regulatory or enforcement orders. OEIS's work will be complementary to, not a replacement of, FERC's existing regulatory processes for reliability. The establishment of the new office in no way alters the Commission's authority pursuant to Section 215 or the Commission's review of NERC standards. While OEIS may provide subject matter expertise to OER, OER will remain responsible for reviewing standards submitted by NERC.

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?

OEIS will have no independent authority to recommend cybersecurity standards to NERC.

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.

No.