May 25, 2022

Senate Energy and Natural Resources Committee
304 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Manchin and Ranking Member Barrasso:

I am concerned about an apparent lack of transparency at the Federal Energy Regulatory Commission (FERC).

As you recall from your March 3, 2022 hearing regarding FERC’s controversial guidance and policy statements on natural gas pipelines, Senator Bill Cassidy of Louisiana asked the commissioners if anyone higher up in the Biden Administration sought to influence the FERC to impede the development of natural gas pipelines. Chairman Glick responded with an unambiguous no.

The Institute for Energy Research (IER) has sought to confirm the veracity of Commissioner Glick’s response to Senator Cassidy. On March 29 and April 13, 2022, IER submitted FOIA requests by both fax and electronic mail seeking correspondence of a handful of senior FERC appointees to or from two White House email domains over the course of a seven-month period. Subsequent IER FOIA requests sought routine information from the commission, including calendar requests, requests for internal information about additional FOIA requests (to determine whether FERC officers were overburdened with FOIA requests), and correspondence with outside groups who have actively promoted the restriction of natural gas pipelines.

The following is an excerpt from the March 29 request:

“Any records responsive to this request are of great public interest after Commission Chairman Glick responded unambiguously, in the negative, in testimony before the United States Senate Committee on Energy & Natural Resources on March 3, 2022 about FERC’s controversial guidance and policy statements Policies to Guide Natural Gas Project Certifications pertaining to greenhouse gas emissions. Senator Bill Cassidy of Louisiana asked a direct question ‘has anyone higher up in the [Biden] administration ever spoken to you in regards to somehow slow-walking or otherwise impeding or otherwise accentuating policy that would have the effect of impeding the development of natural gas pipelines[?]’. The scope of the inquiry of what the White House may or may not have exercised pressure or influence on is very broad, and Commission Chairman Glick responded with an unambiguous no. We take that reference to mean the White House, explaining why this request seeks correspondence with White House email domains.”
Despite FERC's own tracking numbers indicating its FOIA officer is not overburdened, and despite a history of being a remarkably timely processor of FOIA requests, FERC has failed to offer even the most basic required information in response to any of IER's FOIA requests. FERC has instead offered what appear to be delaying tactics.

Specific, curious claims by FERC include that 5 U.S.C. § 552(a)(6)(B)(i) allows an agency to extend its time limits when it establishes “unusual circumstances” exist. But FERC has done nothing to establish such circumstances. Instead, in response to all of IER's FOIA requests FERC has simply claimed “unusual circumstances” exist, remarkably the same “unusual circumstances” each time (a “need to consult”), including even in response to the request that required the FOIA office to search only its own records and produce FOIA requests that have been set to FERC within a limited date range.

As such, the Commission has established by its own actions that its claim of “unusual circumstances” is no more than a “form” claim seeking to evade its FOIA obligations, with no establishment of unusual circumstances. FERC instead establishes, by this pattern, that its claim that “unusual circumstances” exist is in fact its usual circumstance, invoked even when it could not plausibly apply.

IER can only conclude that this practice is an adaptation, post-FOIA Improvement Act of 2016, to the now-forbidden agency practice of informing requesters that someone will be getting back to them, at some later time, with some information.

Give that the White House has announced their intention to nominate Chairman Glick to another full term on the commission, it is of the utmost importance that this committee determine whether Commissioner Glick was indeed being truthful when he denied any White House involvement in the development of the controversial pipeline policy statements. Policy statements which would place concerns about greenhouse gas emissions above considerations including energy reliability, energy security, and affordability for American families.

Further, given that fact that FERC has historically been timely and responsive with FOIA requests, it is equally important that the committee determine whether this new posture from FERC with respect to FOIA requests is due to the change of leadership at FERC, namely a policy of Commissioner Glick. The committee should do everything it can to ensure continued transparency in government decision making. This apparent change in posture by the FERC is indeed a cause for concern.

Please feel free to contact me if you have any additional questions or concerns. I would be happy to provide you with more detailed information.

Sincerely,

Thomas Pyle
President
Institute for Energy Research