

April 28, 2022

Senator Joe Manchin  
Chairman, Senate Committee on  
Energy and Natural Resources

Senator John Barrasso  
Ranking Member, Senate Committee on  
Energy and Natural Resources

Cong. Jeff Duncan  
Chair  
U.S. House of Representatives Committee  
on Energy & Commerce  
Subcommittee on Energy, Climate  
and Grid Security

Cong. Diana DeGette  
Ranking Member  
U.S. House of Representatives Committee  
on Energy & Commerce  
Subcommittee on Energy, Climate  
and Grid Security

Cong. John Curtis  
Vice Chair  
U.S. House of Representatives Committee  
on Energy & Commerce  
Subcommittee on Energy, Climate  
and Grid Security

Cong. James Comer  
Chairman  
U.S. House of Representatives Committee  
on Oversight & Government Reform

Cong. Jamie Raskin  
Ranking Member  
U.S. House of Representatives Committee  
on Oversight & Government Reform

By Electronic Mail

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Dear Chairmen and Ranking Members:

On behalf of the Institute for Energy Research (IER), a 501(c)(3) non-profit public policy institute headquartered in Texas with offices in Washington, D.C., and research, publication, and other media and public education functions, I write to bring an important matter to your attention in your oversight capacities. I am concerned about the a pattern of behavior in recent month concerning the Federal Energy Regulatory Commission's (FERC) handling Freedom of Information Act (FOIA) requests and, related to these requests, FERC's record of compliance with federal record keeping and ethics requirements.

Given the seriousness of the need for federal agency compliance with Freedom of Information Act and records-management, conflicts and ethics obligations, we are armed by FERC's recent departure from its historic approach in handling FOIA requests. This stark reversal of practices suggests a studied disregard for the law, and we believe it should be addressed immediately.

IER has, since March 2022, made numerous requests for public records from FERC under FOIA to learn and educate the public about recent developments and actions by the Commission. Our inquiry began very narrowly but broadened over time as a direct result of FERC's responses and, more so, by what became FERC's pattern of choosing not to respond.

We wrote FERC's new Chairman directly six weeks ago to express these concerns, copying all Commissioners. But we have heard nothing back, nor received any response to our follow up request to discuss the matters. In that intervening time FERC's obstructionism has only compounded. We now bring these issues to your attention.

Again, one of the immediately notable aspects of FERC's clampdown on information was the departure it represented from the Commission's traditional status as an admirably FOIA-compliant agency. Recently, however, something changed. As the record discussed briefly, below, indicates, this goes far beyond mere intransigence or bureaucratic failure to comply with FOIA. Instead, FERC is engaged in what IER has, in pleadings, characterized as an "affirmative approach of delaying processing or production in response to [IER's] FOIA requests" on matters of obvious public (and oversight) interest. This also appears to be burdened if not driven by an obvious and irreconcilable conflict of interest.

### Background

FERC's employment of delaying tactics to avoid releasing records of its compliance with federal recordkeeping, ethics and other matters first unfolded in such a way and at such a time as to suggest an effort to buy time. Specifically, it seemed FERC sought to get past an expected November 2023 Senate confirmation hearing on a second term for

then-Chairman Glick. As you know, that hearing never came about. At about the time at which, media coverage suggests, it is reasonable to conclude Chairman Glick decided his confirmation for a second term was not likely, FERC reversed a months-long course and dropped its withholding of information related to Mr. Glick in many records.

Soon, however, FERC renewed and escalated its campaign to avoid releasing certain records—even now refusing, as a running practice, to make basic, required admissions like *how many records exist* responsive to a few particular (and apparently particularly concerning) requests. Those specifics are the bare minimum required after 20 business days following a FOIA request; nonetheless, in response to what by all indicators should be easily satisfied, if apparently sensitive requests (see, *infra*), FERC continues to refuse to provide such information. It is maintaining this position in several seemingly low-volume cases, even many months after having been sued for its obduracy.

Meanwhile, we are aware of FERC processing hundreds of pages of records for other FOIA requesters at the same time as it sits on IER requests, even some specifically identifying individual records sought.

We also have concerns that this recent practice, too, is designed to buy time through another confirmation hearing, this time to fill the vacant Commissioner position, as well as get beyond certain scheduled congressional oversight. It strikes us as inherently problematic that the same individual who media reports might be the intended, ultimate beneficiary of what is by now clearly a stonewall is the one executing it.<sup>1</sup>

Specifically, the FERC General Counsel appointed by Chairman Glick (and current holdover), Matthew Christiansen, has been reported as being a top candidate under consideration to fill the empty Commissioner seat. As General Counsel, and as shown by his signature on the relevant correspondence, Mr. Christiansen has overseen the unlawful practices uncovered by IER's FOIA requests (*e.g.*, rampant use of personal cell phones for FERC correspondence). Records show that, rather than stop and remedy these practices, Mr. Christiansen also ignored, broadly enabled and in some instances personally participated in these practices.

For example, IER noted to FERC that the sole FERC-phone bill that FERC released for Mr. Glick revealed that this was not the phone he was using for the purposes it was provided — though he was in fact still texting for work, thereby moving an entire class of federal records outside of federal custody. In response FERC, under Mr. Christiansen's guidance, ceased producing Glick-phone bills and changed its position from claiming it had many more Glick bills to process to claiming it in fact had possession of none, they were possessed by Verizon (even while producing the Verizon bills for Commissioner Allison Clements and then-Director of FERC's Office of External Affairs Sarah Venuto, both of whom also regularly used private phones for FERC work if, unlike Mr. Glick, apparently not exclusively). FERC continues to maintain that position in federal court although, quite remarkably, in its pleadings it has simply now gone silent on and no longer addresses this reversal and refusal. See, *Institute for Energy Research v. Federal Energy Regulatory Commission*, 22-cv-3420)(DDC) (FOIA-2022-58).

Additionally, we see records indicating that Commissioner Allison Clements used her personal phone as her default phone for FERC correspondence. See, e.g., "Hi Rich, this is Allison from my work phone (trying again to switch over)." May 9, 2022 Clements text to Glick) (*Institute for Energy Research v. Federal Energy Regulatory Commission*, 22-cv-3003)(DDC)(FOIA-2022-97. Incredibly, FERC produced a grand total of zero records when asked for copies of all texts forwarded from that personal phone to FERC, as required by federal law. *Institute for Energy Research v. Federal Energy Regulatory Commission*, 22-cv-3650) (DDC) (FOIA-2022-89). The implication is that Ms. Clements did not do so.

Also, as the supervisor of FERC's Designated Ethics Official and manager of FERC's FOIA responses — putting him on notice of these practices in the unlikely event he was not already — Mr. Christiansen has overseen other behavior by Commissioner Clements far in excess of what was, in the previous administration, deemed to be a serious ethical transgression.<sup>2</sup> FERC is refusing to reveal even the barest details about whether Commissioner Clements received, or even sought, ethics guidance before engaging in behavior revealed in text messages with her former clients (Do any records exist? How many?). The behavior revealed in texts between Clements and her former client the Energy Foundation ("EF") reveal what EF called Clements's possibly "inappropriate" briefing of

EF's "funder group", about what Ms. Clements called "FERC as an opportunity" for those funders. Emails obtained by IER show this to have been "an energy funder briefing," "to discuss U.S. grid work" by issue-advocates funded by the parties Commissioner Clements briefed on "FERC 2022 priorities" . The same holds true for Ms. Clements's participation in a "quarterly call" with/of former client SustainableFERC. (See *IER v. FERC*, 22-cv-3556 (DDC) (FOIA-2022-95, -98).

Surely the first thing Ms. Clements did was seek ethics advice? After more than seven months, FERC will not say even the number of records reflecting such possible inquiry and advice. It has only acknowledged one (1) Glick document then, five months later, 3 more Glick documents, what with the former Chairman having of course departed. FERC has twice vowed to continue reviewing its files for the described Clements records, as the case plods through the judicial system. This abject refusal to oblige its most basic FOIA obligations about presumably very few documents puts FERC in violation by more than half a year.

IER has documented these and similar concerns with FERC's recent actions in the public record both via court filings and its own [FERC Transparency Project webpage](#). For example, a January amended complaint in *IER v FERC*, 22-cv-3414 (FOIA-2022-81), ECF No. 7, specifically pertained to the machinations involved in delaying release of Commissioner Clements's texts with Energy Foundation. IER has also placed the details of FERC's *pattern* of improper behavior in the record, in a Joint Status Report in *IER v FERC*, 22-cv-3420, ECF No. 18, including the bases for IER's "view that Defendant has adopted an affirmative approach of delaying processing or production in response to Plaintiff's FOIA requests, as previously set forth in detail in the matter [*IER v FERC*, 22-cv-2114 FOIA-2022-37], ECF No. 11-1 at pages 2 - 7. Events subsequent to that November 8, 2022, filing have only strengthened this view."

Subsequent to this series of revelations, certain specific efforts to keep information from the public and/or Congress have emerged beyond the Clements/ethics guidance matter. These include a refusal by FERC to produce or even, after more than 8 months, state how many text messages meeting a particular description exist pertaining to Senator Cassidy, "GHGs"/methane or FERC's "climate" work with the White House (*IER v FERC*,

22-cv-3602, FOIA-2022-87); certain records (again, even how many exist) pertaining to the guidance IER understands that Mr. Christiansen issued about proper phone practices after Glick departed; any guidance pertaining to interactions with former clients such as Commissioner Clements's described above; or records pertaining to any ethics waivers *sought* by Commissioner Clements after a previous House Oversight inquiry into ethics waivers, which was followed by her husband accepting his current employment. The latter is of obvious public and oversight interest given the apparent statutory bar to her service as a Commissioner this creates<sup>3</sup> (all of these matters are captured in (*IER v FERC*, 23-cv-488, FOIA-2023-50). And again, FERC has failed, after months, to even state how many such records exist.

FERC has even failed to locate the order appointing the individual who FERC characterizes, inexplicably, its "Acting Chairman" Phillips<sup>4</sup> (*IER v FERC*, 23-cv-488, FOIA-2023-50).

As noted, IER directly sought intervention into these practices by the new Chairman, or at least to discuss them, but received no response and no response to its follow up.

It is inarguable that the public has a right to know the facts IER seeks in these requests, and now lawsuits. FOIA is intended to ensure the public's ability to know about government operations; litigation is designed to resolve disputes. Despite statutorily shortened timeframes recognizing the priority of the public's right to know, FOIA litigation — particularly when conducted with delay and denial as an objective — is unfortunately not conducive to resolving these disputes at the speed of relevance.

Such serious episodes warrant institutional attention, of course, and also increase the importance of FERC adhering to its transparency obligations, yet it has instead conducted what has every hallmark of a stonewall campaign to delay and block release of records to the public further explaining these matters.

Also given the inherent conflict in what we describe here, we respectfully ask that you in your oversight capacity review FERC's pattern of behavior in, at minimum, the matters cited and ensure positive change, such that FERC satisfies its legal obligations and the public's right to see the record of how its institutions are being used. It seems quite

possible that these revelations would inform decisions about required legislation and otherwise heighten the need for Congressional oversight of FERC's activities.

If you have any questions, please do not hesitate to contact me. It is our hope that, after examining the record you will effect positive change and bring FERC into compliance with its public records obligations. A PDF of this letter is attached for your convenience.

Sincerely,

Thomas J. Pyle

President, Institute for Energy Research

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<sup>1</sup> See, e.g., Miranda Willson, Brian Dabbs, "Names circulating for vacant FERC spot," E&E News, January 17, 2023 <https://www.eenews.net/articles/names-circulating-for-vacant-ferc-spot/>. That this pattern of behavior is being overseen by an official reported by the media to be a candidate for his own Senate confirmation hearing, for elevation to the role of Commissioner, raises additional concerns and adds to the reasons that we respectfully request you examine the behavior.

<sup>2</sup> *Cf.* former Trump EPA official Bill Wehrum, who *did* receive and followed ethics guidance yet was accused of ethics violations for briefing an audience that included a former client. See, e.g., Juliet Eilperin, "EPA regulator skirts the line between former clients and current job," Washington Post, February 25, 2019, [https://www.washingtonpost.com/national/health-science/epa-regulator-skirts-the-line-between-former-clients-and-current-job/2019/02/24/b826b5fa-3767-11e9-a400-e481bf264fdc\\_story.html](https://www.washingtonpost.com/national/health-science/epa-regulator-skirts-the-line-between-former-clients-and-current-job/2019/02/24/b826b5fa-3767-11e9-a400-e481bf264fdc_story.html); see also, e.g., Rebecca Beitsch, "Watchdog probing more ethics investigations into EPA's former air chief: report," The Hill, July 22, 2019, <https://thehill.com/policy/energy-environment/454150-watchdog-continues-ethics-investigations-into-epa-s-former-air-chief/>.

<sup>3</sup> See Federal Power Act, 16 U.S.C. §§ 791 *et seq.*, Section 1, <https://www.copiapower.com/about> ("Copia Power is an energy transition company committed to developing, constructing and owning large-scale infrastructure assets in the U.S. to accelerate decarbonization in all areas of our economy"), and <https://www.copiapower.com/ray-henger>.

<sup>4</sup> The President has no authority to name an Acting Chairman; under FERC's governing statute only a Chairman has that power. Further, IER states with confidence that the President's January 3, 2023, Order, which FERC somehow cannot or will not locate, belies its claim that Mr. Phillips is "Acting Chairman," but instead clearly "hereby designate[d] Willie L. Phillips, Jr. as Chair of the Federal Energy Regulatory Commission."