

**First Set of Responses of the Federal Energy Regulatory Commission
to Senator Murkowski's Separately Submitted Questions for the Record
from April 10, 2014 Hearing of the
Senate Energy and Natural Resources Committee**

10. Who within FERC or outside of FERC first proposed the FERC Study?

A: Then-Chairman Wellinghoff first directed that the work be done.

21. FERC has provided to the Committee an e-mail message written by Mr. Len Tao in late June 2013 that summarizes the FERC Study ("Tao Memo"). Is this the document described in the March 13 article as a "memo" written by Mr. Len Tao? If not, please identify the document to which the March 13 article refers to as a "memo".

A: Yes.

What was the specific intended purpose of the Tao Memo?

A: The "memo" was, as noted above, an internal email written and with limited distribution originally sent by Mr. Tao, the Director of the Office of External Affairs (OEA), only to the then-Chairman, his Chief of Staff, two senior FERC Office Directors and one Office of External Affairs Division Director, each listed below. The purpose of this internal email was to help focus the then-Chairman's message in advance of his meeting with National Security Staff at the White House.

Please describe the differences between the Tao Memo and the FERC Study. Why was the substance and tone of the Tao Memo significantly more dramatic than the actual FERC Study?

A: At the time of the creation of the internal email, Mr. Tao had not seen the FERC Study. Mr. Tao wrote the message points in the email based entirely on his discussions with, and understanding of, then-Chairman Wellinghoff's broader message regarding the Metcalf incident. The tone of the internal email reflects then-Chairman Wellinghoff's views at that time.

Why did the Tao memo make specific reference to the attack on the PG&E substation that occurred in April 2013?

A: The internal email refers to the attack on the PG&E substation that occurred in April 2013 because that incident was to be a major part of then-Chairman Wellinghoff's briefing to National Security Staff at the White House.

Was that attack the subject of any specific analysis or reference in the actual FERC Study? If not, was that attack the subject of any other specific analysis or reference prepared by FERC or under its direction? If so, please identify any such other analysis.

A: No, the Metcalf substation attack was not referenced in the FERC Study or any other specific analysis/reference prepared by FERC. The FERC Study pre-dated the April 16, 2013 incident at Metcalf. A presentation delivered by then-Chairman Wellinghoff in June 2013 to the Edison Electric Institute (EEI) chief executive officers included a section that described the Metcalf incident.

a. Please list all of the persons who received the Tao memo (electronically or in print), starting with indicated recipients (cc), any unindicated recipients (bcc), and anyone to whom the Tao Memo was forwarded or delivered.

b. Please indicate the title and role of all of the recipients.

A: The response to the following subparts of question 21 reflects people who received the internal email prior to February 2014. We will update this response, as necessary, in a subsequent production to provide the requested information for the time period after it became apparent that Rebecca Smith had the internal email. For each recipient noted below, the individual's role is implicit in his or her title.

The initial recipients of the internal email from Mr. Tao were:

Then-Chairman Wellinghoff
Then-Chief of Staff James Pederson
Joseph McClelland, Director, Office of Energy Infrastructure Security (OEIS)
Michael Bardee, Director, Office of Electric Reliability (OER)
Chris Murray, Director, Division of Government Affairs, OEA

Then-Chairman Wellinghoff replied to the initial email and added the following FERC staff members:

Mary O'Driscoll, Director of the Division of Media Relations, OEA
David Morenoff, Acting General Counsel
Christina Hayes, Legal Advisor to then-Chairman Wellinghoff

Debbie-Anne Reese, Legal Advisor to then-Chairman Wellinghoff
Mary Beth Tighe, Policy Advisor to then-Chairman Wellinghoff

Joseph McClelland sent the email to the following members of his staff:
Harry Tom, Supervisory Electrical Engineer, OEIS
Michael Peters, Energy Infrastructure and Cyber Security Advisor, OEIS
Richard Waggel, Electrical Engineer, OEIS

Harry Tom replied back to Joseph McClelland, with copy to Michael Peters and Richard Waggel

c. Please indicate which of the recipients, if any, reviewed the FERC Study and whether any recipient who reviewed the study has a security clearance.

A: The following recipients of the internal email reviewed the FERC Study. Out of an abundance of caution, we will identify under separate cover which of these individuals has a security clearance.

Then-Chairman Wellinghoff
James Pederson
Joseph McClelland
Michael Bardee
David Morenoff
Harry Tom
Michael Peters
Richard Waggel
Christina Hayes

Mr. Tao did not see the FERC Study until Senators Murkowski and Landrieu requested copies in March 2014.

d. Please state why each recipient was determined to be a recipient.

A: Mr. Tao included the then-Chairman and his Chief of Staff because they needed to review and approve the content before the National Security Staff meeting. The Director of OEIS, the Director of OER and the Director of the OEA Division of Government Affairs were recipients because they were qualified to comment on either the substantive content or its articulation.

The email from then-Chairman Wellinghoff does not state why he forwarded the internal email to the additional recipients indicated in response to Q. 22a and b.

Joseph McClelland forwarded the internal e-mail to OEIS staff indicated in response to Question 21a. and b., above, out of concern about a draft Wall Street Journal OpEd then-Chairman Wellinghoff was preparing about Metcalf and to seek staff comments about the draft Wall Street Journal OpEd.

e. Please indicate whether any recipient questioned the wisdom of preparing the FERC Study or the summary or disclosing the contents of the summary or the study.

A: Joseph McClelland initially questioned disclosing the contents of the study and expressed his concerns and sought counsel with OGC on April 4, 2013. Acting General Counsel David Morenoff shared this concern. Mr. McClelland then expressed his concern directly to then-Chairman Wellinghoff on April 5, 2013, stating that OEIS had consulted with OGC and jointly determined that the FERC Study could constitute CEII. Mr. McClelland therefore recommended that, if the Chairman wished to discuss the subject with people outside of FERC, it may be preferable to use generic simulations.

f. Please provide a log listing all e-mail correspondence including or referencing the Tao Memo. Please include in the log “To, from, and date” of all such correspondence.

A:

Date	From	To
June 25, 2013	Tao	Wellinghoff
		Pederson
		McClelland
		Bardee
		Murray
June 25, 2013	Wellinghoff	O’Driscoll
		Morenoff
		Hayes
		Reese
		Tighe
June 25, 2013	McClelland	Tom

		Peters
		Waggel
June 25, 2013	Tom	McClelland
		Peters
		Waggel

22. The March 13 article quotes Mr. Len Tao on the record about the Tao Memo and the article states affirmatively that the memo “was reviewed by the Journal.” Did any current employee of the Commission provide the FERC Study or the Tao Memo to the Journal?

A: No.

Who determined that Mr. Tao would grant an on the record interview about the FERC Study and his memo to the Journal?

A: On March 6, 2014, at 11:10 AM, *The Wall Street Journal* reporter Rebecca Smith left a message asking to speak to Mr. Tao. As it is the responsibility of the Office of External Affairs to deal with the media, Mr. Tao called her back. In that conversation, Rebecca Smith informed Mr. Tao that she had a copy of an internal FERC email that he wrote. She then read from the email and stated that she intended to quote portions of that email in her soon-to-be published article and attribute the quotes to Mr. Tao. She asked Mr. Tao if he had any comments about the quotes from the internal email that she intended to attribute to him. Mr. Tao asked Rebecca Smith who gave her the internal FERC email. She responded that she could not reveal her source. Mr. Tao told her that he would call her back to let her know if he would comment on the quotes that she had read to him. After briefing the Office of the Acting Chairman and receiving authorization to speak with Rebecca Smith to clarify the genesis of the internal email, Mr. Tao called Rebecca Smith and read to her the following approved statement:

“As the Director of the FERC External Affairs Office with responsibilities over communication and outreach, one of my responsibilities is to help shape the message for the Chairman. I am an attorney and have no expertise in energy infrastructure security, reliability or engineering aspects of the grid. The quote that you read to me simply parrots back specific points that then-Chairman Wellinghoff wanted to make about Metcalf and eliminated others to help focus the discussion. I do not have an informed opinion about the effect of losing specific substations on the U.S. electric grid.”

Why did Mr. Tao agree to grant the interview to discuss the FERC Study and the Memo?

A: Mr. Tao did not grant Ms. Smith an interview. Mr. Tao provided the above statement regarding the internal email to Rebecca Smith in order to inform her that the quotes from the internal email she read to Mr. Tao were not based on independent study or analysis, but instead were part of the work of the Director of the Office of External Affairs to assist then-Chairman Wellinghoff in developing a messaging strategy. Thus, any use of quotes from the internal email to attempt to establish credibility for her article regarding the FERC Study from a FERC source, would be misplaced.

Is it standard procedure for Mr. Tao or any other FERC employee (whether in the Office of External Affairs or another office) to grant on the record interviews to discuss sensitive and potentially CEII FERC information with a reporter or journalist?

A: As noted above, Mr. Tao did not grant Ms. Smith an interview. With authorization of the Acting Chairman, he provided a brief statement to Ms. Smith to clarify that the internal email from which she read was not an additional study or independent verification of any other information Ms. Smith may have had relating to grid vulnerabilities, but rather was an email from the Director of FERC's Office of External Affairs to the then-Chairman in order to help him prepare for an upcoming meeting with National Security Staff. The statement that Mr. Tao provided did not "discuss sensitive and potentially CEII FERC information."

The specific requirements related to non-public information will be described in response to Question 8.

What obligations did Mr. Tao have under applicable FERC regulations or any other law applicable to a FERC employee to preserve the confidentiality of that Memo?

A: The specific requirements related to non-public information will be described in response to Question 8.

Why did Mr. Tao decide to explain his function with regard to preparation of the Memo to Ms. Smith?

A: The response to Ms. Smith's inquiry and quoting of the internal FERC email was to inform her that her reliance on these quotes, in her attempt to establish credibility for her article from a FERC source, was misplaced.

Did any other current or former FERC employee or commissioner request that Mr. Tao grant the interview to Ms. Smith, discuss the interview with Ms. Smith before the interview or influence his decision to grant the interview?

A: As noted above, Mr. Tao did not grant Ms. Smith an interview. Mr. Tao discussed Ms. Smith's call only with other OEA staff and the Office of the Acting Chairman. No other current or former FERC employees or Commissioners asked or directed Mr. Tao to speak with Ms. Smith. No other current FERC employee or Commissioner discussed Mr. Tao's statement with Ms. Smith. We do not have information about whether any former FERC employee or Commissioner discussed Mr. Tao's statement with Ms. Smith.

Was Mr. Tao aware at the time of the interview that Ms. Smith had reviewed the Memo? If so, how did he come into that knowledge?

A: At the time of her request for comment, Rebecca Smith indicated to Mr. Tao that she had a copy of an internal FERC email and supported this claim by reading selected quotes from that email to him.

What was Mr. Tao's role, if any, in providing Ms. Smith with access to the Memo he prepared and allowing her to review it?

A: Mr. Tao had no role in providing Rebecca Smith with the internal FERC email or allowing her to review it. She had it in her possession when she called him to ask for his comments.

32. What was the responsibility and role of the General Counsel or Deputy General Counsel and the Office of the General Counsel with regard to the FERC Study in general, as well as controlling access to the FERC Study?

A: The Office of the General Counsel (OGC) played no role in the conception, initial preparation, or subsequent refinement of the FERC Study. OGC became aware of the FERC Study in early April 2013, when the Office of Energy Infrastructure Security (OEIS) informed OGC that then-Chairman Wellinghoff had implied interest in discussing the FERC Study outside of FERC, in particular with owners and operators of facilities addressed in the FERC Study. Either or both of

Acting General Counsel David Morenoff and OGC Special Counsel Christy Walsh, drawing on support from the OGC General and Administrative Law section, participated in subsequent discussions with OEIS staff and subsequently with then-Chairman Wellinghoff concerning whether and how the FERC Study should be shared outside of FERC. OGC suggested treating the FERC Study as Critical Energy Infrastructure Information (CEII) pursuant to FERC's regulations and provided guidance in implementing treatment as CEII. To that end, OGC provided relevant non-disclosure agreements and answered questions about use of non-disclosure agreements by representatives of owners and operators of facilities addressed in the FERC study and by representatives of other Federal agencies. In October 2013, OGC also participated in internal discussions with then-Chairman Wellinghoff with respect to whether the Department of Energy could classify the FERC Study.

33. What was the role and responsibility of the Director or Deputy Director of the Office of Infrastructure Security (OIS) and OIS with regard to the FERC Study in general, as well as controlling access to the FERC Study?

A: The Director of the Office of Energy Infrastructure Security authorized his staff to work on the FERC Study in conjunction with staff from the Office of Electric Reliability (OER) and a staff member from the Office of Energy Policy Innovation (OEPI). The specific OEIS staff members as well as their roles, responsibilities, and functions will be provided in response to Question 14. OER and OEIS staff gave a preliminary presentation of the FERC Study to the Director of OEIS and the Director and Deputy Director of OER in advance of the March 20, 2013 briefing to then-Chairman Wellinghoff. The Director of OEIS attended internal presentations by OER and OEIS staff to then-Chairman Wellinghoff on March 20, 2013 and April 12, 2013. The Director of OEIS was also in attendance when the then-Chairman made a speech to Edison Electric Institute (EEI) chief executive officers where he discussed the FERC Study on June 10, 2013.

With respect to decisions as to how to control access to the FERC Study within FERC, OEIS employees disclosed their information only on a need to know basis and within the team. OEIS work materials for this project were kept either on their individual computers or on a common limited access network drive accessible only to the team.

With respect to decisions as to how to control access to the FERC Study outside of FERC, the Director of OEIS questioned disclosing the contents of the study and expressed his concerns and sought counsel with OGC on April 4, 2013. Acting

General Counsel David Morenoff shared this concern. Mr. McClelland then expressed his concern directly to then-Chairman Wellinghoff on April 5, 2013, stating that OEIS had consulted with OGC and jointly determined that the FERC Study could constitute CEII. The Director therefore recommended that, if the Chairman wished to discuss the subject with people outside of FERC, it may be preferable to use generic simulations.

34. What was the role of the Director or Deputy Director of the Office of Reliability (OR) and OR with regard to the FERC Study in general, as well as controlling access to the FERC Study?

A: The role of the Director of the Office of Electric Reliability (OER) was limited to authorizing OER staff to conduct part of the analysis and prepare part of the presentation for the FERC Study in conjunction with staff from the Office of Energy Infrastructure Security (OEIS) and a staff member from the Office of Energy Project Innovation (OEPI). The specific OER staff members as well as their roles, responsibilities, and functions will be provided in response to Question 14. The Deputy Director reviewed the staff presentations prior to the meetings with then-Chairman Wellinghoff. OER and OEIS staff gave an internal presentation of the FERC Study to the Director of OEIS and the Director and Deputy Director of OER in advance of the March 20, 2013 presentation to then-Chairman Wellinghoff. The Director of OER was also in attendance at the internal presentation by OER and OEIS staff for then-Chairman Wellinghoff on March 20, 2013. The Deputy Director also believes he was in attendance at the March 20, 2013 meeting. Neither the Director nor the Deputy Director of OER provided staff responsible for the FERC Study with any specific directions regarding controlling access to the study. Staff was expected to follow normal protocols and procedures regarding who could have access to the study, i.e., that the work would be shared with others only as necessary to complete the assignment.

35. What was the role and responsibility of the Director or Deputy Director of the Office of Enforcement (OE) and OE with regard to the FERC Study in general, as well as controlling access to the FERC Study?

A: The Director of the Office of Enforcement (OE), the Deputy Director of OE and OE staff had no role or responsibility with regard to the FERC Study. Moreover, the OE Director has no specific recollection of the FERC Study being discussed at agency meetings, presentations, or briefings.

36. What was the role and responsibility of the Director or Deputy Director of the Office of Energy Policy and Innovation (OEPI) and OEPI with regard to the FERC Study in general, as well as controlling access to the FERC Study?

A: The Director and Deputy Director of the Office of Energy Policy and Innovation (OEPI) had no role or responsibility with regard to the FERC Study. A member of OEPI's staff was available on an on-going basis to generally assist OEIS with the work of that Office. While the OEPI staff member was available to assist OEIS, the OEPI staff member was not directed by the OEPI Director or Deputy Director to specifically work on the FERC Study. The name of the specific OEPI staff member, as well as his role, responsibility, and function, will be provided in response to Question 14. Moreover, the Director and Deputy Director of OEPI have no specific recollection of the FERC Study being discussed at agency meetings, presentations, or briefings.

37. What was the role and responsibility of the Director or Deputy Director of the Office of External Affairs (OEA) and OEA with regard to the FERC Study in general, as well as controlling access to the FERC Study?

A: Other than the role of the Director and his staff to help coordinate delivery of the FERC Study to Congressional offices, Office of External Affairs staff (including the Acting Deputy Director) had no role or responsibility concerning the FERC Study. The Director of the Office of External Affairs did not see the FERC Study until Senators Landrieu and Murkowski requested copies in March 2014. The Acting Deputy Director of the Office of External Affairs has not reviewed the FERC Study.

38. What was the role of the Director or Deputy Director of any other FERC Office or any other FERC Office itself with regard to the FERC Study in general, as well as controlling access to the FERC Study?

A: The Office of Executive Director (OED) oversees and directs the numerous executive and administrative operations of the Commission, which includes FERC's security management and information technology (IT) strategy and services. As part of that role, the Executive Director oversees overall governance of IT security functions, which includes controls related to FERC electronic information. The Executive Director became aware of the existence of the FERC Study in a September 2013 meeting with then-Chairman Wellinghoff on an unrelated personnel issue but had no role or responsibility related to the formulation or content of the FERC Study nor its use or subsequent maintenance.

None of the other Office Directors or Deputy Directors, except those specifically identified in response to the above questions, had any role or responsibility with regard to the FERC Study.

41. Please prepare a chart with the names of each FERC Office Director and Deputy Director (or former FERC Office Director or Deputy Director if applicable) in Column 1 (not including the Office of ALJ's). In Column 2, indicate whether that individual had access to the FERC Study at any time, with a yes or no answer. In Column 3, indicate whether that individual reviewed or had any role in the preparation or use of the FERC Study at any time, with a yes or no answer. In Column 4, provide a specific description/explanation for any yes answer in Column 2 or Column 3. In column 5, indicate whether the individual has verified the accuracy of the entries for that individual in Columns 2, 3 and 4.

A:

Office Director or Deputy Director	Access to FERC Study?	Review or Role in Preparation of the FERC Study?	Description of any access or role in the FERC Study?	Verification?
Joseph McClelland, Office of Energy Infrastructure Security (OEIS) Director	Yes	Yes	Description of the Director of OEIS's role and access is provided in response to Question 33.	Yes
David Andrejcek, Deputy Director (Became the Deputy Director in April 2014)	Yes	Yes	In his previous capacity as a Division Director in the Office of Electric Reliability, his staff	Yes

			worked on the FERC Study.	
Michael Bardee, Office of Electric Reliability (OER) Director	Yes	Yes	Description of the Director of OER's role and access is provided in response to Question 34.	Yes
Edward Franks, Office of Electric Reliability (OER) Deputy Director	Yes	Yes	Description of the Director of OER's role and access is provided in response to Question 34.	Yes
David Morenoff, Acting General Counsel	Yes	No	Description of the Acting General Counsel's role and access is provided in response to Question 32.	Yes

Jamie Simler, Office of Energy Policy and Innovation (OEPI) Director	No	No	N/A	Yes
Mason Emmett, Office of Energy Policy and Innovation (OEPI) Deputy Director	No	No	N/A	Yes
Leonard Tao, Office of External Affairs (OEA) Director	Yes	Yes	Description of the Director of OEA's role and access is provided in response to Question 37.	Yes
Chris Murray, Office of External Affairs (OEA) Acting Deputy Director	Yes	No	Description of the Acting Deputy Director of OEA's role and access is provided in response to Question 37.	Yes
Michael McLaughlin, Office of Energy Market Regulation (OEMR) Director	No	No	N/A	Yes

Anna Cochrane, Office of Energy Market Regulation (OEMR) Deputy Director	No	No	N/A	Yes
Jeff Wright, Office of Energy Projects (OEP) Director	No	No	N/A	Yes
Ann Miles, Office of Energy Projects (OEP) Deputy Director	No	No	N/A	Director confirmed OEP had no role or responsibility.
Norman Bay, Office of Enforcement (OE) Director	No	No	N/A	Yes
Larry Gasteiger, Office of Enforcement (OE) Deputy Director	No	No	N/A	Yes
Anton Porter, Executive Director	Yes	No	Description of the Executive Director's role and access is	Yes

			provided in response to Question 38.	
Kimberly Bose, Secretary	No	No	N/A	Yes
Nathaniel Davis, Deputy Secretary	No	No	N/A	Yes
Ted Gerarden, Office of Administrative Litigation (OAL) Director	No	No	N/A	Yes