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INSPECTION REPORT

Review of Controls for Protecting Nonpublic
Information at the Federal Energy Regulatory
Commission

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MEMORANDUM FOR THE CHAIRMAN, FEDERAL ENERGY REGULATORY
COMMISSION

FROM: 
Gregory H. Friedman
Inspector General

SUBJECT: INFORMATION: Inspection Report on "Review of Controls for
Protecting Nonpublic Information at the Federal Energy Regulatory
Commission"

BACKGROUND

The Federal Energy Regulatory Commission (Commission), an independent agency within the Department of Energy, regulates, in part, the reliability of the Nation's bulk electric grid. The Commission staff collaborates with other Federal agencies, state agencies and the energy industry to identify and mitigate physical vulnerabilities and risks to the Nation's electric grid. In support of its mission, in 2013, Commission staff initiated an analysis of the electric grid which identified, in part, critical substations within the U.S. electric grid. Commission staff also developed PowerPoint and other types of presentations, including substation failure simulations, depicting a potentially devastating impact on the grid.

In February 2014, sensitive internal information regarding the electric grid analysis was mentioned by national media and attributed in the press to a former Commission Chairman. Commission staff described the information as highly sensitive, nonpublic, unclassified information, noting that improper disclosure could have significant national energy implications. Because of the potential for harm associated with the publication of such information, the current and former Chair of the Senate Committee on Energy and Natural Resources and the Commission's Designated Agency Ethics Official requested that the Office of Inspector General review the facts and circumstances surrounding the disclosure of the nonpublic information. In response, we initiated a review to determine whether the Commission had adequate controls for protecting nonpublic information.

RESULTS OF INSPECTION

Our review revealed that the Commission's controls, processes and procedures for protecting nonpublic information were severely lacking. Specifically, we found that staff inconsistently handled and shared Commission-created analyses that identified vulnerability of the Nation's electric grid without ensuring that the data was adequately evaluated for sensitivity and classification. We learned that:

- In February/March 2013, the former Chairman directed Commission staff to identify critical electric substations by location and create substation failure scenarios simulating the impact of the loss of these assets on the Nation's electric grid.¹
- Despite the sensitivity of the analysis and the simulations suggesting substation failures, the former Chairman and other Commission officials began to share some or all of the information with industry and Federal officials beginning in March 2013. This was done without having the material reviewed to determine whether it was classified. The Commission failed to have the material reviewed even though some Commission staff referred to the analysis and substation failure simulations as being of "national security" interest.
- Concerns were expressed internally and were later raised by senior Department of Energy officials that the electric grid analysis, including the substation failure simulations, could contain classified information. Yet, the Commission failed to obtain a formal classification review of the material for nearly a year.

Shortly after we initiated our inspection, we were informed by two Department subject matter experts, both of whom had original classification authority, that the scenarios and simulations, including the information that may have been shared with industry and Federal officials, may have contained classified information. We alerted Commission officials to this possibility in our Management Alert on *Review of Internal Controls for Protecting Non-public Information at the Federal Energy Regulatory Commission* (DOE/OIG-0906, April 2014), and we recommended that action be taken to properly protect the information until Commission officials took steps to ensure that the data in question was properly evaluated for classification purposes.

Electric Grid Analysis/Simulations Creation and Handling

Commission officials told us that when the electric grid analysis and simulations were created, there was no expectation that they would be shared with outside entities. These officials also indicated that once the former Chairman was briefed on the matter, he made the decision to share the electric grid analysis and simulations with industry and external Federal officials. Commission staff who were involved in the creation of the electric grid analysis and simulations told us that they expressed concern with sharing the information, indicating that they believed that the information, should it fall into the wrong hands, could provide terrorists or other adversaries with data they might use to disable portions of the grid. In response to these concerns, the creators of the electric grid analysis and simulations told us that the former Chairman permitted them to treat the documents involved as Critical Energy Infrastructure Information (CEII), requiring those who viewed the information to complete nondisclosure agreements.

In an interview with the Office of Inspector General, the former Chairman disputed assertions made by senior Commission staff and Department officials regarding concerns over the classification/sensitivity of the electric grid analysis and simulations. During the interview, he

¹ Ultimately the Commission's study identified, by specific locations, substations which if successfully disabled, could cause failure across wide portions of the U.S. power grid.

indicated that he considered the information to be unclassified because it was drawn from public sources. He also noted that he always intended to provide the information to industry and others so that corrective actions to improve security at substations could be completed. Although he denied releasing specific information, he acknowledged discussing the general nature of the postulated vulnerabilities with at least one member of the media. He indicated that he had never been advised by Commission officials or the Department that the data involved might be classified. He also indicated that there was a general assumption that the modeling and the PowerPoint presentations should be considered CEII but there was never a formal designation as such. The former Chairman also said he was unaware of Commission staff's actions requiring the completion of nondisclosure agreements prior to him sharing the information with Federal and industry officials.

The inconsistencies in the testimony of Commission staff and the former Chairman were troubling. As a consequence, and in an effort to resolve those differences, we requested relevant e-mail traffic and other supporting documentation from the Commission's records. In response to that request, Commission staff provided, and we reviewed, a voluminous amount of e-mail and other supporting documentation for specific periods of interest. In our view, the information contemporaneously generated by Commission staff supported the testimonial evidence they provided regarding the circumstances surrounding the creation and subsequent handling of the electric grid analysis and substation failure simulations. When we attempted to compare the statements made to us by the former Chairman to supporting information, we found no e-mail traffic in the former Chairman's account for the relevant period in October and November of 2013. Commission staff told us that they provided all of the former Chairman's e-mails that were contained in the Commission records for the time period requested. We were, however, able to obtain certain e-mails generated or received by the former Chairman that were not found in his account from the e-mail accounts of other Commission staff members. Nonetheless, because of the inability to obtain information from the former Chairman's e-mail account for that period, we were unable to completely reconcile the differing positions.

Contributing Factors and Information Sharing Challenges

In addition to the issues associated with the basic differences of opinion regarding the sensitivity of the electric grid analysis and substation failure simulations, we found that a variety of procedural and training-related factors contributed to the questionable review and handling of these issues. Specifically, Commission staff was not prepared to deal with internally created documents that may have had national security implications. We found that some staff involved with these matters were unfamiliar with the Commission's policies for handling and sharing CEII as denoted in the *Guidelines on Accessing, Requesting and Handling Privileged, Protected and CEII Material*, dated September 2010 (CEII Guidelines). Even if they had been familiar, we found that there was nothing in the CEII Guidelines to alert staff to seek classification reviews when they sensed that the information with which they were dealing might have had national security implications. Finally, staff noted that they were never trained on the CEII Guidelines and that the only security training that those with security clearances had received focused on procedural regulations rather than methods for identifying national security information.

Also, it was evident that there was confusion between Commission staff and the Department regarding respective roles, responsibilities and authorities to classify Commission-created

information, such as the electric grid analysis. The Department and Commission officials attempted to address the issue of classification authority on several occasions, with different outcomes. In fact, following an October 2013 meeting with the Secretary of Energy at which the concern regarding classification of the simulations was raised, Commission staff questioned the Department's authority to classify its information. Ultimately, the Commission's Office of General Counsel concluded that the Commission did not have original classification authority to classify the electric grid analysis. Commission attorneys noted as well that there was no direct authority prohibiting the Department from unilaterally classifying Commission documents. Despite that authority, Commission attorneys concluded that any Department action to classify the Commission's information could be burdensome in that it would require industry to obtain security clearances for many of its officials.

Classification Issues

In July 2014, 3 months after the issuance of our Management Alert, Commission officials sought classification reviews of the analysis concerning electric grid vulnerabilities from both the Department and the Department of Homeland Security (DHS).

DHS acknowledged that it did not have the authority to classify Commission-generated information. DHS noted that had it produced the information, it would have considered it to be sensitive but unclassified. DHS recommended that Commission staff continue to limit distribution of its analysis to relevant utilities and targeted offices at the Federal level. Department officials found the information to be unclassified but recommended that Commission staff seek specific legislative authority that would permit it to protect similar information from disclosure.

A senior Department classification official told us that he subsequently received and considered information from Commission staff prior to making the classification decision. He told us, as well, that the information was provided to both of the subject matter experts with original classification authority, upon whom we relied when issuing our Management Alert. The senior Classification official told us that based on the additional information provided, both of the subject matter experts concluded that the simulations were not classified.

Federal classification officials also told us that they were reluctant to classify certain nonpublic information. Subject matter experts from the Commission, the Department, and DHS indicated that classifying the electric grid analysis would, in their opinion, prohibit the Federal Government from sharing information with industry officials, an action that could impair the Commission staff's ability to drive mitigation efforts. Thus, in their opinion, the ability to share certain nonpublic information (like the electric grid analysis) with industry outweighed the benefit of classifying certain nonpublic information.

While we agree that sharing information with public sector utilities is important when attempting to address grid vulnerabilities, we noted that there were mechanisms to permit such exchanges without simply declaring the information to be unclassified. For example, the Government has established a classified national security information program for private sector entities, among others, which includes, in part, (1) developing strategic plans to secure and safely share information with industry; (2) establishing information sharing agreements; and (3) facilitating

the provision of security clearances to industry partners based on appropriate background checks and other necessary policies. The use of these strategies could have helped ensure that the extremely sensitive information associated with the analysis and simulations was adequately protected while providing access to public and private utilities in a responsible way.

Discrediting the Commission's Analysis

The concerns raised regarding the Commission staff's analysis of the security of the electric grid, and the fact that the analysis was made publicly available, largely revolve around questions as to whether the information was classified or subject to other forms of protection from improper disclosure. Given the national security mission of the Department, the Office of Inspector General takes questions concerning classification seriously. That applies in this case, as well. For that reason, we give weight to the August 11, 2014, classification decision rendered by the Department.

That having been said, the classification decision document raised serious questions about the purported results or consequences of the grid analysis. As an example, we found that during the June to October 2013 time frame, the Commission Chairman and his staff made multiple presentations regarding the analysis results, including the substation simulation scenarios, to a variety of industry and Federal officials, for the purpose of improving what was identified as security deficiencies within the Nation's electric grid. According to some Commission staff, the presentation depicted potentially devastating impacts on the grid. They told us, as well, that their outcomes were discussed with Department officials, the White House National Security Council and congressional staff. However, as part of their request for a classification decision in response to our Management Alert, Commission officials described the substation simulation scenarios as "hypothetical," and as being based on "public documents" and "historically demonstrated consequences." Based, in part, on the information provided by Commission staff, Department classification officials concluded on page two of the classification document:

To achieve the stated consequences, the analysis assumes both peak capabilities at all the targeted generation stations and the loss of all safety systems designed to prevent the consequences described in the analysis. It also assumes complete loss of the substation with no capability to reconstitute. Even with these highly unlikely assumptions, loss of the critical substations cause the formation of islands of power within the interconnect for an unspecified length of time, not total loss of power ... Given this and that achieving the results in the analysis requires the unlikely loss of several safety systems at the time of highest power demand, loss of the critical substations identified in the analysis would not result in the consequence described in the analysis or any other consequence that could be reasonably expected to result in damage to national security.

These conclusions were apparently important considerations in the decision to find the Commission staff's analysis to be unclassified. Whether intended or not, the Commission staff discredited the very results or consequences of the grid analysis, effectively rendering it of questionable value. The Department's classifier, as previously noted, essentially endorsed this position.

PATH FORWARD

The immediate issue with regard to making the electric grid simulations public appears to have been addressed; however, the matter regarding protection and sharing of sensitive Commission information in the future has not. Striking a balance between information sharing and protecting nonpublic information that could adversely affect national security continues to pose a major management challenge for the Commission. While there are a number of sanctions available for the unauthorized exposure of classified information, such is not the case for information designated as sensitive. For example, Commission officials assert, and we confirmed, that there is apparently no penalty or sanction that could be imposed for disclosing such information for individuals that either leave or were never a part of the Federal service. Therefore, it is imperative that Commission staff develop and implement a comprehensive program to ensure that sensitive and restricted information is adequately protected. Such a program should balance the needs of industry to access such information while protecting the data from would-be adversaries.

In an October 9, 2014, letter to the Inspector General, Commission officials provided the results of their remediation plan in response to our Management Alert. Specifically, Commission staff indicated that they (1) identified the holders of the relevant sensitive nonpublic information and segregated and secured the information, (2) sought assistance to determine classification of information, and (3) took steps to revise its security classification and ethics-training to ensure that Commission employees are aware of their responsibility to protect sensitive nonpublic information. We believe that these efforts are a good start, but we have made a number of recommendations to assist Commission officials with improving controls over protecting nonpublic information.

MANAGEMENT RESPONSE

The Commission concurred with our recommendations and indicated that it was in the process of implementing corrective actions. We found the Commission's comments and planned corrective actions to be generally responsive to our report findings and recommendations. Formal comments are included in Appendix 3.

cc: Secretary
Deputy Secretary
Associate Under Secretary, Office of Environment Health, Safety and Security
Assistant Secretary, Office of Electricity Delivery and Energy Reliability
Director, Office of Classification

**INSPECTION REPORT ON REVIEW OF CONTROLS FOR
PROTECTING NONPUBLIC INFORMATION AT THE FEDERAL
ENERGY REGULATORY COMMISSION**

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REVIEW OF CONTROLS FOR PROTECTING NONPUBLIC INFORMATION AT THE FEDERAL ENERGY REGULATORY COMMISSION

FEDERAL ENERGY REGULATORY COMMISSION

Our review revealed that the Commission's controls, processes and procedures for protecting nonpublic information were severely lacking. Specifically, we found that staff inconsistently handled and shared Commission-created analyses that identified vulnerability of the Nation's electric grid without ensuring that the data was adequately evaluated for sensitivity and classification.

Release of Nonpublic Internal Commission Information

In February 2014, sensitive internal information regarding the Commission's electric grid analysis was mentioned by national media and attributed in the press to the former Commission Chairman. Commission staff described the information as highly sensitive, nonpublic, unclassified information, noting that improper disclosure could have significant national energy implications. Because of the potential for harm associated with the publication of such information, the current and former Chair of the Senate Committee on Energy and Natural Resources and the Commission's Designated Agency Ethics Official requested that the Department of Energy's (Department) Office of Inspector General (OIG) review the facts and circumstances surrounding the disclosure of the nonpublic information. In response, we initiated a review to determine whether the Commission had adequate controls for protecting nonpublic information.

Commission-Created Electric Grid Analysis

We determined that in February/March 2013, the former Chairman directed Commission staff to identify critical electric substations and create substation failure scenarios simulating the impact of the loss of these substations on the Nation's electric grid. The analysis was based on industry and Commission system modeling, and the results, including substation failure simulations, were depicted in Commission developed PowerPoint and other types of presentations.

In March 2013, Commission staff briefed the former Chairman on their findings, which identified the top significant substation locations in the Nation's electric grid. In response to these findings, the former Chairman requested Commission staff provide him additional information, including scenarios that would cause the collapse of the Nation's electric grid. Commission staff provided the former Chairman the requested information in mid April 2013.

Despite the sensitivity of the electric grid analysis and the substation failure simulations, Commission staff began to share some or all of the information with industry or Federal officials without having the material reviewed to determine whether it was classified. The former Chairman referenced the March 2013 briefing he received from Commission staff in a meeting with industry officials that same day. Approximately 2 weeks later, the former Chairman requested a complete presentation be sent to him for purposes of sharing some or all of the information with industry and Federal officials. In response, a senior Commission official and Commission attorneys discussed how to allow outside disclosure of the results of the electric grid

analysis but still protect the information. On the same day he received the April 2013 presentation from Commission staff, the former Chairman requested a closed door meeting with industry to show the information in the April 2013 presentation, to include map views of the substations and their vulnerabilities.

Commission officials told us that when the electric grid analysis and simulations were created, there was no expectation that they would be shared with outside entities. These officials also indicated that once the former Chairman was briefed on the matter, he made the decision to share the electric grid analysis and simulations with industry and external Federal officials. Commission staff who were involved in the creation of the electric grid analysis and simulations told us that they expressed concern with sharing the information, indicating that they believed that the information, should it fall into the wrong hands, could provide terrorists or other adversaries with information they might use to disable portions of the grid. Further, a senior Commission official indicated that the electric grid analysis does not exist outside the Commission and "actually approximates and optimizes attacks" on a certain number of locations. The senior Commission official wrote that "it [the electric grid analysis] would serve as a very nice road map to someone planning such attacks."

In an interview with the OIG, the former Chairman disputed assertions made by senior Commission staff and Department officials regarding concerns over the classification/sensitivity of the electric grid analysis and simulations. During the interview, he indicated that he considered the information to be unclassified because it was drawn from public sources. He further stated that his motivation for directing staff to create the electric grid analysis was a validation exercise to determine the accuracy of two reports—a General Accounting Office (GAO) Report, *Comptroller General Report to the Congress of the United States: Federal Electrical Emergency Preparedness is Inadequate*, dated May 12, 1981, and a National Academy of Sciences Report, *Terrorism and the Electric Power Delivery System*, copyright 2012. Both reports analyzed the Federal role in dealing with major, long-term electric emergencies resulting from acts of war, sabotage, or terrorism. The reports concluded that the Federal Government was not adequately prepared to address national emergencies.

The former Chairman told us that, in his view, the electric grid analysis validated the two reports—that attacks on a small number of locations could significantly affect the grid; therefore, it was necessary to share the results with industry and Federal officials. He also noted that he always intended to provide the information to industry and others so that corrective actions to improve security at substations could be completed. Although he denied releasing specific information, he acknowledged discussing the general nature of the postulated vulnerabilities with at least one member of the media.

Handling and Sharing the Electric Grid Analysis

We found that Commission staff did not have or implement effective processes to appropriately handle and share Commission-generated electric grid analysis. Commission staff told us that information received from industry and incorporated, in part, into the Commission's modeling system of the Nation's electric grid had been historically categorized as critical energy

infrastructure information (CEII). We were told and subsequently confirmed that the intended purpose of CEII is to protect industry generated documents sent to the Commission. Title 18, Code of Federal Regulations (CFR) 388.113, *Accessing Critical Energy Infrastructure Information*, defines CEII as specific engineering, vulnerability or detailed design information about proposed or existing critical infrastructure (physical or virtual). This includes details that could be useful to a person in planning an attack on critical infrastructure and that do not simply give the general location of critical infrastructure. The Commission's *Guidelines on Accessing, Requesting and Handling Privileged, Protected and CEII Material*, dated September 2010 (CEII Guidelines), also require that such information be protected and handled under a prescribed regimen. Specifically, CEII must be properly labeled and maintained in a locked room or locked cabinet when not in use. The guidance also notes that CEII information is exempt from mandatory disclosure under Title 5 United States Code (U.S.C.) Section 552, *Freedom of Information Act*.

Commission Handling of the Electric Grid Analysis

Despite these requirements, we found that Commission staff did not have or implement effective processes to appropriately handle Commission-generated electric grid analysis. Contrary to CEII Guidelines, we determined that Commission staff inconsistently labeled the various versions of the electric grid analysis and simulations, and the information was not always protected when not in use. Further, we found that CEII information was removed from Commission premises without proper authorization. We determined that a portable device and a personal laptop containing certain aspects of the electric grid analysis were removed from Commission premises without proper authorization or the completion of a required Deviation Form. The Commission's internal policy, *Protection of Sensitive Information*, April 2013 (Internal Policy), requires written approval and specifies that staff must complete the *Request for Deviation from Procedures Form* when there is a need for a Commission employee or contractor to take the material from the Commission's premises.

In late January 2014 and February 2014, the Commission received *Freedom of Information Act* (FOIA) requests from the media to obtain, in part, information regarding the modeling study methodology and specific locations indicated in the electric grid analysis. We determined that Commission staff responsible for processing the FOIA requests were unaware that some or all of the requested documentation may have previously been designated as CEII. Commission staff have established separate processes for addressing information requests under FOIA and CEII; however, we were told that CEII processes are only used if there are no FOIA exemptions precluding information from being released. Commission staff processed the media FOIA requests using Exemption 5 (Privileged Inter-Agency Document) and Exemption 7(f) (Law Enforcement Sensitive).

However, our e-mail review revealed that a Commission attorney noted that although the Commission has applied FOIA Exemption 7(f), the Department of Justice has not endorsed the Commission's application. The Commission attorney further noted that a legislative exemption codifying CEII would enable Commission staff to protect the information under FOIA Exemption 3, which protects information specifically exempted from disclosure by statute.

Sharing the Electric Grid Analysis with Industry and Federal Officials

We also received inconsistent and conflicting information regarding how the electric grid analysis and substation failure simulations were shared outside the Commission. CEII Guidelines allow CEII access for non-Commission employees on a need-to-know basis through the use of CEII nondisclosure agreements. However, we received conflicting information about (1) whether industry and Federal officials were required to sign nondisclosure agreements, (2) whether industry and Federal officials viewed electronic versus hard copy presentations, and (3) the reference to specific details such as locations included in the presentations.

From June through October 2013, Commission staff (including the former Chairman) either briefed or shared the various details of the electric grid analysis with industry and Federal officials, and also congressional staff. In April 2013, prior to the initiation of these briefings, a senior Commission official requested that the former Chairman consider using generic simulations to avoid CEII implications, but the former Chairman denied the request. The creators of the electric grid analysis and simulations told us that in response to concerns about sharing the information, the former Chairman permitted them to treat the documents involved as CEII, requiring those who viewed the information to complete nondisclosure agreements. In separate e-mails dated April 23 and 25, 2013, a senior Commission official wrote that he discussed the use of nondisclosure agreements with the former Chairman who agreed with the concept. However, although the former Chairman indicated that there was a general assumption that the modeling and the PowerPoint presentations should be considered CEII, he said there was never a formal designation as such. The former Chairman also said he was unaware of Commission staff's actions requiring the completion of nondisclosure agreements prior to him sharing the information with Federal and industry officials.

The inconsistencies in the testimony of Commission staff and the former Chairman were troubling. As a consequence and in an effort to resolve those differences, we requested relevant e-mail traffic and other supporting documentation from the Commission's records. In response to that request, Commission staff provided, and we reviewed, a voluminous amount of e-mail and other supporting documentation for specific periods of interest. In our view, the information contemporaneously generated by the Commission staff supported the testimonial evidence they provided regarding the circumstances surrounding the creation and subsequent handling of the electric grid analysis and substation failure simulations. When we attempted to compare the statements made to us by the former Chairman to supporting information, we found no e-mail traffic in the former Chairman's account for a relevant period in October and November of 2013. Commission staff told us that they provided all of the former Chairman's e-mails that were contained in the Commission records for the period requested. We were, however, able to obtain certain e-mails generated or received by the former Chairman that were not found in his account from the e-mail accounts of other Commission staff members. Nonetheless, because of the inability to obtain information from the former Chairman's e-mail account for that period, we were unable to completely reconcile the differing positions.

We were provided 106 copies of signed CEII nondisclosure agreements (NDAs): 103 general NDAs for industry and 3 Federal Agency Acknowledgements—one each from Department of

Energy, Department of Homeland Security (DHS), and Tennessee Valley Authority, to allow them access to the electric grid analyses. Interviews and document reviews, however, revealed that not all Federal officials or congressional staff who were granted access signed NDAs. In draft comments to this report, Commission staff indicated that only one Government employee was required to sign NDAs for their respective agencies.

We received further conflicting information regarding the contents of the presentations made to both private sector and Federal officials. The former Chairman told us the PowerPoint presentation he presented included the results of the modeling study and showed that if a number of pieces of equipment in the electric grid were destroyed, sections of the grid would black out. He further advised that the only documentation distributed during the presentations was a list of mitigation efforts for improving physical security at industry locations. The former Chairman stated that industry and Federal officials only viewed the presentations and did not receive electronic or hard copies. Contrary to that assertion, some Department officials told us they received electronic or hard copies of the presentation, while other meeting participants from the Department claimed not to have received copies of the presentation.

Obtaining a Classification Decision on Electric Grid Analysis

In addition to not having or implementing effective processes to handle and share Commission-generated electric grid analysis, we determined that Commission staff did not obtain a timely classification decision. Our review identified at least four opportunities between July 2013 and April 2014, where responsible officials questioned or discussed possible classification of the vulnerability analyses. Even after concerns were expressed internally and were later raised by senior Department officials that the electric grid analysis, including the substation failure simulations, could contain classified information, Commission staff failed to obtain a formal classification review of the material for nearly a year. Executive Order (EO) 13526, *Classified National Security Information*, indicates that if an employee of an agency is unsure about the classification status of information, that employee is required to confirm from an authorized official that the information is unclassified before it may be disclosed. The EO further requires the agency to obtain a classification decision within 30 days of being notified of potentially classified information to ensure that information is appropriately safeguarded and controlled. Details regarding the opportunities for classification reviews include the following:

- **July 2013: Concerns Raised by Commission Staff.** Our e-mail review revealed that as early as July 2013, Commission staff raised a concern to senior Commission officials, after a briefing to the National Security Council, that the electric grid analysis could be classified. However, during our interviews, senior Commission officials told us they could not recall the substance of the e-mail and had no recollection of a meeting or discussion about the classification level of the electric grid analysis.
- **October 2013: Concerns Raised by Department Officials.** We were told that after the former Chairman briefed the Secretary of Energy and other senior Department officials in early October 2013, concerns were raised by Department officials about the classification level of the electric grid analysis. In response to those concerns, a Department subject matter expert with original classification authority was directed to contact Commission

staff to obtain a copy of the electric grid analysis. Although the subject matter expert told us that he did not obtain a copy of the electric grid analysis, we found an e-mail from mid-October 2013, where a Department Office of Classification official inquired about whether the Department subject matter expert needed any assistance [with classifying the electric grid analysis]. The subject matter expert indicated, "I haven't classified it [electric grid analysis] yet." During our interview, the subject matter expert told us that he did not obtain a copy of the electric grid analysis until February 2014. He also indicated Commission officials had never asked him for a classification decision. Further, the Office of Classification official told us he informed the subject matter expert at the time that he [Classification official] could assist in facilitating the process in classifying the document if needed. However, according to the Office of Classification official, the subject matter expert responded that he was not going to classify the document for reasons unbeknownst to the Office of Classification official.

Also, during the same time frame in October 2013, Department and Commission officials concluded that the Commission did not have original classification authority and therefore could not determine the classification level of the electric grid analysis. Our review identified an e-mail in which Commission staff determined that in order to receive original classification authority, they would be required to create a Commission-specific Classification Guide that would identify Commission-originated information that could pose a threat to national security if disclosed. The author concluded that the failure of the nation's power grid would probably be considered a threat to national security.

Further, our review identified an e-mail following a meeting with the Secretary of Energy in which the former Chairman indicated that he did not want to have anything classified "unless we [the Commission] are fully engaged and consulted." The former Chairman told us he had no recollection of the aforementioned e-mail. He indicated that he had never been advised by Department or Commission officials that the data involved might be classified. He told us, however, he would not have wanted the electric grid analysis classified because it would have prevented Commission staff from sharing information with industry officials.

Commission officials told us they could not recall whether a meeting or discussion about the classification level of the electric grid analysis had occurred. Our e-mail review revealed that Commission staff, including the former Chairman, had scheduled a meeting in late October 2013 to discuss classification; however, that same day, a senior Commission official indicated that the Department "has agreed to forestall any classification actions for the foreseeable future." We were unable to confirm who within the Department agreed to forestall the classification decision referenced in the e-mail.

- **February 2014: Concerns Raised Among Commission, Department and DHS Officials.** We determined that in February 2014, shortly after the Commission's receipt of the media's FOIA requests, Commission, DHS, and Department staff engaged in extensive conversations regarding the Commission's and the Department's classification authority and whether the electric grid analysis should be classified. Specifically, we noted that Commission, DHS, and Department staff conducted a conference call amid

concerns about the possible publication of an article disclosing aspects of the electric grid analysis. In management's draft comments to our initial report, we were told that representatives on that call included senior agency officials, subject matter experts, attorneys and classification representatives from DHS and the Department. We were further advised by Commission staff that at the conclusion of the call, the participants agreed that seeking to classify the electric grid analysis at that time did not appear to be warranted for several reasons, including the difficulty of achieving retroactive classification and the circumstances of prior distribution of that information. Upon receiving that input, Commission officials instead directed their efforts to taking other steps to prevent further public dissemination of the sensitive information.

However, we determined that subsequent to this conference call, a Commission program office recommended that the electric grid analysis should not be released because it involved national security information. The rationale included in the response was that the electric grid analysis conveys critical locations on the electric grid, and therefore, any information released to the public could be harmful and provide a road map for terrorists or others to possibly attack certain locations that could result in widespread blackouts. Despite this conclusion, Commission staff did not request an original classification decision and instead denied the media's request under FOIA Exemptions 5 and 7(f).

Around the same time frame (February 2014), the Department's General Counsel conducted research to determine whether the Commission had original classification authority. We were told, and subsequently confirmed, that the Department's General Counsel staff concluded that no Commission employee has original classification authority. In a February 2014 e-mail, the Department's General Counsel staff wrote that "the Secretary of Energy has original classification authority under Part 1, Section 1.1 of EO 13526," *Classified National Security Information*. The author of the e-mail concluded that the information in question was clearly within the Department's domain to classify. In addition, we determined that Commission and senior Department officials engaged in extensive conversations with Federal officials regarding the media FOIA requests and the question of classification. Our e-mail review revealed that a senior Administration official advised a senior Department official that the requested documentation may constitute "a major security vulnerability." The senior Administration official concluded that "classifying going forward is fine ... as long as it meets classification authorities" and the requested information is not being retroactively classified. In a separate February 2014 e-mail, the senior Department official mentioned "the provocative nature of the material we reviewed." The Department and DHS were to discuss with Commission officials the classification methodology that DHS used to classify the list of companies that would create the greatest regional or national economic or security vulnerability given a cyber attack—a deliverable required in EO 13636, *Improving Critical Infrastructure Cybersecurity*. The senior Department official concluded that "the decision to classify the list of substations is technically FERC's decision to make, but FERC is seeking guidance from DHS and DOE."

- **April 2014: Concerns Raised by an OIG Report.** Shortly after we initiated our inspection, we were informed by two Department subject matter experts, both of whom

had original classification authority, that the scenarios and simulations, including the information that may have been shared with industry and Federal officials, may have contained classified information. We alerted Commission officials to this possibility in our Management Alert on *Review of Internal Controls for Protecting Non-public Information at the Federal Energy Regulatory Commission* (DOE/IG-0906, April 9, 2014), and recommended that action be taken to properly protect the information until Commission officials took steps to ensure that the data in question was properly evaluated for classification purposes. We noted that Commission officials moved to protect the information in question by identifying and securing any/all source data, studies and modeling material, including supporting reports and presentations after the issuance of the OIG's Management Alert. Specifically, a multi-office Commission team identified relevant materials and segregated those materials in a secured and restricted-access room within Commission headquarters. After conducting searches for relevant documents, Commission staff created a log detailing the results of their search. The team collected information identified on these employee logs, delivered applicable documents to the secured room and, in the case of electronic files, used secure hard drives to extract information from identified electronic systems.

However, we found that while Commission officials took steps to identify and segregate the potentially classified documentation, they did not take immediate action to obtain an original classification decision of the information or documentation in question after the issuance of our Management Alert. Specifically, in July 2014, 3 months after the issuance of our Management Alert, Commission officials sought classification reviews of the analysis concerning electric grid vulnerabilities from both the Department and DHS. The Department determined that the information was not classified. DHS officials acknowledged that they did not have the authority to classify Commission-generated information, but noted that had it produced the analysis, it would have considered the information to be sensitive but unclassified. DHS also recommended that the Commission continued to limit disclosure of its analysis to relevant utilities and targeted offices at the Federal level. Department officials also found the information to be unclassified and recommended that the Commission seek specific legislative authority that would permit it to protect similar information from disclosure.

A senior Department classification official told us that the Department's decision was attributed, in part, to him having subsequently received additional information from Commission staff and that the information was provided to both of the subject matter experts with original classification authority, upon whom we relied when issuing our Management Alert. The senior Classification official told us that based on the additional information provided, both of the subject matter experts concluded that the simulations were not classified.

The concerns raised regarding the Commission staff's analysis of the security of the electric grid and the fact that the analysis was made publicly available, largely revolve around questions as to whether the information was classified or subject to other forms of protection from improper disclosure. While Commission staff took certain steps in an effort to protect the electric grid analysis, the absence of an initial classification decision put the Commission at risk of adverse

public scrutiny for the unauthorized disclosure of nonpublic information. Given the national security mission of the Department, the OIG takes questions concerning classification seriously. That applies in this case, as well. We do not have either original or derivative classification authority. Thus, when classification decisions are made or when questions concerning classification arise, we rely upon Department professionals who have such authority. For that reason, we give weight to the August 11, 2014, classification decision rendered by the Department.

That having been said, the August 11, 2014, classification decision document raised serious questions about the purported results or consequences of the grid analysis. As an example, we found that during the June to October 2013 time frame, the Commission Chairman and his staff made multiple presentations regarding the analysis results, including the substation simulation scenarios, to a variety of industry and Federal officials, for the purpose of improving what was identified as security deficiencies within the Nation's electric grid. According to some Commission staff, the presentations depicted what were described as having a potentially devastating impact on the grid. They told us, as well, that their outcomes were discussed with Department officials, the White House National Security Council and congressional staff. However, as part of their request for a classification decision in response to our Management Alert, Commission officials described the substation simulation scenarios as "hypothetical," and as being based on "public documents" and "historically demonstrated consequences." Based, in part, on the information provided by Commission staff, Department classification officials concluded on page two of the classification document:

To achieve the stated consequences, the analysis assumes both peak capabilities at all the targeted generation stations and the loss of all safety systems designed to prevent the consequences described in the analysis. It also assumes complete loss of the substation with no capability to reconstitute. Even with these highly unlikely assumptions, loss of the critical substations cause the formation of islands of power within the interconnect for an unspecified length of time, not total loss of power ... Given this and that achieving the results in the analysis requires the unlikely loss of several safety systems at the time of highest power demand, loss of the critical substations identified in the analysis would not result in the consequence described in the analysis or any other consequence that could be reasonably expected to result in damage to national security.

These conclusions were apparently important considerations in the decision to find the Commission staff's analysis to be unclassified. Whether intended or not, it appeared as though both Commission staff and Department classifiers discredited the very results or consequences of the Commission's grid analysis, effectively rendering it of questionable value.

Contributing Factors and Impact

In addition to the issues associated with the basic differences of opinion regarding the sensitivity of the electric grid analysis and substation failure simulations, we found that a variety of procedural and training-related factors contributed to the questionable review and handling of issues we observed. Specifically, Commission staff was not prepared to deal with internally created documents that may have had national security implications. We found that some

Commission staff involved with handling the analysis, simulations and presentations were unfamiliar with the Commission's policies for handling and sharing CEII as denoted in the *Guidelines on Accessing, Requesting and Handling Privileged, Protected and CEII Material*, dated September 2010. Even if they had been familiar, we found that there was nothing in the CEII Guidelines to alert staff to seek classification reviews when they sensed that the information with which they were dealing may have had national security implications. Staff noted that they were never trained on the CEII Guidelines and that the only security training that those with security clearances had received focused on procedural regulations rather than methods for identifying national security information. Finally, there appeared to be a lack of understanding among Commission staff that while publicly-available information is typically unclassified, classified information or unclassified but controlled sensitive information is occasionally found in public sources, and it is possible that aggregating certain publicly available information can result in a classified product or a product containing sensitive controlled information.

Also, it was evident that there was confusion between Commission staff and Department officials regarding respective roles, responsibilities, and authorities to classify Commission-created information, such as the electric grid analysis. Department and Commission officials attempted to address the issue of classification authority on several occasions with different outcomes. In fact, following an October 2013 meeting with the Secretary of Energy at which the concern regarding classification of the simulations was raised, Commission officials questioned the Department's authority to classify its information. Ultimately, the Commission's Office of General Counsel concluded that the Commission did not have original classification authority to classify the electric grid analysis. Commission attorneys noted as well that there was no direct authority prohibiting the Department from unilaterally classifying Commission documents. Despite that authority, Commission attorneys concluded that any Department action to classify the Commission's information could be burdensome in that it would require industry to obtain security clearances for many of the officials.

In addition to training issues and unclear roles and responsibilities, there appears to be a culture of reluctance to classify certain nonpublic information. Specifically, subject matter experts from the Commission, the Department and DHS indicated that classifying the electric grid analysis would, in their opinion, prohibit the Federal Government from sharing information with industry officials, an action that could impair Commission staff's ability to drive mitigation efforts. Thus, in their opinion, the ability to share certain nonpublic information (like the electric grid analysis) with industry outweighed the benefit of classifying certain nonpublic information. While we agree that sharing information with public sector utilities is important when attempting to address grid vulnerabilities, we noted that there were mechanisms to permit such exchanges without simply declaring the information to be unclassified. For example, the Government has established a classified national security information program for private sector entities, among others, which includes, in part, (1) developing strategic plans to secure and safely share information with industry, (2) establishing information sharing agreements, and (3) facilitating the provision of security clearances to industry partners based on appropriate background checks and other necessary policies. The use of these strategies could help ensure that extremely sensitive information associated with the analysis and simulations was adequately protected while providing access to responsible public and private utilities.

Path Forward and Actions Taken

The immediate issue with regard to making the electric grid simulations public appears to have been addressed; however, the matter regarding protection and sharing of sensitive Commission information in the future has not. Striking a balance between information sharing and protecting nonpublic information that could adversely affect national security continues to pose a major management challenge for the Commission. While there are a number of sanctions available for the unauthorized exposure of classified information, such is not the case for information designated as sensitive. For example, Commission officials asserted, and we confirmed, that there is apparently no penalty or sanction that could be imposed for disclosing such information for individuals that either leave or were never a part of the Federal service. Therefore, it is imperative that Commission officials develop and implement a comprehensive program to ensure that sensitive and restricted information is adequately protected. Such a program should balance the needs of industry to access such information while protecting the data from would-be adversaries.

In an October 9, 2014, letter to the Inspector General, senior Commission officials provided the results of its remediation plan in response to our Management Alert. These officials indicated that they had (1) identified the holders of the relevant sensitive nonpublic information and segregated and secured the information, (2) sought assistance to determine classification of information, and (3) took steps to revise its security classification and ethics training to ensure that Commission employees are aware of their responsibility to protect sensitive nonpublic information. We believe that these efforts are a good start, but we have made a number of recommendations to assist Commission officials with improving controls over protecting nonpublic information.

RECOMMENDATIONS

We recommend that the Chairman, Federal Energy Regulatory Commission:

1. Ensure Commission employees are aware of and properly trained on their responsibilities related to CEII;
2. Ensure Commission employees possess the necessary security clearances and receive adequate initial and refresher training concerning the identification and protection of classified information;
3. Ensure that established CEII processes to protect and control nonpublic information are current and that such policies are disseminated and properly implemented;
4. Work with appropriate officials to address the apparent confusion between the Commission and the Department regarding respective roles, responsibilities and authorities to classify Commission-created information; and
5. Determine whether to seek specific authority to protect or classify as necessary Commission developed documents and develop necessary guides and training associated with any authorities obtained.

MANAGEMENT RESPONSE

Management concurred with our recommendations and indicated that corrective actions were in the process of being implemented to enhance the Commission's controls for protecting nonpublic information. We found management's comments and planned corrective actions to be generally responsive to our report findings and recommendations.

Further, in response to our April 2014 Management Alert, Commission staff previously modified both the 2014 mandatory annual ethics training and 2014 mandatory annual classified security training to enhance the proper control, handling and protection of nonpublic information and classified matter respectively. Future training will continue to address proper treatment of nonpublic information as well as enhanced guidance on appropriate procedures for the creation of classified matter.

Also, in December 2014, Commission staff met with Department classification officials and discussed respective roles, responsibilities and authorities to classify Commission-created information. Commission staff is developing a classification guide based on those discussions and future coordination with Department classification officials.

We received and considered comments from other Department elements. Management's formal comments are included in Appendix 3.

OBJECTIVE, SCOPE AND METHODOLOGY

Objective

We initiated this inspection to determine whether the Federal Energy Regulatory Commission (Commission) has adequate controls for protecting nonpublic information.

Scope

The inspection was performed from March 2014 to January 2015, at the Commission in Washington, DC; and Department of Energy (Department) Headquarters, located in Washington, DC; and Germantown, Maryland.

To accomplish the inspection objective we performed the following:

- Reviewed and analyzed Federal, Department and Commission policies and procedures regarding the protection of nonpublic information.
- Conducted interviews with Commission and Department officials, including personnel with the Commission's Offices of Electric Reliability, Energy Infrastructure Security, External Affairs, Executive Director, and General Counsel, as well as the Department's Offices of Classification, General Counsel and Electricity Delivery and Energy Reliability, and Office of Intelligence and Counterintelligence.
- Analyzed hard copy and electronic documents, materials and records, including, but not limited to, calendars, e-mails, presentations, timelines, etc. obtained from Commission and Department officials relating to the matters under review.
- Interviewed a former Commission Chairman.

Methodology

We conducted this special review in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*, dated January 2012. Those standards require that we plan and perform the inspection to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions and observations based on our inspection objective. We believe the evidence obtained provided a reasonable basis for our conclusions and observations based on our inspection objective. Accordingly, the inspection included tests of controls and compliance with laws and regulations to the extent necessary to satisfy the inspection objective. Because our inspection was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our inspection. Finally, we relied on computer-processed data, to some extent, to satisfy our objective. We confirmed the validity of such data, when appropriate, by reviewing source documents.

When we attempted to compare the statements made to us by the former Chairman to supporting information, Commission staff told us that they provided all of the former Chairman's e-mails

that were contained in the Commission records for the period requested. Upon review, however, we found no e-mail traffic in the former Chairman's account for some of the relevant periods. We were unable to determine with any degree of certainty why there were no e-mails for the former Chairman for the periods in question. We were, however, able to obtain certain e-mail generated or received by the former Chairman from the accounts of other staff members. Despite not being able to determine whether the former Chairman generated or received any e-mail during the relevant period, in our opinion, we obtained sufficient, appropriate evidence to support our findings and conclusions.

The Commission, the Department's Office of Environment, Health, Safety and Security and the Office of Electricity Delivery and Energy Reliability waived an exit conference.

RELATED REPORTS

Office of Inspector General

- Management Alert on [*Review of Internal Controls for Protecting Non-Public Information at the Federal Energy Regulatory Commission*](#) (DOE/IG-0906, April 2014). The Department of Energy's (Department) Office of Inspector General (OIG) initiated a review of internal controls for protecting nonpublic information at the Federal Energy Regulatory Commission (Commission). Based on preliminary work performed, the OIG concluded that the Commission may not possess adequate controls for identifying and handling certain electric grid-related information that could pose threats to national security. The OIG recommended that the Commission take immediate action to ensure that the information referred to in the management alert was afforded maximum protection.
- Inspection Report on [*Review of Controls Over the Department's Classification of National Security Information*](#) (DOE/IG-0904, March 2014). The Department's OIG found that the Department had established and implemented critical elements of its classified national security information (NSI) program. However, our review revealed that certain aspects of the NSI program could be improved. The classification related issues we observed occurred, in part, because of ineffective oversight of classification activities and inadequate training and guidance. In general, we found management's comments and planned corrective actions to be generally responsive to our report findings and recommendations.
- Inspection Report on [*Internal Controls over Accountable Classified Removable Electronic Media at Oak Ridge National Laboratory*](#) (INS-O-09-02, May 2009). The Department's OIG found that (1) a number of Secret//Restricted Data media had not been identified as Accountable Classified Removable Electronic Media (ACREM) and placed into a system of accountability; (2) other ACREM protections and controls were not implemented; and (3) other media devices were stored in a security area without an analysis of vulnerabilities. Several recommendations were made to the Manager, Oak Ridge Office, regarding improving controls over ACREM. Corrective actions had been taken to address the recommendations.

Government Accountability Office

- Report on [*Managing Sensitive Information, Actions Needed to Ensure Recent Changes in DOE Oversight Do Not Weaken an Effective Classification System*](#) (GAO-06-785, June 2006). The Government Accountability Office found that an October 2005 shift in responsibility for classification oversight to the Office of Security Evaluations has created uncertainty about whether a high level of performance in oversight will be sustained. The Agency recommended that (1) the Department of Energy conduct a similar number of reviews, as it did before October 2005; (2) apply selection procedures

that more randomly identify classified documents for review; and (3) disclose the selection procedures in future classification inspection reports. Corrective actions had been taken to address the recommendations.

MANAGEMENT COMMENTS

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

January 15, 2015

OFFICE OF THE CHAIRMAN

Honorable Gregory H. Friedman
Inspector General
Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Dear Inspector General Friedman:

Thank you for the opportunity to review the Department of Energy (Department) Office of Inspector General's (OIG) draft report on Review of Controls for Protecting Nonpublic Information at the Federal Energy Regulatory Commission (Draft Report). I appreciate your meticulous review of the Commission's controls for protecting nonpublic information and your careful consideration of the information you received from Commission staff. I concur with the Draft Report's recommendations and have begun to implement them, as discussed below.

1. The Draft Report recommends that I ensure Commission employees are aware of and properly trained on their responsibilities related to critical energy infrastructure information (CEII). In preparing the 2014 annual ethics training that is mandatory for all FERC employees, I directed that the training emphasize issues associated with the proper handling of non-public information (including CEII). Future training will continue to address proper treatment of such non-public information and will reflect any changes to the Commission's CEII policy developed in response to Recommendation 3 of the Draft Report.

2. The Draft Report recommends that I ensure Commission employees possess the necessary security clearances and receive adequate initial and refresher training concerning the identification and protection of classified information. In response to guidance from the Office of Personnel Management, FERC two years ago initiated a re-examination of the position requirements of all of its employees to ensure that they possess the necessary security clearances warranted by their duties and responsibilities. In 2013, FERC completed that re-examination and additional background checks for relevant employees based on that review. We remain committed to ensuring proper alignment in this area.

Further, in accordance with DOE regulations, FERC requires all Commission employees holding National Security Clearances to complete Annual Classified Security Training. Based on the OIG's April 2014 Management Alert and lessons that FERC has drawn from its internal review of our information security practices, FERC modified its 2014 mandatory Annual Classified Security Training to emphasize the protection and control of classified matter. In addition, I have directed Commission staff to include enhanced guidance on appropriate procedures surrounding the creation of classified matter in this year's Annual Classified Security Training. Commission staff will develop and provide that enhanced training by August 2015.

Finally, FERC will re-engage the Department in support of the requirement to comprehensively train affected employees. In March 2013, FERC arranged for Department subject matter experts to conduct a course entitled Classified Matter Protections which provided specific guidance on handling classified matter pursuant to Departmental policy directives and practices. FERC will work with the Department to provide such training prospectively as a mandatory supplement to its annual training.

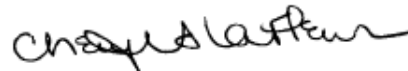
3. The Draft Report recommends that I ensure that established CEII processes to protect and control nonpublic information are current and that such policies are disseminated and properly implemented. I have directed Commission staff to review the Commission's CEII regulations and provide a recommendation to the Commission by May 1, 2015, on whether and how those regulations should be revised to ensure that they are appropriate to protect relevant nonpublic information.

4. The Draft Report recommends that Commission staff work with appropriate officials to address the apparent confusion between the Commission and the Department regarding respective roles, responsibilities and authorities to classify Commission-created information. In December 2014, Commission staff met with Department classification officials to discuss such roles, responsibilities, and authorities. Commission staff is developing a classification guide based on those discussions and the factors that Department classification officials identified in their response to the request for a classification determination discussed in the Draft Report. Commission staff will continue to coordinate with Department classification officials during development of a classification guide. I have directed Commission staff to complete a draft classification guide by July 1, 2015, for review by Department classification officials.

5. The Draft Report recommends that I determine whether to seek specific authority to protect or classify as necessary Commission-developed documents and develop necessary guides and training associated with any authorities obtained. Commission staff is actively evaluating whether there is a need for additional statutory authority in this area. As appropriate, we will discuss this issue with the Department, other Federal agencies, and Congress. We will update any classification guide developed by the Commission to reflect any new authority granted by Congress.

Thank you again for your work on this matter. We are dedicated to learning from this experience and strengthening our processes going forward. Please do not hesitate to contact me if I can provide any further information.

Sincerely,



Cheryl A. LaFleur
Chairman
Federal Energy Regulatory Commission



Department of Energy
Washington, DC 20585

January 13, 2015

MEMORANDUM FOR GREGORY H. FRIEDMAN
INSPECTOR GENERAL

FROM: PATRICIA A. HOFFMAN ^{PH}
ASSISTANT SECRETARY
ELECTRICITY DELIVERY AND ENERGY RELIABILITY

SUBJECT: Draft Report "Review of Controls for Protecting Nonpublic Information at the Federal Energy Regulatory Commission (FERC)"

We appreciate the opportunity to comment on the draft Office of Inspector General (OIG) report, Review of Controls for Protecting Nonpublic Information at the Federal Energy Regulatory Commission."

Comment: The Office of Electricity Delivery and Energy Reliability recognizes this report highlights the need for the Department of Energy and FERC to seek a statutory exemption based on our understanding of inherent weakness and uncertainty associated with existing exemptions available under the Freedom of Information Act (FOIA) for this type of government generated information and the ability to have consistent protection across public and private organizations. It would seem logical to us that the Government generated information would be produced and controlled as Controlled Unclassified Information under a b(3) statutory exemption with the period of control covering from the time the information is generated and when industry fixes the problem. Statutory exemptions are superior because if they can withstand legal challenges in court, can specify control and protection rules that are consistent across Government and private entities, and can have criminal and civil penalties for improper disclosure.



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Department of Energy

Washington, DC 20585

January 8, 2015

MEMORANDUM FOR GREGORY H. FRIEDMAN
INSPECTOR GENERAL

FROM: MATTHEW B. MOURY *MB Moury*
ASSOCIATE UNDER SECRETARY FOR
ENVIRONMENT, HEALTH, SAFETY AND SECURITY

SUBJECT: Office of Inspector General Inspection Draft Report Comments:
Review of Controls for protecting Nonpublic Information at the Federal
Energy Regulatory Commission (Project Number S14IS008) (U)

We appreciate the opportunity to comment on the draft Office of Inspector General (OIG) report. The Office of Environment, Health, Safety and Security provides the following comments on the draft memorandum from OIG to the Chairman, Federal Energy Regulatory Commission (FERC). These comments also apply to similar language found in the text of the draft report itself:

- Page 4. "Department officials, on the other hand, simply found the information to be unclassified but recommended that the Commission seek specific legislative authority that would permit it to protect similar information from disclosure."
- Page 5. "Whether intended or not, the classifiers discredited and debunked the very basis underlying the commission's grid analysis, effectively rendering it of questionable value."
- Comment: The Office of Classification was asked formally to make a classification determination on four FERC documents. The determination was not simple but in fact was a multi-step judgment regarding the nature of the source information used in the FERC analysis, the nature of assumptions used to create the analysis, the likelihood of damage to national security and the overall need to communicate findings to private industry. It was a difficult decision but balanced with a recommendation to FERC to seek a better statutory-based exemption to control and protect this type of unclassified information.

We would not use the term "debunked" as an outcome of our classification review nor assign a value judgment whether the FERC analysis raises appropriate concerns to the reliability or resilience of the electrical grid. Our letter to FERC indicated that in our judgment, the documents did not contain classified information. We have no doubt that there is value to the FERC analysis in identifying weaknesses in the electrical grid.



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Further, our recommendation to FERC to seek a statutory exemption was based on our understanding of inherent weakness and uncertainty associated with the existing exemptions available to DOE and FERC under the Freedom of Information Act (FOIA) for this type of government generated information and the ability to have consistent protection across public and private organizations. It would seem logical to us that the Government generated information would be produced and controlled as Controlled Unclassified Information under a b(3) statutory exemption with the period of control covering from the time the information is generated and when industry fixes the problem. Statutory exemptions are superior because if they can withstand legal challenges in court, can specify control and protection rules that are consistent across Government and private entities, and can have criminal and civil penalties for improper disclosure.

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Office of Inspector General (IG-12)
Department of Energy
Washington, DC 20585

If you want to discuss this report or your comments with a member of the Office of Inspector General staff, please contact our office at (202) 253-2162.