

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

February 11, 2014

OFFICE OF THE CHAIRMAN

The Honorable Al Franken
United States Senate
Washington, D.C. 20510

Dear Senator Franken:

Thank you for your letter of February 7, 2014, asking the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation (NERC) to determine whether federal regulations are needed to address the risk of physical attacks on our Nation's bulk power system. I agree that protecting the bulk power system against such attacks is an issue of critical importance.

Since the attack on the Metcalf facility in April 2013, the Commission's staff has taken responsive action together with NERC, other federal and state agencies, and transmission and generation asset owners and operators. The other federal agencies include the Department of Homeland Security, the Department of Energy and the Federal Bureau of Investigation, among others. Working together, we have explained to utilities the specific facts of the attack on Metcalf and the need for asset owners to increase the physical protection of key facilities. We have also conducted detailed grid modeling to identify the most critical facilities and helped identify protective measures that would be appropriate for particular types of facilities and locations.

For example, FERC representatives have briefed the chief executive officers of many large investor-owned utilities, cooperative utilities, and municipal utilities, as well as of the Independent System Operators and Regional Transmission Organizations, which together serve nearly three-quarters of our nation's population. We have also briefed the National Association of Regulatory Utility Commissioners (NARUC) and various State commissioners, in addition to the leadership of major electric industry trade associations such as the Edison Electric Institute and, National Rural Electric Cooperative Association, the Large Public Power Council, and the North American Transmission Forum. And currently, we are participating with NERC, DHS, DOE, and FBI in a 13-city physical security campaign (including a detailed briefing about the Metcalf incident) intended to reach out to utilities, states, and law enforcement agencies in the United States and Canada.

To date, our efforts have focused on strongly encouraging utilities to make improvements to their physical security, by explaining why and where they should be made. This approach has resulted in improvements being implemented more quickly and more confidentially than a mandatory regulation could have accomplished under our

existing authority, as explained below. Also, the measures taken were uniquely suited to the types of facilities and locations, in a way that might be more difficult to accomplish through broad-based regulation.

Nonetheless, I agree that it is appropriate to consider whether federal regulation is needed to ensure the risk of physical attacks on our electrical infrastructure is addressed adequately. Thus, I have asked Commission staff to evaluate this issue with NERC under the authority of section 215 of the Federal Power Act. In doing so, we will make every effort to ensure the confidentiality of sensitive security information, recognizing, however, that the Commission is still subject to the Freedom of Information Act even in this area of its authority.

As Commission members and representatives have stated previously, section 215 is a reasonable approach for developing traditional reliability standards, as it uses the technical knowledge of industry through an inclusive stakeholder process to carefully develop standards that truly address long-term reliability issues. However, in the context of national security concerns, the confidentiality of sensitive security information, and the timeliness and certainty of the process, are appropriate concerns. Congress could improve the Commission's and NERC's ability to address the risks related to physical and cyber attacks by enhancing the confidentiality of sensitive security information concerning physical or cyber threats to, or vulnerabilities of, the bulk power system. A properly-defined exemption from the Freedom of Information Act would be very helpful. Also, I believe Congress should consider designating a federal department or agency (not necessarily FERC) with clear and direct authority to require actions in the event of an emergency involving a physical or cyber threat to the bulk power system. This authority should include the ability to require action before a physical or cyber national security incident has occurred. This authority should not impede FERC's existing authority under section 215 of the Federal Power Act to approve reliability standards developed by NERC through its current processes.

Thank you very much for your interest in this matter. If you have any further questions or concerns, please feel free to contact me.

Sincerely,



Cheryl A. LaFleur
Acting Chairman