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Description of document: Federal Energy Regulatory Commission (FERC) Transition Briefing materials for the Incoming Biden Administration 2020

Requested date: 12-January-2021

Release date: 12-March-2021

Posted date: 22-March-2021

Source of document: FOIA Request
Chief FOIA Officer
888 First Street, NE
Washington, DC 20426
Email: foia-ceii@ferc.gov
[Electronic FOIA-Privacy Act Request Form](#)

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FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D.C. 20426

March 12, 2021

Re: FOIA No. FY21-10,
Response Letter

VIA ELECTRONIC MAIL

This letter responds to your correspondence accepted on January 12, 2021, in which you requested documents pursuant to the Freedom of Information Act (FOIA) and the Federal Energy Regulatory Commission's (Commission or FERC) regulations.¹ Specifically, you requested a copy of transition briefing documents prepared by FERC for the incoming Biden Administration.²

A search of the Commission's non-public files identified one document, a PowerPoint presentation, that may contain information that is responsive to your request. The document is released with portions redacted pursuant to FOIA Exemption 5, which protects from disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."³

FOIA Exemption 5 incorporates various privileges, including the deliberative process privilege, which is at issue here. Courts have consistently held that three policy purposes constitute the basis for the FOIA Exemption 5 deliberative process privilege: (1) to encourage open, frank discussions on matters of proposed policy between subordinates and superiors; (2) to protect against premature disclosure of proposed

¹ 5 U.S.C. § 552 (2018); 18 C.F.R. § 388.108 (2020).

² You agreed via email to allow the agency until March 12, 2021 to respond to your request.

³ See 5 U.S.C. § 552(b)(5).

policies before they are finally adopted; and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action. *See Russell v. Dep't of the Air Force*, 682 F.2d 1045, 1048 (D.C. Cir. 1982); *see also EPA v. Mink*, 410 U.S. 73, 87 (1972) (recognizing that "[i]t would be impossible to have any frank discussions of legal or policy matters in writing if all such writings were to be subjected to public scrutiny.") In this instance, the redacted portion of this inter agency document contain both deliberative and predecisional information that is protected from disclosure under FOIA Exemption 5.

The redacted document is enclosed. As provided by the FOIA and 18 C.F.R. § 388.110(a)(1) of the Commission's regulations, any appeal from this determination must be filed within 90 days of the date of this letter. The appeal must be in writing, addressed to Matt Christiansen, General Counsel, and emailed to FOIAAPPEALS@ferc.gov. If you do not have access to email, a hard copy may also be sent via traditional mail to Matt Christiansen, General Counsel, with a copy to Charles A. Beamon, Associate General Counsel, General and Administrative Law, at Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

You also have the right to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services (OGIS). Using OGIS services does not affect your right to pursue your appeal. You may contact OGIS by mail at Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; email at ogis@nara.gov; telephone at (301) 837-1996; facsimile at (301) 837-0348; or toll-free at 1-877-684-6448.

Sincerely,

MARY

O'DRISCOLL

Mary O' Driscoll
Acting Director
Office of External Affairs

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O'DRISCOLL
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Enclosure

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FERC Overview

Biden-Harris Transition Team December 2020



Federal Energy Regulatory Commission

What is FERC?

FERC is an Independent, Bipartisan Federal Agency

- FERC was created in 1977 by the Department of Energy Organization Act, 42 USC 7134, 7171(a)
- FERC inherited many responsibilities of the Federal Power Commission
- Commissioners are nominated by President and confirmed by Senate
 - Staggered 5-year terms;
 - Chairman is a Commissioner designated by President
 - No more than 3 Commissioners may come from one political party

Commission decisions are reviewed by the courts

Commission is quasi-judicial

FERC's *ex parte* regulations prohibit private parties in contested case-specific proceedings from private discussions with Commissioners and FERC staff



What does FERC regulate?

Rates and services for

- Electric transmission in interstate commerce and electric wholesale power sales in interstate commerce – Federal Power Act
- Natural gas pipeline transportation, storage facilities and LNG facilities
- Oil pipeline transportation – Interstate Commerce Act

Certification/decertification of Public Regulatory Utility Policies Act of 1978 qualifying facilities

Certification of new natural gas pipeline, storage and LNG facilities, and abandonment of existing facilities – Natural Gas Act

Hydroelectric dam licensing and safety—Federal Power Act



FERC Does Not Regulate

- Local distribution of electric energy
- Retail sales of electricity.
- Choice, siting and construction of power plants other than hydropower
- Choice, siting and construction of electricity transmission
- Environmental matters, except for those associated with hydropower facilities
- Rural Utilities Services-financed power cooperatives and smaller power cooperatives
- Alaska, Hawaii and the Electric Reliability Council of Texas, Puerto Rico and the US Virgin Islands



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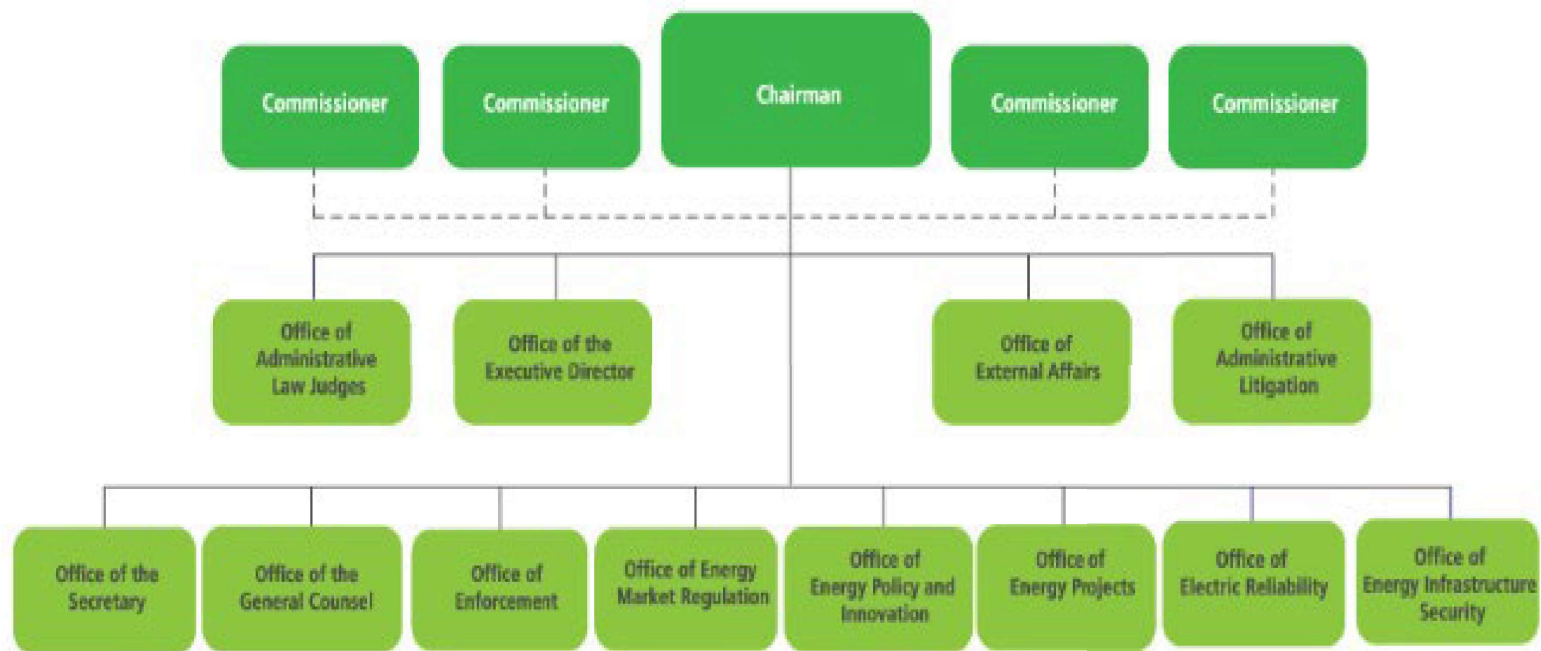
Key Areas of FERC Regulatory Responsibility

TYPE OF REGULATION	INVESTOR-OWNED ELECTRIC POWER	INTERSTATE NATURAL GAS PIPELINES	INTERSTATE OIL PIPELINES	NONFEDERAL HYDROPOWER PROJECTS
Regulation of Wholesale Markets				
Transmission & Transportation Services	Yes	Yes	Yes	N/A
Wholesale Rates	Yes	Yes, but limited	No	N/A
Mergers	Yes	No	No	N/A
Authorization and Monitoring of Energy Facilities				
Siting	No, except for limited backstop siting	Yes, the Commission issues certificates for construction of pipelines, storage, LNG, and related facilities	No	Yes, the Commission issues licenses, exemptions, license amendments and renewals and approves shoreline management plans
Environmental	No, except for programmatic EISs for some major actions.	Yes, NEPA review and interagency consultation for pipelines to be certificated	No	Yes, NEPA review and interagency consultation for the above authorizations
Safety	No	No, except as part of initial certification–incorporation of DOT standards	No	Yes, dam and public safety
Reliability	Yes, for the bulk power system	No	No	No
Related Responsibilities of Some Federal Agencies				
Other Federal Agencies	<u>DOE</u> : Power Marketing Administrations <u>NRC</u> : nuclear power generator licenses <u>DOI/USDA</u> : siting on federal lands	<u>DOI</u> : siting in offshore waters, federal lands, national parks; endangered species <u>COE</u> : water body crossings		<u>DOI</u> : federal lands, national parks, fish and wildlife, endangered species, siting projects at Bureau of Reclamation dams <u>COE</u> : siting projects at COE dams



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Key Areas of FERC Regulatory Responsibility



FERC's Strategic Goals

Ensure Just and Reasonable Rates, Terms, and Conditions

- Establish Commission rules and policy that will result in just, reasonable, and not unduly discriminatory or preferential rates, terms, and conditions of jurisdictional service.
- Increase compliance with FERC rules; detect and deter market manipulation.

Promote Safe, Reliable, and Secure Infrastructure

- Facilitate benefits to the nation through the review of natural gas and hydropower infrastructure proposals.
- Minimize risks to the public associated with FERC-jurisdictional energy infrastructure.

Mission Support through Organizational Excellence

- Manage resources effectively through an engaged workforce.
- Facilitate public trust and understanding of Commission activities by promoting transparency, open communication, and a high standard of ethics.



Budget Authority Overview

- FERC has “No-year” budget authority
- FERC fully offsets its appropriation through the collection of annual charges and filing fees
 - Federal Power Act of 1920 (Section 10 paragraph (e) (1))
 - Omnibus Budget Reconciliation Act of 1986
 - Excess Receipts are deposited directly into the U.S. Treasury
- FERC’s budget has no impact on the federal budget deficit



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Appropriations History

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Appropriation	304,600	304,389	319,800	346,800	367,600	369,900	382,000
FERC Revenue	(304,600)	(304,389)	(319,800)	(346,800)	(367,600)	(369,900)	(382,000)
Excess Fees and Recoveries, FERC	(19,686)	(17,325)	(15,912)	(16,645)	(7,873)	(16,000)	(12,598)
Totals	(19,686)	(17,325)	(15,912)	(16,645)	(7,873)	(16,000)	(12,598)

Dollars in Thousands



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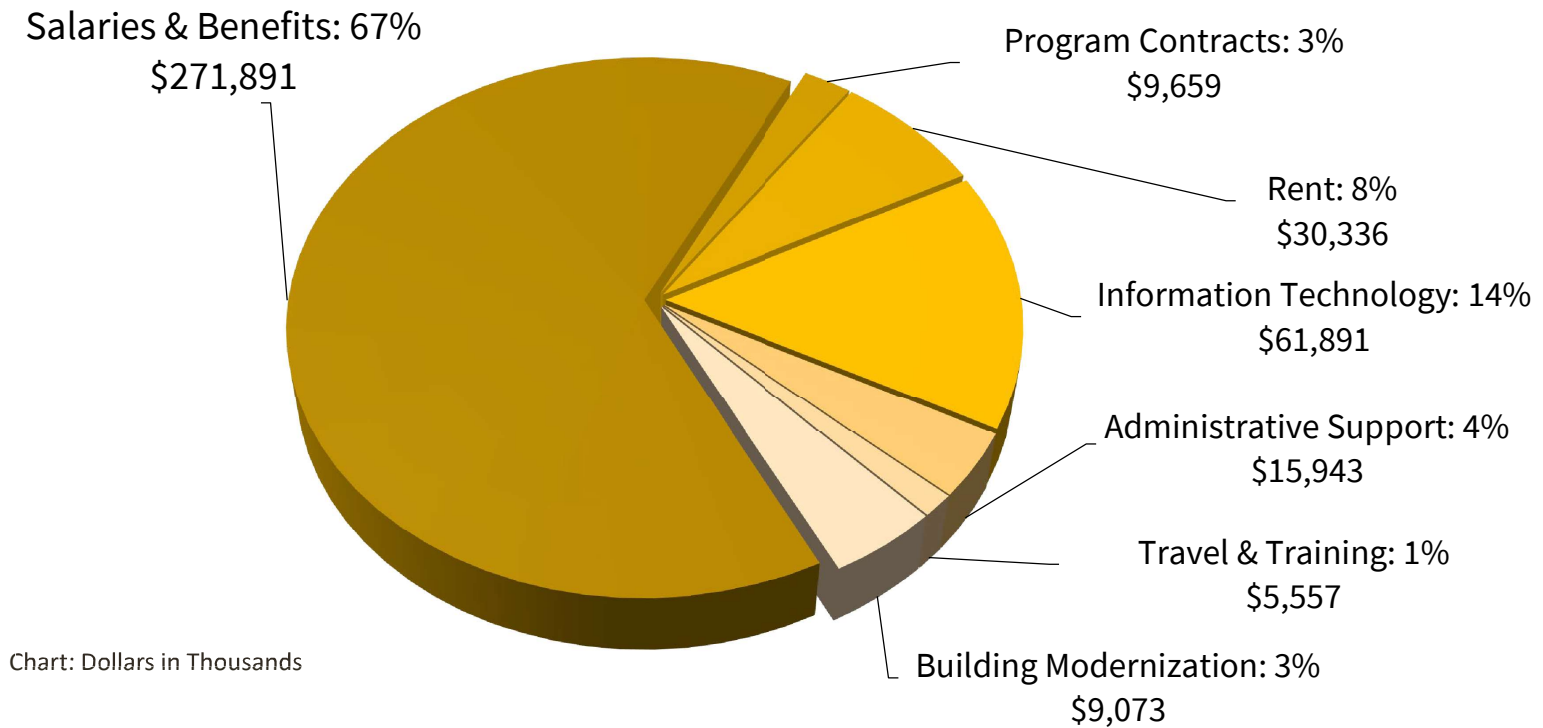
FY 2021 Funding Request By Major Category

Major Category (Dollars in Thousands)	FY 2021 Request
Salaries & Benefits	\$271,891
Rent	30,336
Environmental and Program Contracts	9,659
Information Technology	61,891
Administrative (including Travel and Training)	21,500
Building Modernization	9,073
Totals	\$404,350



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FY 2021 Budget Request: \$404,350,000



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FY 2021 Funding by Program Goal

Dollars in Thousands	Program Funding FY 2021 Cong. Request	Program FTEs FY 2021 Requested
Goal 1: Ensure Just and Reasonable Rates, Terms, and Conditions	\$182,261	663
Goal 2: Promote Safe, Reliable, and Secure Infrastructure	142,757	501
Goal 3: Mission Support through Organizational Excellence	79,332	301
Total	\$404,350	1,465



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FY 2021 Funding by Regulated Industry Sector

Dollars in Thousands	Industry Funding FY 2021 Cong. Request	Industry FTEs FY 2021 Requested
Electric	\$226,922	823
Hydro	88,828	327
Natural Gas	78,437	277
Oil	10,163	38
Total	\$404,350	1,465



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FY 2021 FTE By Program Office

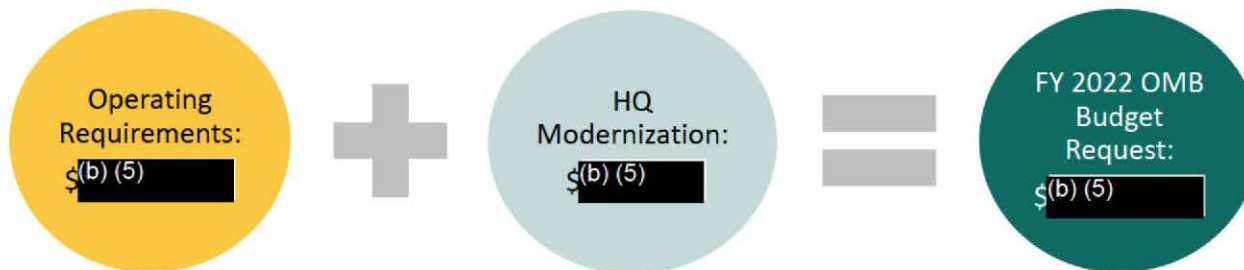
Office	Program FTEs
Chairman and Commissioners	37
Office of External Affairs	19
Office of the General Counsel	189
Office of Energy Projects	345
Office of the Executive Director	142
Office of Administrative Litigation	85
Office of Enforcement	163
Office of Electric Reliability	90
Office of Energy Market Regulation	225
Office of Energy Policy and Innovation	80
Office of the Secretary	25
Office of Energy Infrastructure Security	25
Office of Administrative Law Judges & Dispute Resolution	40
Total	1,465



FY 2022 OMB Budget Request

Request Level: \$(b) (5)

- Full operating requirement is \$(b) (5) includes \$(b) (5) for HQ Building Modernization
- Funding request is \$(b) (5) above the Commission's FY21 Congressional request level
- Funds (b) (5) full-time equivalents (FTE)
- Supports required mandatory increases



Non-Public

FY 2022 OMB Budget Request

Comparison to FY 2021 Congressional Request

Major Category	FY 2021 Congressional Request	FY 2022 OMB Request	Difference btwn FY21 Cong & FY22 OMB Request	Percent Change FY 2021 to FY 2022
Salaries & Benefits	(b) (5)	(b) (5)	(b) (5)	(b) (5)
Rent	(b) (5)	(b) (5)	(b) (5)	(b) (5)
IT Support	(b) (5)	(b) (5)	(b) (5)	(b) (5)
Admin Support	(b) (5)	(b) (5)	(b) (5)	(b) (5)
Program Contracts	(b) (5)	(b) (5)	(b) (5)	(b) (5)
Travel & Training	(b) (5)	(b) (5)	(b) (5)	(b) (5)
Total Operating	(b) (5)	(b) (5)	(b) (5)	(b) (5)
Building Modernization	(b) (5)	(b) (5)	(b) (5)	(b) (5)
Total Request Level	(b) (5)	(b) (5)	(b) (5)	(b) (5)
Estimated FTEs	(b) (5)	(b) (5)	(b) (5)	(b) (5)

Non-Public

Dollars in Thousands