

**Written Testimony of FERC Commissioner Allison Clements**

**Subcommittee on Energy**

**House Energy and Commerce Committee**

**July 27, 2021**

Chairman Rush, Ranking Member Upton, Chairman Pallone, Ranking Member McMorris Rodgers, and Members of the Subcommittee, thank you for the opportunity to testify this morning. The Federal Energy Regulatory Commission (the Commission) is entrusted with protecting customers by regulating significant aspects of the energy industry. My testimony today focuses on the challenges, solutions, and Commission's role in facilitating a robust, reliable, and resilient transmission grid while protecting customers.

The Commission's core responsibility under the Federal Power Act is to ensure reliable, affordable electric service for the American public. For several decades the Commission has met this objective by adapting its regulations to reflect changing circumstances, which include technological advancements, shifting economic and market dynamics, and evolving federal, state, and local energy regimes and policies. While the Commission's adaptation to change is familiar, the current magnitude of the challenges driving the need for change is unprecedented. I believe two major developments must guide the planning of our nation's electric grid: the increasing frequency of dangerous extreme weather and the rapidly changing resource mix.

**The Challenges**

**First, on a distressingly regular basis, extreme weather is challenging our electric system in extraordinary ways.**<sup>1</sup> Record excessive heat conditions are blanketing the West, driving record breaking temperatures. Together with historic drought, these prolonged heat conditions are stressing the transmission system, prompting preemptive system shutdowns and reducing the hydropower supplies that have long supported regional reliability. Wildfires driven by these conditions threaten the delivery of electricity for an increasing number of months each

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<sup>1</sup> U.S. Gov't Accountability Office, GAO-21-423T, *Electricity and Grid Resilience: Climate Change is Here and Expected to Have Far-Reaching Effects and DOE and FERC Should Take Actions* (2021).

year.<sup>2</sup> Across the nation, previously rare weather events like this summer's intense heat domes across the West and Great Plains and February's Texas and Central U.S. cold weather event strain numerous elements of the energy system. Current operations, market, and planning rules and practices are not adequate to meet these challenges, which are likely to become more intense in the years ahead.

**Second, the transmission system is not equipped to facilitate the rapidly changing resource mix.** Declining costs of wind, solar, and hybrid generation are making these technologies increasingly competitive in the marketplace. States and cities are enacting increasingly ambitious decarbonization laws and mandates. Utilities and corporations are setting clean energy goals and expressing those preferences in the wholesale markets that the Commission regulates. The vast majority of new supply seeking to connect to the transmission grid is wind, solar, battery storage, or a combination of those technologies.

Current transmission planning practices do not adequately account for this changing grid mix. Instead, they generally plan grid upgrades in a piecemeal fashion that examines reliability, economic, and public policy benefits in siloes, based on analysis that is not sufficiently forward-looking. These insufficient practices have resulted in inadequate buildout of the high-voltage transmission system, leading to overloaded interconnection queues and costly project development delays. Nearly 750 gigawatts of generation are mired in interconnection queues across the country, including nearly 700 gigawatts of renewable generation.<sup>3</sup>

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<sup>2</sup> Currently, 80 large active wildfires are burning across 13 states. See Peter Szekely, and Steve Gorman, *Western wildfire smoke causes cross-country air pollution*, Reuters, July 21, 2021, available at <https://www.reuters.com/world/us/smoke-us-west-wildfires-leaves-easterners-gasping-2021-07-20/>.

<sup>3</sup> See Joseph Rand, *Queued Up: Characteristics of Power Plants Seeking Transmission Interconnection as of the End of 2020*, Lawrence Berkeley National Laboratory, May 2021, available at [https://eta-publications.lbl.gov/sites/default/files/queued\\_up\\_may\\_2021.pdf](https://eta-publications.lbl.gov/sites/default/files/queued_up_may_2021.pdf). In the nation's two largest RTO regions, Midcontinent Independent System Operator (MISO) and PJM Interconnection (PJM), 80% and 79%, respectively, of the total capacity in the interconnection queue comes from solar and wind projects. See MISO, *Generator Interconnection Queue – Active Projects Map*, available at <https://giqueue.misoenergy.org/PublicGiQueueMap/index.html>; PJM, *New Services Queue*, available at <https://www.pjm.com/planning/services-requests/interconnection-queues.aspx>. The current MISO capacity mix is approximately 50%

## **The Solutions**

The Commission's statutory obligation is to address these challenges in a manner that protects customers and ensures reliability. Fortunately, recent experience has illuminated solutions capable of addressing the extreme weather and changing resource mix challenges.

**First, we must build cost-effective high voltage transmission across the country.** Grid responses to extreme weather events have consistently demonstrated the reliability and resilience value of the limited high voltage transmission that currently exists, connecting diverse resources with load centers and linking grid regions with one another. For example, during several consecutive days throughout the February cold weather event in Texas and the Central U.S., thousands of megawatts of power flowed from the PJM region, where weather was milder, into the MISO and Southwest Power Pool (SPP) regions, which were experiencing extreme temperatures and winter storm conditions.<sup>4</sup> Those flows allowed MISO and SPP to keep life-saving services energized, contrary to the largely disconnected Texas grid, which could not benefit from transfers from its neighbors and suffered catastrophic outages.<sup>5</sup> SPP and MISO attribute their ability to maintain reliability during the 2021 winter to these transfers from PJM.<sup>6</sup>

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coal, 26% natural gas, 15% nuclear, 8% wind, and <1% solar. *See* <https://api.misoenergy.org/MISORTWD/dashboard.html?fuelMix> (last visited July 25,2021). The current PJM capacity mix is approximately 37% gas, 31% nuclear, 27% coal, and <5% a mix of other resources including renewables. *See* <https://www.pjm.com/markets-and-operations.aspx> (last visited July 25,2021).

<sup>4</sup> Technical Conference to Discuss Climate Change, Extreme Weather & Electrical System Reliability, Tr. 63:11-21, Docket No. AD21-13 (filed July 22, 2021).

<sup>5</sup> Better transmission interconnection to neighboring systems could have greatly reduced the impact of the extreme weather event in Texas. Even before the February storm, ERCOT and the Public Utility Commission of Texas had testified to FERC about the need for new transmission lines to strengthen resilience through geographic diversity. *See Joint Comments of the Electric Reliability Council of Texas, Inc. and the Public Utility Commission of Texas*, Docket No. AD18-7-000. March 9, 2018 at 8.

<sup>6</sup> Southwest Power Pool Market Monitoring Unit, Report on 2021 Winter Weather Event, July 14, 2021 at 43; Midcontinent Independent System Operator, The February Arctic Event: Event Details, Lessons Learned, and Implications for MISO's Reliability Imperative at 13; Renuka Chatterjee, Technical Conference to Discuss Climate Change, Extreme Weather, and Electric System Reliability, June 2, 2021 Transcript at 63.

Earlier polar vortex events, in 2014 and 2019, similarly illustrated the critical reliability value of high voltage transmission.<sup>7</sup>

A significant buildout of transmission is also the cost-optimal approach to capturing the benefits that low-cost clean energy resources present. A leading study from Princeton University, for example, estimates that a least-cost approach to reaching a national net zero greenhouse gas emissions target would require roughly 60 percent more high voltage transmission infrastructure than exists today by 2030, and a tripling of such infrastructure by 2050.<sup>8</sup>

**Second, we must encourage Regional Transmission Organization (RTO) formation to create long-term system efficiency and resilience as well as to cost-effectively integrate the changing resource mix.** In addition to demonstrating the need for high voltage transmission to connect neighboring regions, the February polar vortex in Texas and Central U.S., as well as past polar vortex conditions in PJM and ISO-NE, have demonstrated that large grid areas operated by independent RTOs can maximize and optimize the contributions of different electricity supply resources and transmission capability across broad geographic areas.

Further, RTOs maintain significant comparative advantages over non-RTO regions for purposes of integrating increasing amounts of low-cost wind, solar and hybrid generation. These advantages include optimized markets that foster competition of supply and demand resources, coordinated transmission planning, and standard and single transmission rates that ease procurement contracting.<sup>9</sup>

The need for more effective regional integration that provides resilience in the face of extreme weather and facilitates low-cost renewable energy integration is especially stark in the West. Earlier this year, a study funded by the Department of Energy and led by the Utah Office of Energy Development with other western state partners demonstrated that an RTO could bring

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<sup>7</sup> See e.g., North American Electric Reliability Corporation, “2019 State of Reliability,” June 2019 at viii.

<sup>8</sup> Eric Larson, et al., Net-Zero America: Potential Pathways, Infrastructure, and Impacts, interim report, Princeton University, Princeton, NJ, December 15, 2020.

<sup>9</sup> Advanced Energy Buyers Group, Organized Wholesale Markets and Corporate Advanced Energy Procurement at 28 (2021).

up to \$2 billion of annual benefits to the region by 2030.<sup>10</sup> Accounting for extreme weather resilience and low-cost renewables integration benefits, in a region where six states and several utilities have 100% clean laws or commitments, makes the case even more compelling.

While the West is incrementally making progress towards integration, such as through the formation of energy imbalance markets and the Northwest Power Pool's forthcoming resource adequacy initiative, I am concerned that the current efforts are moving too slowly and are not adequately coordinated. Western collaboration is needed to develop an end goal of system coordination to address the region's needs, so that these ongoing efforts can realize the broadest efficiencies possible.

Utility RTO participation increases reliability and saves customers money by, among other things, providing coordinated, optimized dispatch of the most economic resources in the region with low transaction costs, allowing utilities to share their reserves, and planning transmission in a more coordinated fashion that has the potential to avoid redundancy.<sup>11</sup> MISO estimated that in 2020 it provided between \$3.1 billion and \$3.9 billion in regional benefits.<sup>12</sup> PJM has estimated that its operations, markets and planning result in \$3.2 to \$4 billion in annual savings.<sup>13</sup>

### **The Commission's Role**

Success in achieving a modern, reliable and resilient transmission system will require the collective acknowledgment by federal and state policymakers that a failure to act will endanger both customers and broader system reliability. The Commission has a significant role to play

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<sup>10</sup> Exploring Western Organized Market Configurations: A Western States' Study of Coordinated Market Options to Advance State Energy Policies, Stakeholder Meeting, June 17, 2021, available at [https://legacy-assets.eenews.net/open\\_files/assets/2021/06/29/document\\_ew\\_02.pdf](https://legacy-assets.eenews.net/open_files/assets/2021/06/29/document_ew_02.pdf).

<sup>11</sup> Midwestern Independent System Operator, *MISO Value Proposition*: FERC Staff Update 12 (2021); PJM Interconnection, *PJM Value Proposition 2* (2019).

<sup>12</sup> See Midwestern Independent System Operator, *MISO Value Proposition*, <https://www.misoenergy.org/about/miso-strategy-and-value-proposition/miso-value-proposition/>.

<sup>13</sup> See PJM Interconnection, *PJM Value Proposition*, available at <https://www.pjm.com/-/media/about-pjm/pjm-value-proposition.ashx> (last accessed July 25, 2021).

towards the solutions described above. We have the opportunity and the responsibility to enact reforms that facilitate the cost-effective and reliable buildout of grid improvements and further the efficient and flexible operations of resources.

**First, the Commission should reform regional and interregional transmission planning processes.** Cost-effective transmission development is essential to ensure reliable and affordable electric service and is the path to realizing the solutions described above. The Commission’s recently issued Advance Notice of Proposed Rulemaking (ANOPR) examines how holistic, forward-looking planning, based on a more accurate assessment of future conditions, holds the potential to save customers money by providing access to less expensive resources and facilitating buildout of cost-effective interregional infrastructure for system reliability and resilience. The ANOPR explores several areas of potential improvement in regional and interregional system planning. It asks how we can leverage modern modeling techniques to craft more realistic future scenarios to guide planning. It asks how we can better assess the full suite of benefits of large-scale transmission to improve the benefit-cost analyses that inform decision-making. It asks how to integrate transmission planning and generator interconnection—processes that, while separate today, could offer tremendous customer savings and other benefits if co-optimized. Finally, it asks about enhanced oversight and transparency to ensure money is spent wisely. While the ANOPR is only a first step, it is critical on the path toward smarter transmission planning.

**Second, the Commission should continue its work to improve state-federal coordination.** Considering the Federal Power Act’s framework of cooperative federalism, the Commission cannot successfully implement its part of the solutions described above without respect for, and robust engagement and cooperation with, the states.

For example, states are responsible for the siting of transmission infrastructure, and play an important role in transmission planning. To ensure that our process for considering planning reforms incorporates states’ perspective, the Commission recently approved the creation of a joint federal-state task force with the National Association of Regulatory Utility Commissioners (NARUC). The task force endeavors to examine the full array of transmission planning challenges facing our country today. The Commission also recently took action to facilitate collaboration among states, by issuing a policy statement making clear that states and utilities are

not precluded from engaging in voluntary agreements to lead the planning and paying for new transmission facilities that support their own priorities.

State-federal cooperation is also essential in the context of furthering western market integration. It goes without saying that to be successful, any western RTO must be designed by western states for western states. The Commission must respect these states' priorities while standing ready to provide guidance and expertise in the process.

**Third, the Commission should continue its work to ensure public access by growing the Office of Public Participation.** Another mandatory precursor to achieving the solutions described above is ensuring that the public has access to, and is heard in, the Commission's decision-making processes. Improved public participation in Commission proceedings will provide more fulsome records that lead to stronger decision-making and more durable outcomes. The Commission has recently taken an important step towards this end via establishment of its Office of Public Participation (OPP). The office, which Congress directed the Commission to establish over forty years ago, is intended to (1) facilitate public participation in Commission proceedings, and (2) make compensation available to intervenors and other participants in significant Commission proceedings who would face financial hardship in the absence of that assistance.<sup>14</sup> I believe that OPP will be remembered as one of this Commission's most important accomplishments. Fundamentally, OPP's mission is to help ensure meaningful access to Commission proceedings for those whose communities, property, and pocketbooks are directly affected by the outcomes of those proceedings, including energy customers, landowners, tribal members, and members of environmental justice communities. This Commission has decisions of great consequence ahead of it. The development of new infrastructure especially has implications for the public. Broadening participation in Commission proceedings will go a long way to ensuring our decisions are more informed, durable, and accessible to the public.

I was honored that Chairman Glick tasked me with leading the process of obtaining public input on OPP's role, structure, and operations. In a first for the Commission, we held six public listening sessions, including a Spanish-language session, to hear directly from stakeholders. We also held a full-day, Commissioner-led workshop featuring citizens affected by Commission

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<sup>14</sup> Federal Power Act Section 319, 16 U.S.C. § 825q-1.

decisions, as well as experts on relevant topics such as public participation, tribal consultation, and environmental justice. Finally, we invited written public comments over a months-long period. We received extensive input reflecting strong support for the office and providing a wealth of information and ideas for how to make OPP successful. The Commission drew on that input to design OPP and define its role. Continued stakeholder feedback will help guide the office's future development.

Earlier this summer, on June 24, the Commission issued a public report on OPP which describes the mission, functions and organizational structure of this new office. The report also includes a summary of the public input we received. Satisfying Congress's directive in late 2020,<sup>15</sup> the Commission provided the report to Congress, including the members of this subcommittee. I have attached a copy of the report to my testimony. For the next several months, OPP will be led and staffed by experienced Commission personnel serving temporary details to the office. The Commission is currently recruiting a permanent Director for the office and aims to hire the Director by this October. We expect to steadily grow the office over the next four years, shaping it to reflect continued public feedback and the learning gained from our experience over time. OPP's initial focus will be on public education, outreach, and assistance navigating Commission procedures. Once the Director is on board, OPP will also advise on a rulemaking on intervenor funding. Despite its small size, the interim OPP is already making a difference, helping several individual callers to understand Commission proceedings and procedural rules, and preparing informational materials that will be posted on OPP's website.

It has been the greatest honor to begin service to the American people. Thank you again for the opportunity to testify today.

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<sup>15</sup> See Joint Explanatory Statement to the Consolidated Appropriations Act of 2021 at 117 (P.L. 116-260).



# The Office of Public Participation

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June 24, 2021



FEDERAL ENERGY REGULATORY COMMISSION



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## Executive Summary

In 1978, Congress amended the Federal Power Act (FPA) by adding section 319, “Office of Public Participation.”<sup>1</sup> FPA section 319 directs the Commission to establish an Office of Public Participation (OPP) to be led by a Director to coordinate assistance to the public. The Commission is now taking steps to establish the office.

FPA section 319 provides for two types of assistance to persons participating in Commission proceedings. Section 319(b)(1) directs the Commission to establish OPP to “coordinate assistance to the public with respect to authorities exercised by the Commission,” including assistance to those intervening or seeking to intervene in Commission proceedings.<sup>2</sup> Pursuant to Section 319(b)(2), the Commission may, under rules promulgated by it, provide funding to compensate “any person whose intervention or participation substantially contributed to the approval, in whole or in part, of a position advocated by such person.”<sup>3</sup>

To help establish OPP, the Commission sought public comment during six listening sessions, a full-day, virtual Commissioner-led workshop, and a written comment period extending from March 5, 2021 through May 7, 2021. Stakeholders—including landowners, consumer advocates, environmental justice leaders, community organizers, Tribal Governments, Tribal citizens, industry representatives, experts on public engagement and participation, academics, and state and municipal government officials—provided recommendations on the establishment of OPP, as well as information on their perspectives and challenges experienced while working with the Commission and other governmental entities.

Commenters indicated that members of the public—especially communities that have been historically underrepresented before the Commission—need OPP to assist with participation in Commission proceedings. Commenters emphasized that this assistance would help place communities on equal footing with well-resourced industry stakeholders, particularly in proceedings involving natural gas pipeline projects and electric matters under the Commission’s jurisdiction. To achieve these goals, commenters suggested that OPP serve the following functions: conduct outreach; provide public education; provide procedural assistance to intervenors and participants in individual proceedings; provide technical assistance; recommend improvements for public participation in all of the Commission’s program areas; and provide intervenor funding.

Based on this feedback and the directive in section 319 of the FPA, the Commission intends to establish OPP. As detailed in this report, the Commission intends for OPP to grow over the course of a four year period before reaching its full operating status by the close of Fiscal Year (FY) 2024. By the end of FY2021, the Commission plans to hire the OPP Director, as well as the Deputy Director and an administrative staff member. The Commission plans to assess OPP’s workload and reevaluate needed resources for additional growth into and beyond FY2024 to ensure meaningful and consistent compliance with Section 319.

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<sup>1</sup> 16 U.S.C. § 825q-1.

<sup>2</sup> *Id.* § 825q-1(b)(1).

<sup>3</sup> *Id.* § 825q-1(b)(2).

# I. FERC Background

## A. About FERC: Authorities and Participation in Proceedings

FERC is an independent agency that regulates the transmission and wholesale sale of electricity and transmission of natural gas in interstate commerce, as well as the transportation of oil by pipelines in interstate commerce. FERC also reviews proposals to build interstate natural gas pipelines, natural gas storage projects, and liquefied natural gas (LNG) terminals; and licenses non-federal hydropower projects. Congress assigned these responsibilities to FERC in various laws enacted over nearly 100 years, such as the FPA, Public Utility Regulatory Policies Act (PURPA), Natural Gas Act (NGA), Natural Gas Policy Act (NGPA), and Interstate Commerce Act. More recently, as part of the Energy Policy Act of 2005, Congress gave FERC additional responsibilities to protect the reliability and cybersecurity of the bulk-power system through the establishment and enforcement of mandatory reliability standards, as well as additional authority to enforce FERC regulatory requirements through the imposition of civil penalties and other means.

More specifically, under Part I of the FPA, the Commission regulates the licensing and administration of non-federal hydroelectric projects. This includes oversight of ongoing project operations, including through dam safety inspections and environmental monitoring.

Under Parts II and III of the FPA, the Commission regulates the rates, terms, and conditions of electric transmission service in interstate commerce and electric wholesale power sales by public utilities engaging in interstate commerce. The Commission has exclusive authority to regulate wholesale electric rates. FPA sections 205 and 206 require that wholesale rates and the transmission of electric energy in interstate commerce by public utilities be just, reasonable, and not unduly discriminatory or preferential or otherwise unlawful. Examples of the Commission's regulatory authority under these statutory provisions include: approving or ordering modification of rules for organized wholesale electric markets run by grid operators; the regulation of the rates, terms, and conditions of service over the interstate transmission grid; the regulation of the rates, terms, and conditions of generator interconnection service (which includes the interconnection to and injection of power onto the transmission grid); and the regulation of transmission planning processes conducted on a local, regional, and interregional basis.

The NGA gives the Commission regulatory authority over companies that engage in either the sale of natural gas for resale or its interstate transportation. Under NGA section 3, the Commission has the exclusive authority to authorize the siting of facilities for the import or export of natural gas, including LNG. Pursuant to NGA section 7, the Commission issues certificates of public convenience and necessity authorizing natural gas companies to construct and operate facilities for the transportation of natural gas in interstate commerce. Under NGA sections 4 and 5, the Commission regulates the rates and other terms of jurisdictional transportation of natural gas, ensuring that rates and charges for such services, as well as all rules, regulations, practices, and contracts affecting those rates and charges, are just and reasonable and not unduly discriminatory or preferential.

The Commission also regulates the rates and practices for interstate transportation service by oil pipelines under the Interstate Commerce Act.<sup>4</sup> Safety is regulated, monitored, and enforced by the Department of Transportation and states control siting of pipelines transporting crude oil and petroleum liquids.

The Commission's processes for different proceedings can contain multiple deadlines that may prove difficult for participants to fully understand and navigate. For example, the FPA requires that filings made pursuant to section 205 become effective 60 days after the date of filing or on a later date if proposed by the applicant(s), unless the Commission otherwise acts. Interventions, comments, or protests in such a proceeding are due 21 days after the filing date, unless otherwise specified by the Commission based on a request to shorten or lengthen a comment period. For entities alleging that a rate, charge, term, condition, or rule is unjust or unreasonable pursuant to FPA section 206, any answers, interventions, or comments are due within 20 days from the filing date, or 30 days in certain circumstances. Under sections 3 and 7 of the NGA, the Commission provides an initial 21-day intervention period, but, if the Commission issues an associated draft EIS comment period, the Commission will accept motions to intervene during that time, and may also accept late interventions on a case-by-case basis during the proceeding. Hydroelectric licensing under the FPA is generally a multi-year process, and the Commission provides an initial 60-day intervention period and also allows interventions during the draft EIS comment period. Finally, under NGA section 4, participants typically have 12 days to intervene in NGA section 4 filings, and 20 days for complaints under NGA section 5. All requests for rehearing, a prerequisite before petitioning a court for review, must be made within 30 days of the initial order.

To accomplish its mandates, the Commission has adopted a mission and three Strategic Goals, which are outlined below.

### **Mission:**

FERC's mission is to assist consumers in obtaining economically efficient, safe, reliable, and secure energy services at a reasonable cost through appropriate regulatory and market means and collaborative efforts.

### **Strategic Goals:**

#### **Goal 1: Ensure Just and Reasonable Rates, Terms, and Conditions**

Ensure that rates, terms, and conditions of jurisdictional energy services are just, reasonable, and not unduly discriminatory or preferential.

**Objective 1.1:** Establish Commission rules and policies that will result in just, reasonable, and not unduly discriminatory or preferential rates, terms, and conditions of jurisdictional service.

**Objective 1.2:** Increase compliance with FERC rules; detect and deter market manipulation.

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<sup>4</sup> 49 U.S.C. app. § 1 et seq.

## **Goal 2: Promote Safe, Reliable, and Secure Infrastructure**

Promote the development of safe and reliable infrastructure that is both physically and cyber-secure and consistent with the public interest.

**Objective 2.1:** Facilitate benefits to the nation through the review of natural gas and hydropower infrastructure proposals.

**Objective 2.2:** Minimize risks to the public associated with FERC-jurisdictional energy infrastructure.

## **Goal 3: Mission Support through Organizational Excellence**

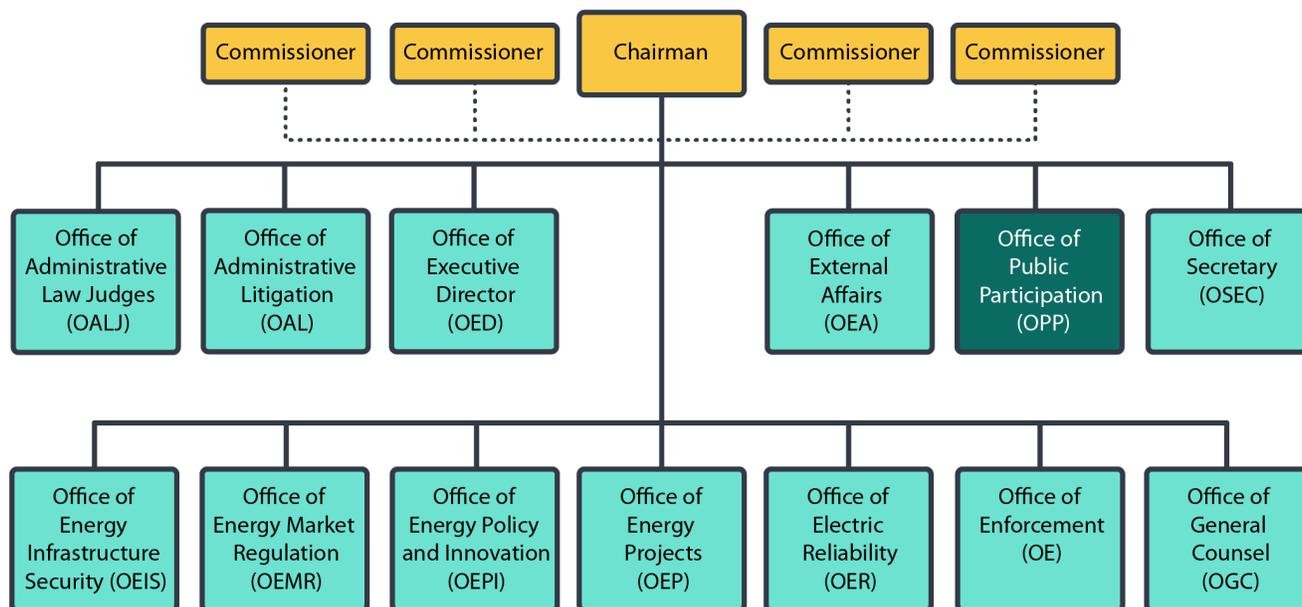
Achieve organizational excellence by using resources effectively, adequately equipping FERC employees for success, and executing responsive and transparent processes that strengthen public trust.

**Objective 3.1:** Manage resources effectively through an engaged workforce.

**Objective 3.2:** Facilitate public trust and understanding of Commission activities by promoting transparency, open communication, and a high standard of ethics.

## **B. FERC's Organizational Structure**

FERC is composed of up to five Commissioners who are appointed by the President of the United States with the advice and consent of the Senate. Commissioners serve staggered, five-year terms and have an equal vote on the orders through which FERC acts. The President appoints one of the Commissioners to be the Chairman of FERC, the administrative head of the agency. FERC is a bipartisan body; no more than three Commissioners may be of the same political party. To carry out its authorities, the Commission has approximately 1,465 staff who are organized into 12 offices. Once established, OPP will be the Commission's 13<sup>th</sup> office. Commission staff are located primarily in the Washington, DC region, with field offices in Portland, San Francisco, Chicago, New York, Houston, and Atlanta, as well as other offices near certain Regional Transmission Organization (RTO)/Independent System Operator (ISO) headquarters.



## II. The Office of Public Participation

This report provides further background on FPA section 319 and describes the steps the Commission is taking and plans to take to establish an effective OPP that faithfully carries out Congress’s directives. Thus far, the Commission has carried out stakeholder engagement to inform OPP’s establishment and responded to that feedback by creating an OPP that addresses the requirements of FPA section 319.

The Commission intends to hire the OPP Director and initial support team by October 1, 2021, the beginning of FY2022. In FY2022, the Director and this initial support team will further build out the organization, begin implementing OPP’s mission and functions, and advise on a rulemaking process, in coordination with other Commission offices, to establish an intervenor funding program. As OPP gains experience and receives further feedback, it will continue to adjust its mission, functions, and structure to ensure that it is meeting the public’s needs.

### A. Overview of Section 319 of the FPA

In 1978, Congress directed the Commission to establish OPP. PURPA amended Title II of the FPA by adding section 319 to authorize FERC to create OPP to assist the public with intervening and participating in Commission proceedings.

FPA section 319 states that there shall be an office within the Commission, known as the Office of Public Participation, led by a Director appointed with the approval of the Commission for a four-year term.<sup>5</sup> The

<sup>5</sup> *Id.* § 825q-1(a)(1).

Director “shall be responsible for the discharge of the functions and duties of the Office.”<sup>6</sup> To fulfill the Office’s responsibilities, the Director “may appoint, and assign the duties of, employees of such Office.”<sup>7</sup>

FPA section 319 provides for both non-financial and financial assistance to persons participating in Commission proceedings. FPA section 319(b)(1) directs the Commission to establish OPP to “coordinate assistance to the public with respect to authorities exercised by the Commission,” including assistance to those intervening or seeking to intervene in Commission proceedings.

FPA section 319(b)(2) also permits the Commission, under rules promulgated by it, to provide funding to compensate “any person whose intervention or participation substantially contributed to the approval, in whole or in part, of a position advocated by such person.”<sup>8</sup> This reimbursement may only be paid if the Commission determines both that the proceeding is “significant” and the person’s “intervention or participation in such a proceeding without receipt of compensation constitutes a significant financial hardship” for that person.<sup>9</sup> The compensation can include “reasonable attorney’s fees, expert witness fees, and other costs of intervening or participating in any proceeding before the Commission...”<sup>10</sup>

## B. Summary of Public Input on OPP Formation

To develop OPP in a manner that would best serve the public, the Commission heard directly from affected and interested members of the public and others interested in the Commission’s decision-making processes. FERC held six listening sessions, during which participants provided comments on the establishment and operation of OPP, without the requirement to file written comments through the Commission’s electronic filing system. On April 16, 2021, FERC hosted a full day, virtual workshop on the establishment of OPP, that featured direct input to the Commissioners from 29 stakeholders, including landowners, consumer advocates, environmental justice leaders, community organizers, Tribal Governments, Tribal citizens, and representatives from industry, academia, the public participation community, and state and municipal government officials. In total, the Commission received over 115 comments through the listening sessions and over 125 written comments in Docket No. AD21-9-000 during a 63-day comment period, from March 5, 2021 through May 7, 2021.

During the public comment period, Chairman Glick also received correspondence from members of Congress who sponsored the *Public Engagement at FERC Act*,<sup>11</sup> urging the Commission to consider measures included in the legislation as a way to further improve public participation and remove technical barriers that may prevent consumers from making their voices heard. Specifically, members of Congress requested that OPP employ directed outreach methods, such as consultation services and technical assistance, to ensure

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<sup>6</sup> *Id.* § 825q-1(a)(2)(B).

<sup>7</sup> *Id.* § 825q-1(a)(3).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* § 825q-1(b)(2)(A)-(B).

<sup>10</sup> *Id.* § 825q-1(b)(2).

<sup>11</sup> Public Engagement at FERC Act, S. 1477, H.R. 3240, 116th Cong. (2019).

the interests of residential and small commercial consumers are adequately represented. Policymakers also recommended that the Commission to create a Public and Consumer Advocacy Advisory Committee for the office, composed of representatives from the national and state-based nongovernmental consumer advocacy community and provide intervenor funding to individuals or small commercial energy consumer groups to encourage their participation in FERC proceedings.

Commenters urged the Commission to create an OPP that is responsive to the public and provides equitable assistance to increase participation in Commission proceedings. Several commenters asserted that the long-term, complex nature of many Commission proceedings and financial barriers make public participation at the Commission difficult and that OPP must better equip people to participate. Many commenters also asserted that more meaningful participation from a diverse range of stakeholders would strengthen Commission decisions.

To achieve these goals, commenters generally suggested that OPP serve the following functions: conduct outreach; provide public education; provide procedural assistance to intervenors and participants in individual proceedings; provide technical assistance; improve coordination of public participation across the Commission; and provide intervenor funding. Commenters also provided recommendations on how to organize and staff OPP. As described later in this report, the Commission has incorporated many of the recommendations received from the public into OPP's planned operations and design; a brief summary of these recommendations is provided below.<sup>12</sup> The Appendix includes a more detailed summary of these comments.

### **a. Recommended Functions**

The vast majority of commenters stated that public outreach is critical to fulfilling the Commission's statutory mandates. Commenters indicated that many members of the public do not have the necessary resources to participate in Commission proceedings or do not know that the Commission's actions will affect them until it is too late to meaningfully participate. Commenters provided a range of recommendations on how OPP could conduct such outreach, but they emphasized that OPP must tailor its outreach based on attributes of the affected community, ensuring that engagement is equitable and sustained. For example, Jacqueline Patterson, Director of the Environmental and Climate Justice Program at the National Association of the Advancement of Colored People (NAACP), and Kerene Tayloe, Director of Federal Legislative Affairs for WE ACT for Environmental Justice, recommended that OPP focus on historically marginalized communities. Other commenters, such as Dr. Shelley Welton, Associate Professor of Law at the University of South Carolina School of Law, suggested that OPP clearly flag for the public those proceedings where the Commission believes that public input would be most beneficial. Many others highlighted the need for appropriate outreach and translation for non-English speakers.

Commenters recommended that OPP provide education to facilitate greater understanding of Commission processes and proceedings. The recommended educational efforts include: an OPP-specific website; open houses, workshops, and webinars; educational videos, including those directed at young audiences with accompanying curricula; blogs and newsletters; how-to guides; and acronym lists and glossaries of commonly-used terms to help the public understand the how, when, and where to engage at FERC.

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<sup>12</sup> Comments pertaining to reforms of existing Commission processes are not summarized in this report but OPP will consider and make recommendations to the Chairman ] after its establishment, in coordination with existing Commission offices.

Commenters emphasized that these materials should be produced in plain language. Several commenters also recommended that the OPP website include industry-specific pages with citizen-friendly summaries and fact sheets and explain, in plain language, relevant rules, policies, recent proceedings, and developments. For example, the Niskanen Center requested clear instructions for how to intervene in Commission proceedings and what landowner rights are preserved by such intervention. Dr. Susan Tierney of the Analysis Group, and former Assistant Secretary for Policy at the U.S. Department of Energy (DOE), pointed out that the public involvement sections on FERC's current website focus on natural gas and hydropower projects but not on other regulated industries that may be of growing interest to the public.

Commenters broadly suggested that a key function of OPP should be to assist intervenors and participants with navigating individual proceedings. For example, Rebecca Tepper, Chief of the Energy and Environment Bureau of the Massachusetts Office of the Attorney General, noted the importance of real-time help and suggested that, in larger cases, the Commission designate a single point of contact to provide on-going process information on individual proceedings. Many commenters, including the Niskanen Center and landowners such as Pam Ordway, Deb Evans and Ron Schaaf, supported a project liaison function within OPP to provide a neutral, trusted entity to guide landowners through the process to intervene and comment on proceedings. Other frequently heard requests from commenters included obtaining guidance from the Commission on the process for intervention in Commission proceedings, information about engaging in RTO/ISO stakeholder processes, and on how to file complaints and rehearing requests. To facilitate public assistance, commenters recommended that OPP provide a real-time Help Desk and OPP portal available by phone, email, or live-chat.

Commenters asserted that a lack of expert assistance can inhibit successful public participation and recommended that OPP provide or facilitate technical assistance. Shalanda Baker, Deputy Director for Energy Justice at DOE, explained that building capacity for meaningful participation may require providing technical tools and resources for communities. For example, SOUL of Wisconsin recommended that OPP provide technical expertise in the form of engineers, economists, energy planners, and natural asset specialists trained to work with the public and to identify with diverse interests. Many commenters agreed with Tyson Slocum, Director of the Energy and Climate Program at Public Citizen, that OPP can remain neutral in providing technical assistance by, for example, providing briefing materials that includes potential risks and benefits associated with natural gas pipeline projects, and information on how the public can engage to make their voices heard and considered in a Commission proceeding.

Many commenters urged OPP to coordinate with Commission program offices on an ongoing basis to improve existing Commission processes. Several commenters recommended creation of an ombudsperson or similar role to improve existing public processes and serve as an independent, neutral resource for the resolution of concerns or complaints from the public. Olivia Nedd of Vote Solar explained that providing for such a role would help ensure that the public's comments are addressed and that the public receives a direct response from someone they trust. Several commenters suggested ways to improve formal consultations with Tribal governments and how OPP could facilitate better consultations and outreach.<sup>13</sup> A number of Tribal representatives and other commenters state that Tribal governments are not "public" or "stakeholder" entities but rather sovereign entities that have a unique political and legal relationship with the

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<sup>13</sup> As noted, the Commission received suggested reforms to existing processes, including Tribal consultation, during the OPP stakeholder process. OPP plans to review this information and pursue any potential changes with the Chairman of the Commission in coordination with the Office of External Affairs, Office of Energy Projects, and Office of General Counsel.

federal government and should not be treated the same as other stakeholders in Commission proceedings. Commenters suggested that OPP coordinate with the Commission's Tribal Liaison and that OPP staff have practical experience with Tribal outreach, engagement, and cultural sensitivities. For example, The Hopi Tribe recommended that a project liaison coordinate with the Tribal liaison or designated OPP staff representative to best address Tribal member interests.

Commenters supported intervenor funding for historically underrepresented communities in Commission proceedings. As described in more detail in the Appendix, several commenters provided input on OPP's role with respect to the provision of intervenor funding. Some commenters recommended that OPP develop and implement an intervenor funding program to efficiently benefit other OPP functions, such as the coordination of technical assistance and other expertise. Others, such as Sharon Jacobs, Associate Professor at the University of Colorado Law School, stated that placing the intervenor funding program outside of OPP would shield the office from any allegations of preference in funding, bolstering OPP's status as a trusted partner and advocate for stakeholder engagement. Tyson Slocum, Director of the Energy and Climate Program at Public Citizen, echoed this sentiment and suggested that assistance with participating in intervenor funding be coordinated by OPP but that claims be administratively reviewed by the Commission's Office of Administrative Law Judges.

Finally, commenters suggested a number of reforms on how the Commission could improve its existing public participation procedures in proceedings. Comments pertaining to reforms of existing Commission processes are not summarized in this report but OPP will consider and make recommendations to the Chairman of the Commission after its establishment, in coordination with existing Commission offices.

## **b. OPP Organization**

Commenters provided feedback on OPP's organization and structure. Regarding the role of the Director, many commenters suggested that the Director report to the Chairman but be solely responsible for carrying out OPP's mission, including setting the budget for the office and having the discretion to appoint staff to fulfill OPP's mandate. Some commenters also suggested that the OPP Director be hired from outside of the Commission, have a demonstrated record of serving the public interest, have no personal financial interest in any entity that appears before the Commission, and not have recently served in any role for a private industry entity that is subject to Commission regulation.

Commenters also provided a range of suggestions regarding OPP staffing levels, staff roles, and the location of staff. For example, Public Citizen recommended that funding for staff be established by the OPP Director based on his or her determination of the office's needs. Several commenters proposed securing resources to support at least 50 OPP staff members. Commenters recommended a range of OPP staff roles, including: an OPP Director and Deputy Managing Director; an Environmental Justice Director and Managing Director with staff; a Legal Director with technical assistance staff, civil rights attorneys, and review staff for a Public Interest Attorney Referral Program; a senior advisor representative and field staff at each Commission-regulated RTO/ISO, natural gas, and hydropower field office; energy analysts; an Administrative Law Judge and staff for intervenor funding processing and an intervenor funding manager/liaison; an Ombudsperson; a Tribal Government Advisor with support staff; public information officers and investigators for complaints and fairness; regional liaisons; and general administrative support staff. In particular, commenters overwhelmingly recommended the creation of a process or project liaison assigned to individual proceedings or regions for both infrastructure and electric matters.

Finally, some commenters recommended that the Commission establish an advisory board to advise OPP on methods used for public outreach to different constituent communities and to assess OPP's performance at achieving its mission. Many commenters requested that such an advisory board be diverse and reflective of the public being served by the Commission and recommended that such a board include a range of representatives, including members from environmental justice groups, Tribes and Tribal governments, landowners, national and state-based consumer advocate organizations, large industrial consumers, low income community advocates, rural community advocates, renewable energy advocates, and others.

## C. The Proposed Office of Public Participation

The Commission incorporated many aspects of the public input received during the public comment period into the design of OPP. Based on this input, as well as consultation with Commission staff and analysis from outside consultants, the Commission plans to establish OPP in three phases over a four year period. For the first few months of its operation, OPP will be staffed by Commission personnel detailed to the office. OPP will focus on hiring permanent staff and conducting initial outreach and assistance in FY2022, and grow into FY2024. The Commission's process, OPP mission and functions, OPP structure, OPP implementation plan, and FY2022 budget request are discussed below.

### 1. Methodology

Commission staff conducted an extensive stakeholder engagement process to hear directly from the public on how OPP can best serve the public. The Commission held six listening sessions to receive input from a range of stakeholders interested in Commission proceedings,<sup>14</sup> hosted a full day virtual workshop on OPP on April 16, 2021, during which stakeholders communicated their feedback on OPP directly to the Commissioners, and accepted written comments during a 63-day comment period from March 5, 2021 through May 7, 2021.

Commission staff analyzed all input received, including feedback on OPP's design for this report.<sup>15</sup> Commission leadership developed OPP's mission and functions based on public comments and the parameters established by FPA section 319. As described below, OPP's mission and functions incorporate those functions that fall within the Commission's mandate to "coordinate assistance to the public," as provided under FPA section 319. As recommended, OPP will be equipped to conduct outreach, provide public education, provide procedural assistance to intervenors and participants in individual proceedings, provide technical assistance, improve coordination of public participation across the Commission, and advise on a rulemaking establishing the intervenor funding program pursuant to FPA section 319.

The Commission also worked with outside consultants to further refine the office's structure, employee roles, and budget. The consultants first performed external benchmarking by analyzing resource needs at other governmental agencies to identify comparable functions and associated FTE employee resources.

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<sup>14</sup> The following stakeholder listening sessions were held: (1) Landowners and Communities Affected by Infrastructure Development on March 17, 2021; (2) Environmental Justice Communities and Tribal Interests on March 22, 2021; (3) Tribal Governments on March 24, 2021; (4) Energy Consumers and Consumer Advocates March 25, 2021; (5) Evening Listening Session (All Stakeholder Groups) on April 29, 2021; and (6) Spanish-Language (All Stakeholder Groups) on May 4, 2021.

<sup>15</sup> See Appendix: Public Comment Overview.

They also conducted an internal needs assessment by collaborating with Commission staff and reviewing internal documents to identify existing functions that aligned with OPP's mission. The consultants then conducted a bottom-up analysis of FTE requirements to develop OPP's vision, mission, design, and functions. Based on the external benchmarking and the internal needs assessment, the consultants recommended several aspects of the office's design and associated FTEs.

## 2. OPP Functions and Organization

As reflected in the following mission and functions statement, OPP will conduct outreach, provide public education, provide procedural assistance to intervenors and participants in individual proceedings, provide technical assistance, recommend improvements for public participation in all of the Commission's program areas, and advise on an intervenor funding program.

### OFFICE MISSION:

The Office of Public Participation shall coordinate and provide assistance to members of the public to facilitate participation in Commission proceedings.

### FUNCTIONS:

Engages with the public through direct outreach and education to facilitate greater understanding of Commission processes and solicit broader participation in matters before the Commission.

Acts as a liaison to members of the public affected by and interested in Commission proceedings, by providing ongoing process information on individual proceedings and responding to requests for technical assistance.

Coordinates with Commission program offices to improve, or, as appropriate, make recommendations to improve existing Commission processes in a manner responsive to public input, with the goal of ensuring processes are inclusive, fair, and easy to navigate.

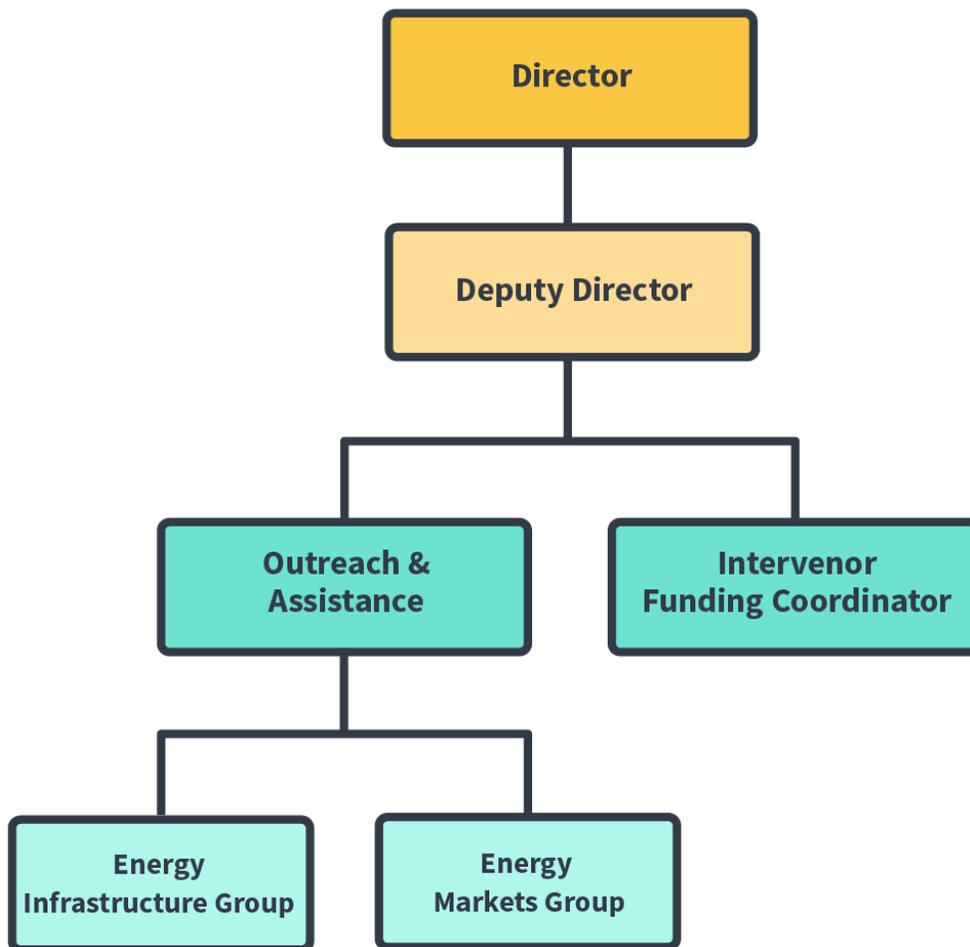
Provides advice and recommendations to the Commission with respect to intervenor funding.

In carrying out these functions, OPP will work closely with the Commission's Office of External Affairs intergovernmental advisor, the Office of General Counsel including the Senior Counsel for Environmental Justice and Equity, and the Office of Energy Projects, amongst others. This collaboration will better ensure that the concerns of Tribal members, environmental justice communities, and other historically marginalized communities are fully and fairly considered in Commission proceedings.

To meet the office's mission and functions, the Director would oversee within OPP an Outreach and Assistance unit that would provide outreach, educational resources, technical assistance, and project liaison services. In addition to an Outreach and Assistance unit, the Director would oversee an Intervenor Funding Coordinator, who would initially focus on advising on the development of a rulemaking on intervenor compensation pursuant to FPA section 319.

Additional details on the office’s composition will be determined by the incoming Director. Pursuant to FPA section 319, Congress required that the Director “shall be responsible for the discharge of the functions and duties of the Office,” and in furtherance of this responsibility, “may appoint, and assign the duties of, employees of such Office.” For example, the Director may decide to create an Ombudsperson role, which a number of commenters recommended.

### Office of Public Participation (OPP)



### 3. OPP Implementation

The Commission plans to staff the office over a four-year period beginning in FY2021. The Commission will provide resources to OPP in three phases: interim operations in FY2021; initial operations in FY2022; and full operating capacity between FY2023 and FY2024.

During FY2021, the Commission plans to form an interim Office of Public Participation to support the office's development. The interim office includes core staff temporarily deployed via detail assignments for specific tasks. The interim office will provide information, commensurate with its limited staffing, regarding Commission processes and procedures. It will also undertake initial analyses to help the Director, once chosen and approved by the Commission, establish OPP. By the end of FY2021, the Commission plans to fill the Director position,<sup>16</sup> as well as a Deputy Director and an administrative staff member.

During FY2022, OPP will enter initial operations and expand its support to the public to more fully provide education, outreach, and assistance. During this period, OPP will continue to expand its assistance to the public and will advise on an intervenor funding rulemaking. As OPP functions are established, the Commission will endeavor to provide continuing opportunities for public input on the office's development. OPP will also begin developing tools to track interactions with the public to measure effectiveness and adaptively manage OPP processes and staff roles; formalize how it will interact with existing Commission program offices; and consider whether OPP staff, and any cooperating Commission staff in other offices, should be non-decisional or non-advisory, and whether and how *ex parte* communications rules will apply. In addition, OPP will evaluate establishing an advisory board, which some commenters recommended.

OPP will reach full operating capacity in FY2024. During FY2023 and into FY2024, OPP will fully support its mission and functional objectives. The OPP Director will assess staffing needs to support its planned workload and reevaluate needed resources based on available funds.

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<sup>16</sup> FPA section 319 specifies that “[t]he term of office of the Director [of OPP] shall be 4 years.” 16 U.S.C. § 825q-1(a)(2)(B).

## Appendix: Public Comment Overview

### A. Overview

To develop OPP in a manner that best serves the public, the Commission heard directly from affected members of the public, community representatives, and others interested in the Commission's decision-making processes. The Commission held six listening sessions during which members of the public were able to provide comments on the establishment and operation of OPP, without a requirement to also file written comments through the Commission's electronic filing system.<sup>1</sup> Individuals and groups without internet access were able to participate in these sessions via teleconference. This departure from the Commission's typical comment procedures was intended to enable greater access and engagement. On April 16, 2021, FERC hosted a virtual workshop on OPP, during which 29 stakeholders, including landowners, consumer advocates, environmental justice leaders, community organizers, Tribal Governments, Tribal citizens, industry, experts on public engagement and participation, academics, and state and municipal government officials, were able to communicate their feedback on OPP directly to the Commissioners. In total, the Commission received over 115 listening session comments and over 125 written comments via Docket No. AD21-9-000 during a 63-day comment period, from March 5, 2021 through May 7, 2021.

During the public comment period, Chairman Glick also received correspondence from members of Congress who sponsored the *Public Engagement at FERC Act*,<sup>2</sup> urging the Commission to consider measures included in the legislation as a way to further improve public participation and remove technical barriers that may prevent consumers from making their voices heard. Specifically, members of Congress requested that OPP employ directed outreach methods, such as consultation services and technical assistance, to ensure the interests of residential and small commercial consumers are adequately represented and that the Commission create a Public and Consumer Advocacy Advisory Committee for the office, composed of representatives from the national and state-based nongovernmental consumer advocacy community, and provide intervenor funding to individuals or small commercial energy consumer groups to encourage their participation in FERC proceedings.

Commission staff conducted an initial review of public input to shape the formation of OPP. Commenters shared their stories and provided essential insight into what they sought from OPP and how the Commission should reform its existing processes. Public comments on how the Commission should establish OPP and recommendations for OPP best practices are summarized below. We note that some of these recommendations are outside of Congress's mandate in FPA section 319. Comments pertaining to reforms of existing Commission processes are not summarized in this Appendix but will be considered by OPP, after its establishment, in coordination with existing Commission offices.

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<sup>1</sup> The following stakeholder listening sessions were held: (1) Landowners and Communities Affected by Infrastructure Development on March 17, 2021, (2) Environmental Justice Communities and Tribal Interests on March 22, 2021, (3) Tribal Governments on March 24, 2021, (4) Energy Consumers and Consumer Advocates on March 25, 2021, (5) Evening Listening Session (All Stakeholder Groups) on April 29, 2021, and (6) Spanish-Language (All Stakeholder Groups) on May 4, 2021 .

<sup>2</sup> Public Engagement at FERC Act, S. 1477, H.R. 3240, 116th Cong. (2019).

Broadly speaking, commenters emphasized the need for the Commission and OPP to place affected communities on equal footing with well-resourced industry stakeholders, with a large number of commenters expressing concern that the Commission historically has favored industry preferences at the expense of communities and consumers. Commenters urged the Commission to create an OPP that is responsive to the public and provides equitable assistance to increase public participation in Commission proceedings. For example, Chandra Farley of the Partnership for Southern Equity asserted that the long-term, complex nature of many Commission proceedings and financial barriers make the Commission an unwieldy space for public participation and recommended that OPP better equip the public to participate. Several commenters, such as the National Consumer Law Center, also stated that more meaningful participation from a diverse range of stakeholders would strengthen Commission decisions. To achieve those goals, commenters generally suggested that OPP serve the following functions: conduct outreach; provide public education; assist intervenors and participants in individual proceedings; provide technical assistance; improve coordination of public participation across the Commission; and provide intervenor funding.

Multiple commenters urged OPP to generally focus on the public, including marginalized, historically underrepresented, and environmental justice communities, rather than the interests of any particular party or interest. Multiple commenters also suggested ways that OPP might improve communication, outreach, and engagement with Tribal governments and those representing Tribal interests.

Regarding the scope of OPP's activities, the Commission received input on potential OPP activities related to both energy infrastructure projects and electric matters under the Commission's jurisdiction. This included input from landowners affected by the Commission's NGA proceedings. Many commenters recommended that the scope of OPP activities include education, outreach, and coordination of assistance to persons intervening, or those who wish to intervene, in Commission proceedings related to energy projects such as hydropower licensing and pipeline certification. For example, Friends of the Earth submitted comments on behalf of approximately 10,000 members of the public requesting that OPP ensure that all voices are heard on energy project matters. Landowners asserted that increasing landowner engagement will help the Commission gather substantial information necessary to make more informed decisions about pipeline certifications, while upholding rights of landowners. The Interstate Natural Gas Association of America suggested that OPP could assist landowners and other stakeholders who are not familiar with the Commission's pipeline certification process, or have not historically participated in the process, by providing technical expertise to understand and navigate the Commission's processes.

While many commenters provided input on specific assistance that OPP could provide the public in navigating Commission processes related to energy infrastructure projects, some commenters contended that OPP's efforts should not include proceedings related to the Commission's responsibilities under the NGA. For example, while FPA section 319 contains broad language in its instructions to the Director of OPP, Energy Transfer L.P. asserts that the placement of that instruction in Part III of the FPA and consideration of the structure of PURPA indicate that Congress intended to limit OPP's activities to only regulatory proceedings under the FPA, not proceedings under the NGA or the NGPA. Energy Transfer L.P. recommended limiting OPP's activities to regulatory proceedings initiated under the FPA. The Electricity Consumers Resource Council echoed these sentiments, requesting that OPP focus its work on the electric sector.

Many commenters provided input on the scope of OPP activities as related to the Commission's jurisdiction over energy market and rate matters. For example, the National Rural Electric Cooperative Association stated that electric cooperatives and the consumer members they serve will benefit from Commission

policies and procedures that enable effective public participation in Commission proceedings under the FPA. Edison Electric Institute suggested that OPP could serve a critical role in advancing education, facilitation, and coordination among interested stakeholders. The Electric Power Supply Association stated that OPP should prioritize the development of informational and educational materials and forums to explain the mechanics of Commission proceedings and make the Commission's processes, authorities, and outcomes understandable to all interested persons and communities. Kin Gee, President of Consumers Helping Affect Regulation of Gas & Electric, noted that the Commission's rules and regulations on issues such as electric transmission are no less impactful to the public than those related to energy projects. The PJM Cities and Communities Coalition advocated for the involvement of those directly affected by energy market-related decisions, such as cities, in OPP's efforts.

Many commenters also suggested that OPP help stakeholders and the public better understand, and participate in, the processes and proceedings of the Commission-regulated RTOs and ISOs. For example, the Midwest Citizens Utility Boards Network highlighted the impact of RTO/ISO decisions on local communities and the barriers to participation created by the complexity and resource-intensity of participating in such proceedings. David Springe of the National Association of State Utility Consumer Advocates emphasized that decisions made at regional organizations impact consumer bills, yet there is often little support or access for consumers to provide meaningful input. Earthjustice suggested that OPP provide educational materials and guidance regarding participation in RTOs/ISOs and evaluate public participation in these entities. In joint comments, the Acadia Center, Conservation Law Foundation, Fresh Energy, Natural Resources Defense Council, NW Energy Coalition, Sierra Club, Southern Environmental Law Center, Sustainable FERC Project, Union of Concerned Scientists, and Vote Solar noted a widespread recognition of continued barriers to participation in these stakeholder processes and stated that OPP has a responsibility to improve both the oversight and facilitation of public participation in RTO/ISO and non-RTO/ISO planning regions. The Harvard Electricity Law Initiative also recommended including RTO/ISO monitoring in OPP's portfolio as well as the provision of educational materials on RTO/ISO processes and proceedings.

Several commenters noted that the Commission may need to develop OPP through a multi-stage process. For example, the Harvard Electricity Law Initiative suggested that the Commission avoid limiting OPP's potential functions because the Commission's work will continue to evolve and suggested that adopting a flexible understanding of the office's authority under FPA section 319(b)(1) will allow OPP to respond to industry and regulatory changes while respecting OPP's independence. The Electricity Consumers Resource Council recommended that OPP first identify and pursue any reasonable and necessary outreach and procedural reforms to assist public participation and, once it has assessed its results, then consider intervenor funding. David Springe of the National Association of State Utility Consumer Advocates stated that the creation of OPP is a long overdue opportunity to give consumers support to exercise their due process rights.

## B. OPP Functions

Commenters provided many recommendations for how OPP should assist the public. Multiple commenters emphasized that OPP's role should be clearly defined so that the public and those who wish to participate in Commission proceedings understand any limits on OPP's ability to provide assistance, as well as the scope of any engagement processes. Several commenters also cautioned that OPP should not create redundant or duplicative processes. For example, the Consumer Energy Alliance recommended that the Commission review existing outreach procedures to assess how OPP could address gaps instead of assuming that wholesale changes are needed.

Commenters generally agreed that OPP should remain policy and project neutral and not take substantive positions, provide preferential treatment to any stakeholders, or intervene directly in Commission proceedings. Such commenters proposed that OPP focus on providing public education and assisting stakeholders in understanding and participating in proceedings. Many commenters recommended that OPP serve as an accessible source of independent information. For example, the Electric Power Supply Association stated that OPP's impartiality should not detract from its ability to provide technical assistance or to indirectly support parties taking substantive positions by providing educational materials and intervenor funding where eligible.

While most commenters recommended that OPP remain policy and project neutral and avoid any advocacy role, others urge OPP to intervene in proceedings on behalf of the public or conduct independent investigations or audits. For example, Kirkman Frost suggested that OPP provide direct legal support for those impacted by Commission-authorized projects, and Crystal Cavalier-Keck, Founder and President of 7Directions of Service, stated that when her community reaches out to the Commission they are asking for the government to intervene and protect the public.

In addition, several commenters noted that the Commission's rules regarding off-the-record or *ex parte* communications prevent staff from providing substantive responses to their questions. Earthjustice recommended that the Commission review its *ex parte* communication regulations or consider appointing some non-decisional staff to OPP to make it easier for OPP to answer questions and assist the public with proceedings. Earthjustice suggested that non-decisional staff would be able to communicate with the public on any matter and at any stage in a proceeding, and communication between non-decisional staff and the Commission would be more limited and subject to more formality or be "walled off." The Electric Power Supply Association argued that OPP's operations should be structured in a way that avoids *ex parte* communication concerns and prevents OPP from serving, or being perceived to serve, as a conduit between parties in contested proceedings and decisional employees. Some commenters such as Earthjustice recommended that the Commission consider establishing a stand-alone public advocate, separate from OPP.

## 1. Outreach

The vast majority of commenters stated that outreach and public engagement is critical to fulfilling the Commission's statutory mandates under the FPA and NGA. Comments indicated that many members of the public do not have the necessary resources to participate in Commission proceedings or do not know that the Commission's actions will affect them until it is too late to meaningfully participate. Many commenters explained that they have had difficulty accessing information due to technological barriers or the complexity of Commission processes. They suggested that OPP work to improve clarity and visibility of the Commission's actions and better inform the public of significant or noteworthy proceedings that may impact their communities.

Many commenters—including Tribal governments, national nonprofit organizations, grassroots community organizations, individual landowners, and others—indicated that they routinely encounter difficulty navigating Commission processes for participation and, in particular, using the Commission's eFiling system and other online-only resources. Dr. Matthew Tejada, the Director of Environmental Justice at the U.S. Environmental Protection Agency (EPA), emphasized that effective outreach involves helping prepare communities to meaningfully engage and going to affected communities months in advance to ensure that the community understands the statutes, rules, hearings, and processes that may apply to them.

Commenters noted that, even if they are notified of relevant Commission proceedings, those proceedings often involve highly complex technical engineering, economic, and scientific information that is difficult for a lay-person to understand. For example, Michelle Martinez, Acting Executive Director of the Michigan Environmental Justice Coalition, stated that, “Even if someone knows about the meeting, believes it’s important, and because of their work schedule, digital literacy, and internet connection are able to come, they may be unsure how to plug into the technocratic language and formal meeting structure.”<sup>3</sup>

### **a. Outreach Strategies and Recommendations**

Commenters provided a range of recommendations on how OPP could conduct outreach to ensure that the public is aware of Commission proceedings that may impact them or their communities. A common theme among commenters was that outreach must be targeted and built on existing relationships. For example, Shalanda Baker, Deputy Director for Energy Justice at DOE, highlighted the importance of sustained engagement, explaining that, because comment windows are typically short, the Commission must prepare communities to participate. The National Park Service reiterated the importance of engaging communities early and often.

Several commenters recommended ways that OPP should share notifications of important proceedings, including posting on the Commission’s website; using mailings to residences and places of business; emails, newspaper and radio advertisements, and announcements on social media platforms; and distributing information to municipal governments and local elected officials, community action agencies, faith organizations, educational institutions, and other trust organizations in affected communities. Commenters, such as Port Arthur Community Action Network, requested that OPP consider the most effective media formats and provide information at key community locations, such as parks, libraries, community centers, grocery stores, bus stops, and other important locations. Commenters also urged OPP both to improve the ease of use of the eFiling system and offer multiple routes for the public to provide input.

The Commission also heard from non-English speakers and language justice advocates, particularly in Puerto Rico and areas of the Texas Gulf Coast, who mentioned the need to translate project notices, general background information, key terms, and Commission procedures for non-English speakers. For example, Fenceline Watch recommended that OPP provide videos in Spanish explaining how individuals with limited English proficiency can file public comments. The Port Arthur Community Action Network proposed that OPP use tools such as the EPA’s EJSCREEN Mapping Tool and the Limited English Proficiency map to determine which languages should be made available for proceedings and projects. Commenters also suggested that OPP provide simultaneous language translation and sign language interpretation during Commission-hosted public meetings.

Commenters, including numerous individual landowners, the National Mining Association, Interstate Natural Gas Association of America, Conservation Law Foundation, and the Union of Concerned Scientists, stressed that OPP staff meet members of the public where they live and work. These and other commenters discussed the need for both in-person and virtual options for public meetings and hearings. A number of commenters, including Appalachian Voices, the Niskanen Center, and the Interstate Natural Gas Association of America, recommended scheduling meetings at a variety of times, including daytime, nighttime, and weekend meetings, to increase attendance. Some commenters noted that OPP may need to

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<sup>3</sup> Michelle Martinez April 17, 2021 Workshop Statement at 2.

offer more meetings of short duration rather than a few lengthy meetings to obtain community input. A few commenters, including Union Hill Freedmen Family Research Group and Dr. Barbara Cuthbert, recommended holding scoping meetings for energy infrastructure projects in all counties and municipalities that will be impacted by an infrastructure project. Landowner Francis Eatherington suggested holding meetings in the most rural and internet-constrained areas with the option for others to attend via online video conference. In joint comments, the Attorneys General of Massachusetts, Connecticut, Delaware, Maryland, Michigan, Minnesota, Oregon, Rhode Island, and Wisconsin; the Maine Office of the Public Advocate; and the Maryland People's Counsel together recommended that the Commission invest in technologies and technical support personnel to enable remote engagement with stakeholders who are unable to attend in-person meetings. Commenters also recommended that virtual meetings be scheduled with an awareness to the time zone of the affected communities. Dr. Martha Rozelle, past president and co-founder of the International Association for Public Participation, stated that there is no "one size fits all" answer to public engagement and recommended that the Commission conduct a combination of online and in-person meetings, depending on the project.

Many commenters—including the Clean Air Council; Rebekah Hinojosa, Gulf Coast Campaign Representative for the Sierra Club; and private landowners—requested that public meetings be held in an "open mic" format and that the Commission cease its practice of requiring private testimony during scoping meetings for natural gas proceedings. Several commenters, including the Ohio Farm Bureau Federation and Francis Eatherington, recommended that the Commission hold listening sessions throughout a project's life cycle.

More than 30 commenters provided recommendations about the communities with whom OPP should engage. Broadly, Olivia Nedd, Policy Director of Access & Equity at Vote Solar, recommended that OPP provide those that have an interest or stake in an issue the opportunity to influence decisions that affect their communities. Union of Concerned Scientists suggested that OPP analyze which communities might be impacted by proposed projects. Others, including Jacqueline Patterson, Director of the Environmental and Climate Justice Program at NAACP, and Kerene Tayloe, Director of Federal Legislative Affairs for WE ACT for Environmental Justice, recommended that OPP engage with affected communities equitably and initially focus on the historically marginalized communities. In determining how to identify and prioritize communities, several commenters recommended taking into consideration changing population dynamics in addition to, or in place of, tools like the EPA's EJSCREEN.

Overall, commenters suggested that OPP tailor its outreach based on whether Commission actions affect the following public groups: residential and small commercial consumers; environmental justice, indigenous, frontline, and fenceline communities that have historically been disproportionately burdened by energy infrastructure; Tribal governments and Alaska Native Corporations; landowners, tenants, and nearby residents affected by natural gas infrastructure projects; young people and members of the youth climate movement; consumers with disabilities; community organizations representing the low-resourced, low-income individuals, the elderly, black communities, indigenous communities, and people of color; environmental and energy justice organizations; civic organizations; small-scale renewable energy and distributed energy resource advocates; municipal and state-level elected officials; and scientific researchers and academic institutions. Earthjustice recommended that OPP reach out not only to communities in the continental U.S. but also to communities in U.S. territories like Puerto Rico that have Commission-jurisdictional infrastructure. Several commenters recommended that OPP partner with federal, state, and municipal governments and organizations to enhance its outreach efforts.

With specific regard to outreach to individual utility ratepayers, the Office of the People’s Counsel for the District of Columbia explained that, with respect to rate cases, merger authorizations, market design changes, and rulemakings, it may not be efficient or economic for individual consumers to engage directly in Commission proceedings. The Office of the People’s Counsel for the District of Columbia recommended instead that OPP focus on engaging advocate offices and other consumer organizations that represent the public and connecting individual consumers with the advocacy organizations that represent them.

Several commenters recommended that OPP develop criteria for determining which proceedings would be of interest to the public and publish information related to those “significant” proceedings on the Commission’s website. For example, the Appalachian Trail Conservancy recommended that this list include all activities conducted during the pre-filing period for gas pipeline certificates or hydropower licenses. Other commenters suggested that the Commission highlight significant electric proceedings at the Commission and in RTO/ISO stakeholder processes. In general, most commenters supported an expansive definition of “significant proceedings.” However, some commenters, such as Dr. Shelley Welton, Associate Professor of Law at the University of South Carolina School of Law suggested instead that OPP clearly flag for the public those proceedings, and perhaps particular issues within those proceedings, where the Commission believes that public input would be most beneficial.

Commenters stated that an important first step for OPP is to develop a strategic plan for improving public awareness of the Commission through direct engagement. Commenters—including the Appalachian Trail Conservancy; the Port Arthur Community Action Network; and, in joint comments, the Attorneys General of Massachusetts, Connecticut, Delaware, Maryland, Michigan, Minnesota, Oregon, Rhode Island, and Wisconsin, the Maine Office of the Public Advocate, and the Maryland People’s Counsel—recommended that OPP develop case-specific outreach plans in consultation with the appropriate program office within the Commission (i.e., Office of Energy Projects, Office of Energy Market Regulation, etc.). The Institute for Policy Integrity at New York University School of Law recommended that these plans be developed for each class of Commission proceeding and that OPP publish the plans in the Federal Register and on the Commission’s website. Rebecca Tepper, Chief of the Energy and Environment Bureau of the Massachusetts Office of the Attorney General, recommended that for cases of significant public interest OPP allow for a period of public comment on draft outreach plans before implementation. The Port Arthur Community Action Network suggested that OPP continuously seek feedback on its outreach plans.

Commenters provided recommendations for specific components of outreach plans. For example, the Port Arthur Community Action Network suggested that outreach plans contain information about where to find relevant documents regarding a Commission proceeding or action, public participation educational materials, and announcements of public meetings and comment periods. Kerene Tayloe, Director of Federal Legislative Affairs for WE ACT for Environmental Justice, recommended that outreach plans factor in the mistrust and unfamiliarity between environmental justice communities and the federal government.

Commenters cautioned that there may be limits to OPP’s ability to proactively engage in extensive outreach. For example, the Electric Power Supply Association acknowledged that there will be cases where the affected individuals and groups can be identified (such as landowners and communities along project rights-of-way), and it asserted that it is reasonable for the Commission or OPP to develop or improve processes for outreach to such individuals and groups. The Electric Power Supply Association contended, however, that providing outreach for other Commission proceedings, such as policy and rulemaking matters or rules for organized wholesale electricity markets, have implications for thousands or even millions of people and groups, and identifying persons or communities impacted by broad policy or rulemaking considerations, or multi-state regional market rules, would pose a nearly insurmountable challenge. The Electric Power Supply

Association also cautioned that such outreach could raise fairness and due process issues, to the extent OPP's outreach is perceived as selective or favoring a particular viewpoint.

Many commenters recommended that OPP track its outreach and assistance efforts, assess effectiveness, provide recommendations for improvement when procedures are not adequately supporting public participation, and make its findings available to the public. Commenters expressed that, through accountability and reporting mechanisms, OPP can demonstrate that it is transparent and responsive to the public. Many commenters requested the continued use of listening sessions to periodically assess community needs and receive feedback. Commenters believed that OPP could serve as a bridge between the public and the Commission. As Dr. Matthew Tejada, Director of Environmental Justice at EPA, explained, the public will let the Commission know when engagement efforts have failed, and "the voice of the impacted community is the best and maybe only needed accountability function."<sup>4</sup>

## 2. Education

More than two dozen commenters recommended that OPP provide public education about the Commission and its authorities, how to participate in proceedings, and the rights of affected individuals. For example, Michelle Martinez, Acting Executive Director of the Michigan Environmental Justice Coalition, recommended that OPP's educational information be "designed for impacted people, not utilities, to understand the issues at stake and opportunities to influence the decision-making process."<sup>5</sup>

Commenters recommended a range of educational efforts, including that OPP develop specific resources like open houses, workshops, and webinars; educational videos, including those directed at young audiences with accompanying curricula; blogs and newsletters; how-to guides; and acronym lists and glossaries of commonly used terms to help the public understand the how, when, and where to engage at FERC. Overwhelmingly, commenters stated that these materials should be produced in plain language, with some commenters recommending that all materials be produced at a fourth to eighth grade reading level.

Many commenters recommended that the Commission improve its entire website to make it more user-friendly, but at a minimum, make an OPP site accessible to the public. Commenters recommended that the site avoid jargon, provide glossaries, be readable to non-technical audiences and available in multiple languages. Additionally, many commenters believe that the website should provide simple information (i.e., Frequently Asked Questions, handbooks, and videos). Many suggested that the Commission employ a web consultant to help make the website more user-friendly, accommodate the needs of communities with poor internet access, and address other user needs.

Several commenters also recommended that the OPP website develop industry-specific pages that include citizen-friendly summaries and fact sheets and explain, in plain language, relevant rules, policies, recent proceedings, and developments. For example, Dr. Susan Tierney of the Analysis Group, and former Assistant Secretary for Policy at DOE, points out that the public involvement sections of FERC's current website's focus on natural gas and hydropower projects but not other regulated industries that may be of growing interest to the public. Commenters also requested that OPP improve online resources for

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<sup>4</sup> April 17, 2021 Workshop Transcript at 146.

<sup>5</sup> Michelle Martinez April 17, 2021 Workshop Statement at 2.

landowners impacted by natural gas pipeline projects. Landowners Deb Evans and Ron Schaaf requested that a catalog of pertinent rulemakings and policy statements be available online. The Niskanen Center requested clear instructions for how to intervene and what landowner rights are preserved by such intervention. The Interstate Natural Gas Association of America requested flowcharts for the entire process for natural gas pipeline projects from pre-filing through operation, videos of construction and restoration examples, a plain language definition of eminent domain, and template forms for items like survey permissions. Earthjustice requested that the list of major gas projects be expanded to all pending projects, that similar lists be created for pending tariff filings and LNG filings, and that the website include searchable lists of attorneys, other experts, templates for different types of filings, summaries of relevant permitting agencies involved in a decision, and a clearinghouse of Freedom of Information Act (FOIA) requests that have been released.

Dr. Shelley Welton, Associate Professor of Law at the University of South Carolina School of Law, recommended that, in addition to explaining the Commission's activities to the public, which she terms "translating out," OPP must also "translate in" by highlighting to the Commissioners and Commission staff the importance of the knowledge that communities hold about issues based on their lived realities, even when that knowledge is not expressed in the technical language used by the Commission. Dr. Welton suggested that OPP could offer educational sessions and dialogues with Commission staff about the role of community based "situated knowledge" in the Commission's mission.

### **3. Assistance with Individual Proceedings**

Commenters, such as Rebecca Tepper, Chief of the Energy and Environment Bureau of the Massachusetts Office of the Attorney General, noted the importance of real-time help and suggested that, in larger proceedings, the Commission might consider designating a single point of contact to provide on-going process information. Frequently-recommended navigational assistance by commenters included guidance on the process for intervention in Commission proceedings, technical resources, information about engaging in RTO/ISO stakeholder processes, and landowner rights and responsibilities relating to Commission-jurisdictional energy infrastructure.

For example, commenters recommended that an OPP representative assist participants with the Commission's procedural requirements. The Hopi Tribe recommended that a project liaison coordinate with the Tribal liaison or designated OPP staff representative to best address Tribal community interests. The Niskanen Center recommended that an OPP representative be assigned to each natural gas pipeline project to gather, save, and analyze data and who could provide answers to landowners' inquiries, help identify significant issues, and recommend compliance investigations. Many commenters, including several landowners and others, supported a project liaison function within OPP to provide a neutral, trusted entity to guide landowners through the process to intervene and comment on proceedings. They explained that affected landowners, some of whom are elderly and live in rural areas with limited internet access, are thrust into Commission proceedings with little warning and limited resources, and they recommend that, among other things, OPP—not the project proponent—notify all landowners regarding their rights, potential alternative pipeline routes, and instructions to access all pertinent information to participate in the proceeding.

Commenters suggested that OPP should provide support for individuals filing complaints about Commission regulated entities, including pipeline companies' conduct during and after construction. Environmental Defense Fund suggested that OPP provide guidance on how to properly file complaints to

receive appropriate consideration and action, including generic guidance and individual support, and by reaching out to a complainant after a decision is rendered to ensure that the complainant is informed of the decision and is aware of their options to challenge the decision if they disagree with it, including through rehearing, and the deadlines and procedural requirements associated with those options.

Finally, to help facilitate this public assistance, commenters recommended that OPP provide a real-time Help Desk and OPP portal available by phone, email, or live-chat.

#### 4. Technical Assistance

Commenters asserted that a lack of expert assistance can inhibit successful public participation. Commenters, such as the Institute for Policy Integrity at New York University School of Law, stated that the technical complexity of proceedings is a barrier to the average citizen. Commenters indicated that they often need to hire experts or are disenfranchised from the process given the technical complexity of the issues that are presented to the Commission. Shalanda Baker, Deputy Director for Energy Justice at DOE, explained that building capacity for meaningful participation may require providing technical tools and resources for communities. Olivia Nedd, Policy Director of Access & Equity at Vote Solar, echoed this statement, explaining that for stakeholders to meaningfully engage with FERC, technical assistance must be offered to the public.

Commenters suggested that OPP provide direct technical assistance, although this assistance could encompass a range of suggested activities. For example, SOUL of Wisconsin recommended that OPP provide technical expertise in the form of engineers, economists, energy planners, and natural asset specialists trained to work with the public. The National Park Service suggested that OPP could provide assistance with specific technical filings, such as study requests for hydroelectric proceedings, or provide support on intervention requests or in the development of effective comments. Commenters also suggested a variety of specific activities such as providing resource experts to assist the public in understanding complex resource studies, support for understanding or performing complex modeling, assistance with routing tools, assistance with accessing and understanding Commission databases, and providing experts to explain complex information to the public, among other suggested activities. Several commenters also suggested that OPP require equity impact assessments from energy project proponents and serve as a resource to affected communities to ensure meaningful participation in the process of assessing equity impacts. Many commenters agreed with Tyson Slocum, Director of the Energy and Climate Program at Public Citizen that OPP can remain neutral in providing technical assistance by, for example, providing briefing materials that includes potential risks and benefits associated with natural gas pipeline projects, and information on how the public can engage to make their voices heard and considered in a Commission proceeding.

Several commenters also suggested that OPP offer technical assistance through competitive grants. Both Kerene Tayloe, Director of Federal Legislative Affairs for WE ACT for Environmental Justice, and the Institute for Policy Integrity at New York University School of Law recommended that OPP offer grants to help build technical expertise and capacity in underserved and underrepresented communities as a way of building equity into OPP's outreach and engagement efforts.

Vote Solar also recommended that OPP provide technical assistance to help companies interested in submitting a new energy project, or with existing projects, get better and earlier input from communities, especially when a project could have an impact on that community.

## 5. Improving Existing Commission Processes

Many commenters urged OPP to coordinate with Commission program offices on an ongoing basis to improve existing Commission processes. For example, the Government Accountability Project suggested that OPP include the public in providing agency oversight based on open governance principles and whistleblower protections.

Commenters also suggested that OPP review the Commission's regulations and identify and address challenges that limit public participation in its processes or negatively affect the public. For example, the Pechanga Band of Luiseño Indians recommended that OPP identify and acknowledge how the Commission's administrative processes currently result in systemic injustice, inequality, and the exclusion of meaningful Tribal consultation. The Pechanga Band of Luiseño Indians noted that Tribes may be disproportionately impacted by energy projects, leading to environmental justice concerns, and they recommended that OPP investigate how low-income communities and communities of color are disproportionately impacted by Commission-jurisdictional projects and evaluate the systemic and implicit bias driving those decisions.

Several commenters recommended creation of an Ombudsperson or similar role to improve existing public processes and serve as an independent, neutral resource for the resolution of concerns or complaints. As an example, the Electric Power Supply Association stated that the Ombudsperson could be a neutral person able to communicate with interested parties on a confidential basis while facilitating mutually acceptable resolutions and offering responses to difficult complaints or concerns. Commenters, including landowners Deb Evans and Ron Schaaf, recommended that the Ombudsperson be available to assist landowners, while RTOGov Researchers supported creating an Ombudsperson role to address public concerns about RTO/ISO stakeholder processes and propose ways to improve the delivery of services. Olivia Nedd of Vote Solar explained that providing for such a role would help ensure that the public's comments are addressed and that the public receives a direct response from someone they trust, whereas the current structure often offers no closure for commenters.

A number of commenters detailed their negative experiences with pipeline companies and land agents and urged OPP to improve the landowner complaint process to provide lasting improvements to Commission processes. For example, Maury Johnson, a representative of Preserve Monroe, Save Monroe, and the Indian Creek Watershed Association, requested that the Commission not ignore the alleged misbehavior of land agents who fail to strictly follow landowner notice and permission requirements regarding surveying, as well as in the early negotiations of easement contracts with the rural elderly, the unsuspecting, or less savvy sellers. The Property Rights and Pipeline Center recommended that OPP staff track calls and complaints from landowners and flag or remove pipeline agents that give landowners false or misleading information. However, the Interstate Natural Gas Association of America cautioned that OPP should take care not to duplicate the Commission's existing dispute resolution and landowner hotline services in the Office of General Counsel, which could be confusing and counter-productive.

## 6. Outreach to Tribal Governments and Tribal Citizens

The Commission heard from many commenters about the Commission's existing consultation practices and OPP's potential role with Tribal governments and citizens. A number of Tribal representatives and others stated to the Commission that Tribal governments are not "public" entities but rather sovereign entities that have a unique political and legal relationship with the federal government and should not be treated the

same as other stakeholders in Commission proceedings. Ms. Lois Sweet Dorman, member of the Snoqualmie Tribe and Snoqualmie Falls spokesperson, noted that when the then-state recognized Snoqualmie Tribe sought to advocate for its sacred place of creation during a hydroelectric dam relicensing proceeding, the Tribe felt that the Commission “lumped [them] together with kayakers in an interest that we were simply stakeholders.”<sup>6</sup>

Commenters urged the Commission not to include the Tribal liaison role within OPP and offered several suggestions for improving Tribal consultation. For example, Ted Glick with Beyond Extreme Energy suggested that the Commission create a new Office of Indigenous Relations. With specific regard to OPP, commenters urged that OPP coordinate with the Tribal liaison and that OPP staff have practical experience with Tribal outreach, engagement, and cultural sensitivities. Confederated Tribes of the Umatilla Indian Reservation recommended that the Commission establish a separate Office of Tribal Participation, as well as have one Tribal liaison per state, a board comprising Tribal representatives to advise on consultation with Tribes, and procedures to enable two-way communication between Tribes and Commission staff.

In addition, commenters noted that Commission staff and applicants must be aware of how the timing and scope of input sought and the obligations and requirements for consideration of that input, can affect Tribes. Commenters recommended that OPP staff work with the Tribal liaison to identify Commission proceedings and tailor outreach based on barriers to Tribal participation, such as lack of access and limited staff resources, through multiple forms of contact, e.g., mailings, phone calls, and emails. Several entities recommended that the Commission ensure that information about Tribal outreach, Tribal consultation, and the role of the Tribal liaison is publicly available and easily accessible on the Commission’s website.

Commenters noted that the Commission needs to ensure cultural competency of its staff and should ensure that Commission staff have mandatory training on how to coordinate and conduct government-to-government consultation with Tribal nations. Commenters suggested that OPP could assist with training in close coordination with the Tribal liaison. Many commenters also recommended that OPP staff have knowledge of Tribal matters, including consultation processes, the trust doctrine, treaty rights, as well as methods to tailor outreach to both federally recognized and state-recognized tribes. Some commenters recommended that OPP look to the practices of other entities, such as the Federal Communication Commission’s Office of Native Affairs and Policy, for examples on how to model working with Tribal governments.

## 7. Intervenor Funding

Commenters overwhelmingly supported intervenor funding for those historically underrepresented in Commission proceedings. However, a few commenters, such as Energy Transfer L.P., asserted that compensation will prolong the regulatory process and create perverse incentives to increase the frequency, intensity, and duration of regulatory proceedings. Consumer Energy Alliance urged the Commission to provide compensation only in very rare circumstances and to consider compensation caps. Similarly, a few commenters advised against open-ended funding for litigation and recommended that the Commission establish compensation caps and clear parameters for funding.

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<sup>6</sup> April 17, 2021 Workshop Transcript at 31.

Of the few comments received regarding the funding mechanism for intervenor funding, most suggested that the entities that the Commission regulates be responsible for intervenor funding either directly or indirectly through the Commission's general budget appropriation. For example, Public Citizen, suggested that, in any proceeding filed by a public utility, the utility be financially responsible for paying a claim for intervenor funding. Other commenters suggested that regulated entities pay into an intervenor fund per project, similar to an escrow account. Other commenters, such as the Interstate Natural Gas Association of America, recommended that the funds come from the Commission's general budget. PJM Interconnection, L.L.C. (PJM) suggested that the funds should come through an allocation of the Commission's resources or a direct appropriation. PJM also requested that the Commission recognize that RTOs/ISOs incorporate the components of a public service entity, including independence and a robust stakeholder process, and already fund a significant share of the Commission's electric programs.

Recognizing that section 319 contemplates intervenor funding decisions at the conclusion of a proceeding, some commenters suggested that the Commission should let potential participants know early in the process if they could be eligible for compensation, while others advocated for statutory changes to the reimbursement compensation framework. In addition, several commenters asked for upfront funding or grants to assist participants at the start of, and throughout, a proceeding. Some commenters also requested grants to assist the public generally or for Commission-jurisdictional activities that do not involve a formal Commission proceeding, such as stakeholder events at RTO/ISOs. Protect Our Water Heritage Rights sought creation of an eminent domain landowner defense fund for pre- and post-certificate legal defense. Beyond Extreme Energy recommended coordinating access to federal, state, local, and private funds to ensure environmental justice participation. Several commenters recommended providing Tribes with funds for Tribal, fisheries, cultural resource, and legal experts to review projects and that the Commission should determine funding by assessing, before a project's scoping process is started, how many Tribes will be impacted. The Institute for Policy Integrity at New York University School of Law suggests that OPP might look at other examples of agency practices for compensating Tribal governments who lend their time and expertise to fulfilling statutorily mandated processes, including the National Historic Preservation Act, NEPA, and the policies of the Bureau of Land Management, Federal Communications Commission, and Nuclear Regulatory Commission. The Hopi Tribe pointed to the EPA, DOE, and Department of the Interior for Tribal outreach, assistance, and funding opportunities. Others recommended that OPP have authority to provide grants to assist with public interest participation in RTO/ISO stakeholder processes.

The majority of commenters stated that those who are historically underrepresented, marginalized, or otherwise have not been able to participate meaningfully in Commission proceedings absent intervenor funding should receive funding. Several commenters, such as PJM Cities and Communities Coalition, called for prioritizing environmental justice and frontline communities and Tribal organizations directly impacted by Commission actions, and larger organizations, such as Earthjustice and the Environmental Defense Fund, encouraged maximizing funding for historically marginalized communities. Commenters also advocated for intervenor funding based on financial need and commensurate with the scale of the communities impacted. Some landowners focused on funding for energy project-related and eminent domain proceedings. In addition, multiple commenters suggested that OPP should limit the type of entities eligible for intervenor funding. For example, Union of Concerned Scientists argued that industry and trade groups, as well as nonprofit organizations with a national presence and funding, be ineligible to receive intervenor compensation funds. The Electric Power Supply Association agreed that nonprofits with the means to participate should be ineligible, and the Interstate Natural Gas Association of America advocated that large environmental organizations be ineligible to receive funding.

Numerous commenters encouraged the Commission to provide early notification of eligibility and impose deadlines for key decision points, including: (1) when an applicant must apply for eligibility; (2) when the Commission will make the threshold determination; (3) when an applicant must file for compensation; (4) when the Commission must act on the application; and (5) if compensation is granted, when the funds must be disbursed. Commenters also urged the Commission to provide clear requirements and guidelines to facilitate a streamlined process. The Office of the Ohio Consumers' Counsel recommended that the Commission be diligent in reviewing any entity that seeks its assistance to ensure that such entity is a consumer advocate and not a front group for utility or other non-consumer interests.

Jointly, the Attorneys General of Massachusetts, Connecticut, Delaware, Maryland, Michigan, Minnesota, Oregon, Rhode Island, and Wisconsin; the Maine Office of the Public Advocate; and the Maryland People's Counsel; as well as other commenters, recommended that the Commission use successful state intervenor funding programs as models. In particular, multiple commenters recommended that the Commission model its program after the California Public Utility Commission's intervenor funding program, particularly with respect to defining the following statutory terms from FPA section 319: "significant proceeding;" "significant financial hardship;" "reasonable attorney's fees, expert witness fees, and other costs of intervening or participating;" and "substantially contributed."<sup>7</sup>

Commenters also proposed ways to provide funding to the most-in-need or infrequent participants. For example, Public Citizen recommended that OPP oversee a public interest attorney referral program akin to a state court-appointed attorney program. Public Citizen suggested that OPP develop standards or training and a review process to accept attorneys into the program; Public Citizen states that the attorneys would not charge their clients any fees, agreeing instead to be paid through the intervenor funding program if the client prevails and is otherwise eligible. Others suggested that the Commission allocate funding for specific stakeholder groups, such as Tribal governments or landowners.

Several commenters provided input on OPP's role with respect to the provision of intervenor funding. Some commenters suggest that OPP should directly administer any intervenor funding program. For example, the Center for Biological Diversity stated that OPP should have the authority and responsibility to both develop and implement the intervenor funding program, including the power to both determine how compensation will be awarded and the sources for those funds. Union of Concerned Scientists suggested that OPP play a role in encouraging efficiency; for example, they suggested that OPP be tasked with recognizing common interests among potential intervenors and recommending, but not mandating, joint intervention when appropriate to allow for the sharing of resources and the advocating of similar positions. By contrast, others suggested that an intervenor funding program be placed outside of OPP. For example, Sharon Jacobs, Associate Professor at the University of Colorado Law School, stated that the OPP Director does not need to administer the intervenor funding program and that placing the program outside of OPP would shield OPP from any allegations of preference in funding, which could bolster OPP's status as a trusted partner and advocate for stakeholder participation.

Several commenters also suggested that the Commission's Office of Administrative Law Judges play a role in compensation decisions. Tyson Slocum, Director of the Energy and Climate Program at Public Citizen, suggested that assistance with participating in intervenor funding should be coordinated by OPP but that compensation claims should be administratively reviewed by the Office of Administrative Law Judges

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<sup>7</sup> See 16 U.S.C. § 825q-1(b)(2).

because separating these functions will help preserve the integrity of the funding program. The Electric Power Supply Association stated that it would be reasonable for the Office of Administrative Law Judges to participate in, if not administer, any funding process and determinations, as is done in some state intervenor funding programs. The Edison Electric Institute stated that OPP should remain neutral and uninvolved in discussions related to intervenor funding and that it would be more appropriate for an Administrative Law Judge to determine whether compensation is warranted, with final approval determined by the Commission. The Electricity Consumers Resource Council suggested that, if the Commission establishes a compensation mechanism, Administrative Law Judges could be designated as the initial compensation award decision-makers but that the final step would involve a Commission vote. Several commenters, such as the Edison Electric Institute and the Interstate Natural Gas Association of America, further suggested that, if the Commission decides to implement an intervenor funding program, the Commission should undertake a rulemaking process regarding definitions, rules, structure, and implementation of the program.

## C. OPP Office Structure

### 1. OPP Office Structure and Makeup

Commenters recommended several different structures to meet OPP's functions as articulated in FPA section 319. Commenters also provided input on the roles of various OPP staff, the location of OPP offices, appropriate funding levels, and qualifications of the OPP Director and staff.

Consistent with the description of the OPP Director's role pursuant to section 319, many commenters recommended that the Director report to the Chairman of the Commission but be solely responsible for carrying out OPP's mission, including setting the budget for the office and having the discretion to appoint staff to fulfill OPP's mandate. A few commenters, including Heath Frantzen, a landowner, and Andre Hudson, a member of Beyond Extreme Energy, recommended that OPP be led by a Director hired from outside the Commission. Commenters suggested several qualifications for the Director, such as a demonstrated track record of serving the public interest, a record of serving ratepayers, no personal financial or pecuniary interest in any party that appears before the Commission, and, for at least five years preceding the appointment, should not have personally served in any role for a private industry entity that is subject to Commission regulation. Commenters also recommended that the Director and other OPP staff should be public facing and easy to contact.

Other commenters provided additional suggestions regarding the status of the OPP Director. For example, Fore River Residents Against the Compressor Station suggested that the OPP Director be a voting member of the Commission or a role assigned to a current Commissioner and Earthjustice suggested that the Director be a member of the senior executive service.

Commenters also provided recommendations for organizing the office. For example, Charles Sullivan, an affected landowner in New York, recommended that OPP form a division of information, which would provide public access to information, assume the functions of the Commission's eLibrary system and reference reading room, and provide educational materials about the Commission. Kirkman Frost recommended that OPP form a public awareness, engagement, and communications division that is responsible for outreach and ensuring that all members of the public have the opportunity to voice their input on projects. Mr. Frost also suggests creating a transparency and measurements division to provide information on past projects. Other suggestions included that OPP have an outreach and notification division and a division to provide intervenors and participants with direct process support. Others

requested that, rather than coordinate assistance, OPP create a division to provide legal support and advocacy. For example, according to some commenters, such a division, would intervene in Commission proceedings on behalf of the public.

As is also noted earlier in this report, in the discussion of OPP functions related to assistance with individual proceedings, commenters overwhelmingly recommended the creation of a process or project liaison assigned to individual proceedings or regions. For example, the National Hydropower Association stated that OPP should provide staff for navigating stakeholder processes, including notifying the public of key dates and times; explaining rules, terms, and conditions of notices; and providing periodic updates regarding substantial events in specific Commission proceedings. Berkshire Environmental Action Team recommended similar project liaisons, located regionally, who would guide stakeholders and ratepayers through designated proceedings. William Limpert suggested that OPP appoint a public liaison for each natural gas pipeline project to conduct town hall meetings in the project area and to meet with property owners on their property prior to project approval.

The requests for dedicated liaisons were not limited to infrastructure projects. In joint comments, the Attorneys General of Massachusetts, Connecticut, Delaware, Maryland, Michigan, Minnesota, Oregon, Rhode Island, and Wisconsin, the Maine Office of the Public Advocate, and the Maryland People's Counsel recommended that OPP appoint public liaisons for proceedings that have potential to significantly affect local communities, landowners, and/or consumers. They also stated that OPP should designate a staff liaison for each state consumer advocate to facilitate information exchange and build relationships and should consider opportunities to assist state consumer advocates in participating before RTOs/ISOs and the Commission.

Commenters provided a range of suggestions regarding OPP staffing levels and roles. For example, Tyson Slocum, Director of the Energy and Climate Program at Public Citizen, recommended that funding for staff be established by the OPP Director based on his or her determination of the office's needs. Several commenters proposed resources for at least 50 OPP staff. Commenters recommended a range of OPP staff roles, including the hiring of the following: an OPP Director and Deputy Managing Director; an Environmental Justice Director and Managing Director with staff; a Legal Director with technical assistance, civil rights attorneys, and review staff for a Public Interest Attorney Referral Program; a senior advisor representative and field staff at each Commission-regulated RTO/ISO, natural gas, and hydropower field office; energy analysts; an Administrative Law Judge and staff for intervenor funding processing and an intervenor funding manager/liaison; an Ombudsperson; Tribal Government Advisor with support staff; public information officers and investigators for complaints and fairness; regional liaisons; and general administrative support staff. Earthjustice recommended that some OPP staff may be recruited from their existing roles in certain Commission program offices, including hotline staff across offices; eLibrary and eDocket support staff in the Office of the Secretary; and staff responsible for public outreach in the Office of Energy Projects.

Several commenters recommended that OPP include staff from diverse backgrounds who reflect historically marginalized and impacted communities, such as persons of color and Tribal members. Commenters also proposed that OPP staff include individuals with disadvantaged backgrounds and who are sight and hearing impaired. Several commenters emphasized the importance of OPP staff having community and grassroots organizing and outreach experience, and a few commenters stressed the importance of OPP staff having soft skills, such as empathy, cultural sensitivity, and flexibility. Several commenters suggested that OPP staff have environmental justice, technical, science, law, Tribal, research, communications, sociology, anthropology, data analysis, administrative, policy, National Environmental Policy Act (NEPA),

demography, consumer, or industry backgrounds. Several commenters recommended outsourcing staff positions to citizens, landowners, communities, organizations, ratepayers, Tribal members, and other stakeholders that represent affected communities through partnerships and grants. Several commenters recommended that OPP directly hire multilingual staff or internal translators to assist or directly respond to public inquiries in non-English languages.

More than a dozen commenters recommended OPP establish regional and or local field offices to facilitate community partnerships, effective public participation, familiarity with local issues, and/or staff accessibility. Shalanda Baker, Deputy Director for Energy Justice at DOE, and Dr. Matthew Tejada, Director of Environmental Justice at EPA, reminded the Commission that communities are not monolithic and recommended employing trained staff to facilitate participation by on-the-ground experts. However, others cautioned that such an approach does not require new regional offices. For example, the Electric Power Supply Association asserted that multiple OPP offices are not necessary when OPP can assign certain staff to focus on specific regions from headquarters, as is done with other Commission offices.

Some commenters provided input on appropriate OPP funding levels. For example, Earthjustice recommended that, for FY2021 ending in October 2021, existing funds from other Commission offices should be used to support OPP until the FY2022 budget is appropriated. Earthjustice stated that the Commission's overall budget will need to increase beginning in FY2022 to accommodate OPP functions and staff, and such funding should come from fees collected by the Commission. Earthjustice recommended a budget of \$10 to \$16 million for staff and \$2 million for operations, in addition to money allocated for intervenor compensation. Maranda Compton, Tribal citizen and federal Indian law expert, recommended that OPP's budget include opportunities for non-project based, ongoing technical assistance to Tribal governments and communities.

## 2. Advisory Board

During the public comment period, the Commission received comments regarding the establishment of an OPP advisory board. Many commenters—including Tribal representatives, environmental and public interest organizations, and private landowners—recommended the formation of an advisory board responsible tasked with providing recommendations about methods of public outreach to different constituent communities, monitoring OPP's activities, and assessing OPP's performance at achieving its mission. The members of Congress who sponsored the *Public Engagement at FERC Act* also requested that Commission create a Public and Consumer Advocacy Advisory Committee for the office composed of representatives from the national and state-based non-governmental consumer advocacy community.<sup>8</sup> Some commenters also recommended that an advisory board provide recommendations on specific Commission proceedings, and others contend that the advisory board should directly influence decision-making at the Commission, rather than fulfilling a performative role, to ensure the most vulnerable members of the public are considered during Commission action. Commenters recommended that EPA's National Environmental Justice Advisory Council and the White House's Environmental Justice Advisory Council serve as models for an advisory board. Commenters recommended that an advisory board include members representing a range of interests, including environmental justice groups, Tribes and Tribal governments, landowners, national and state-based consumer advocate organizations, large industrial consumers, low income community advocates, rural communities advocates, renewable energy advocates,

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<sup>8</sup> Public Engagement at FERC Act, S. 1477, H.R. 3240, 116th Cong. (2019).

and others. Commenters requested that an advisory board be diverse and reflective of the public being served by OPP. Many commenters requested that an advisory board's appointees not include regulated entities or members that hold or retain any official relation to a regulated entity, while other commenters suggested a board should include representatives of regulated industries. Some commenters recommended that an advisory board have a specific focus on environmental justice matters and be composed of individuals from environmental justice communities or frontline communities directly impacted by FERC-jurisdictional projects.

Several commenters provided words of caution regarding an advisory board. For example, Dr. Martha Rozelle, past president and co-founder of the International Association of Public Participation, recommended that the Commission avoid forming an advisory board and instead consider technical working groups during OPP's first year to collect and gather recommendations from constituent communities on OPP's priorities and outreach strategies. Some commenters also raised concerns that an advisory board would impede OPP from fulfilling its mission effectively. For example, the Electric Power Supply Association stated that such a board would add an unnecessary layer of bureaucracy to OPP, create confusion as to the reporting structure, and interfere with OPP's mission and hamstring its interactions within the Commission.

## D. Commission-Wide Reforms

Commenters suggested the Commission can improve its existing public participation efforts by reforming the following processes: the NEPA public participation process for infrastructure projects; how the Commission evaluates and responds to NEPA comments; the Statement of Policy for the Certification of New Interstate Natural Gas Facilities (Docket No. PL18-1-000); Tribal consultation; RTO/ISO governance; timely access to Freedom of Information Act and Critical Energy/Electric Infrastructure Information filed in proceedings; and existing technological resources, including eFiling, eLibrary, eRegister, and the Commission's website. More broadly, the Commission heard that it should consider ways to embed metrics concerning environmental justice into decision-making. As discussed, comments pertaining to reforms of existing Commission processes are not summarized in this report but OPP will consider them and make recommendations for improvements, after its establishment, in coordination with existing Commission offices.