

FERC Office of Public Participation: A Transformative Opportunity for Economic & Environmental Justice Advocacy

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FERC Determines Your Monthly Electric Bill & Whether Natural Gas Infrastructure Is In The Public Interest

- **FERC Oversees Electricity Markets Covering 2/3 of the U.S.**
 - The Commission's proceedings decide about half of the monthly utility bill that families pay by setting rates that power plants, energy traders and transmission lines can charge.
 - FERC establishes the rules of how electricity markets work which impact how clean energy can compete with fossil fuels.
 - FERC's core mission is an economic regulator, to enforce "just and reasonable" rates.
 - **Power market oversight includes enforcement to protect households from market manipulation, typically by Wall Street traders and other sophisticated financial entities.**
- **FERC Determines If Certain Natural Gas Pipelines and LNG Export Facilities Are In the Public Interest, Including Conducting An Environmental Assessment**
 - FERC also regulates the rates that natural gas and oil pipelines can charge (but only oversees environmental reviews for gas pipelines, not oil)

FERC Impacts Economic and Environmental Justice Communities

- **44% of U.S. households**—or 50 million families—are low-income. According to the U.S. Department of Energy’s Low-Income Energy Affordability Data (LEAD) Tool, the national average energy burden for low-income households is 8.6%, three times higher than for non-low-income households which is estimated at 3%. In some areas of the country, energy burden can be as high as 30%.
- This has only gotten worse under COVID.
- FERC’s mandate that electric and natural gas rates be “just and reasonable” has a significant impact on energy affordability for tens of millions of families, including communities of color.
- Proposed gas pipelines and LNG terminals are often located in communities of color, raising environmental justice concerns.

FERC Operates Much Like a Court Of Law, With Commissioners Acting As Judges

The Commission can only render a decision based upon facts presented before it in the docket—so if you're not at the table, then you're on the menu.

FERC proceedings are highly technical and feature challenging legal and regulatory procedures.

To compete with corporate utilities, pipeline companies and Wall Street energy traders, economic justice communities need the Office of Public Participation to provide intervenor funding and direct support.

On December 27, 2020 President Trump signed the *FY2021 Omnibus and COVID Relief and Response Act* (HR133). The accompanying joint House-Senate Appropriations Committee Report (Division D—Energy & Water) states:

“FERC is directed to submit to the Committees on Appropriations of both Houses of Congress not later than 180 days after enactment of this Act a report detailing how it will establish and operate the Office of Public Participation required under section 319 of the Federal Power Act, beginning in fiscal year 2022. As part of the report, FERC shall provide an organizational structure and budget for the office sufficient to carry out its statutory obligations. The report shall assume that funding for the Office of Public Participation will be derived through annual charges and filing fees as authorized by the Federal Power Act and the Omnibus Budget Reconciliation Act of 1986.”

SO EXPECT REPORT BY FRIDAY JUNE 25, 2021

Public Citizen's 2016 Petition for a Rulemaking To Establish The Office Of Public Participation

16 USC § 825q-1. Office of Public Participation

(a)

(1) There shall be an office in the Commission to be known as the Office of Public Participation (hereinafter in this section referred to as the "Office").

(2)

(A) The Office shall be administered by a Director. The Director shall be appointed by the Chairman with the approval of the Commission. The Director may be removed during his term of office by the Chairman, with the approval of the Commission, only for inefficiency, neglect of duty, or malfeasance in office.

(B) The term of office of the Director shall be 4 years. The Director shall be responsible for the discharge of the functions and duties of the office. He shall be appointed and compensated at a rate not in excess of the maximum rate prescribed for GS-18 of the General Schedule under section 5332 of title 5.

(3) The Director may appoint, and assign the duties of, employees of such Office, and with the concurrence of the Commission he may fix the compensation of such employees and procure temporary and intermittent services to the same extent as is authorized under section 3109 of title 5.

(b)

(1) The Director shall coordinate assistance to the public with respect to authorities exercised by the Commission. The Director shall also coordinate assistance available to persons intervening or participating or proposing to intervene or participate in proceedings before the Commission.

(2) The Commission may, under rules promulgated by it, provide compensation for reasonable attorney's fees, expert witness fees, and other costs of intervening or participating in any proceeding before the Commission to any person whose intervention or participation substantially contributed to the approval, in whole or in part, of a position advocated by such person. Such compensation may be paid only if the Commission has determined that—

(A) the proceeding is significant, and

(B) such person's intervention or participation in such proceeding without receipt of compensation constitutes a significant financial hardship to him.



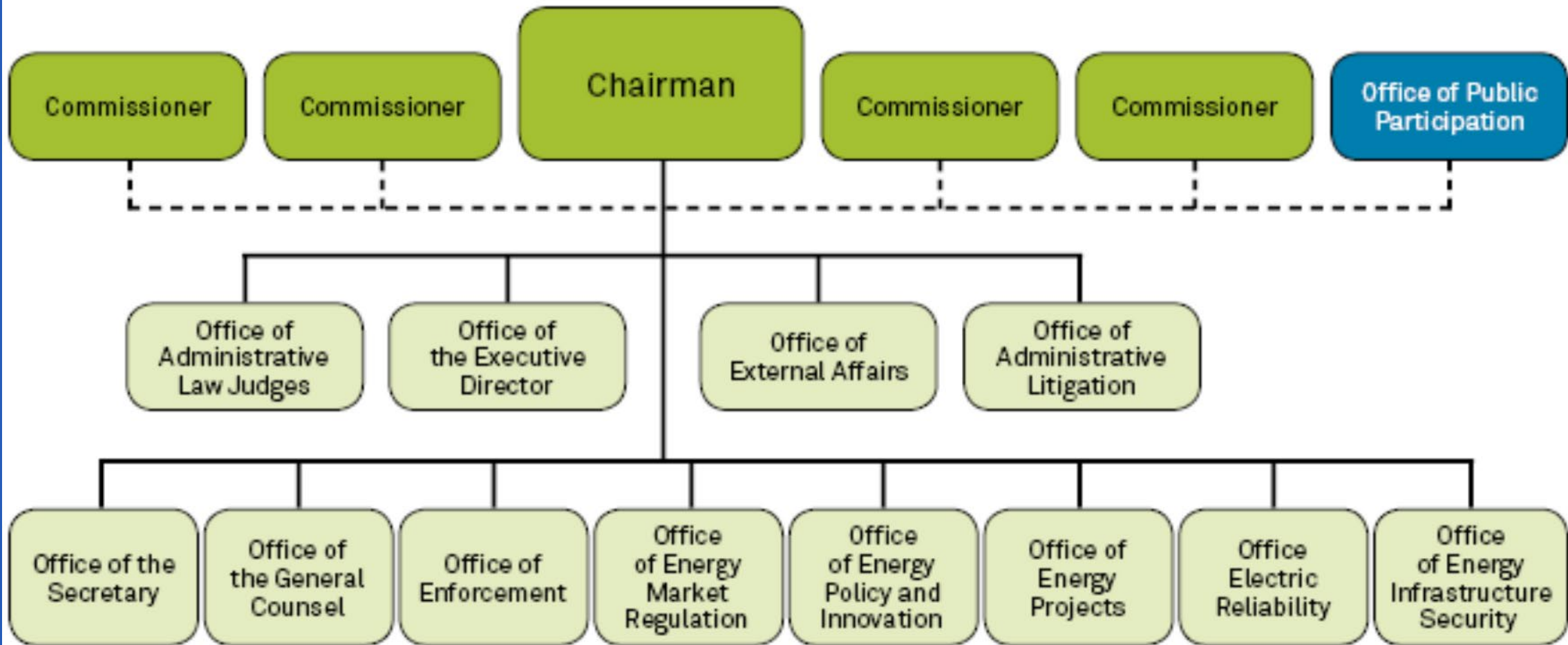
Former U.S. Senator Howard Metzenbaum, Speaking On the Senate Floor, 1978, About the Importance of Intervenor Funding for the Office of Public Participation

*For the first time, the Congress has assured the electric consumers of this country that their voice will be heard. And Mr. President, I should point out that not only will the consumer's voice be heard, but the conference report provides that if the individual or individuals who "substantially contribute" to the ultimate determinations of the hearings **may be compensated for their efforts**. This is a great victory for the consumer, who will finally be able to compete on an even footing with the utility industry of this Nation. I would like to commend my colleagues on the Conference Committee for preserving this provision.*

Office of Public Participation Statutory Requirements:

- **Director serves a four year term, appointed by the Chair and confirmed by full Commission.**
- **The Director shall coordinate assistance to the public, including to persons intervening, participating or proposing to intervene in proceedings before the Commission.**
- **The Commission can provide compensation for reasonable attorney's fees, expert witness fees, and other costs of participating in any FERC proceeding to any person whose participation **substantially contributed** to the approval, in whole or in part, of a position advocated by such person.**
- **Such compensation may be paid only if the Commission has determined that—**
 - (A) the proceeding is significant, and
 - (B) such person's participation without receipt of compensation constitutes a significant financial hardship to him.

Federal Energy Regulatory Commission's new look



As of Feb. 9, 2021.

Source: Federal Energy Regulatory Commission

9 States Have Some Form of Intervenor Compensation, But None Feature an Economic or Environmental Justice Focus

- **California is the gold standard (CA Public Utilities Code § 1801-1807). The state awarded \$12 million in compensation last year.**
- **Colorado § 40-6.5-105**
- **Idaho Title 61 Chapter 6 (61-617A)**
- **Maine Title 35-A, Part 1, Chapter 13 §1310**
- **Michigan § 460.6L-M establishes a Utility Consumer Participation Board that provides up-front grants**
- **Minnesota § 216B.16(10)**
- **New Hampshire § 365:38-a**
- **Oregon www.oregon.gov/puc/filing-center/Pages/Intervenor-Funding.aspx**
- **Wisconsin § 196.31**

The Office of Public Participation Doesn't Change The Law Or Standards to Address Economic & Environmental Justice: It Simply Provides Direct Financial and Logistical Support To Give Communities Access to the Resources Needed to Meaningfully Participate And Contribute To On-the-record Proceedings

Public Citizen Envisions Two Broad Functions of the Office of Public Participation

First, conducting extensive outreach and providing technical assistance to those representing the interests of consumers, environmental justice, climate and equity; tribes; labor unions; landowners and others impacted by infrastructure; and municipalities.

Second, coordinating financial assistance, with FERC's Administrative Law Judges conducting the award evaluation.

The only advocacy conducted by the Office is encouraging public participation at FERC. The Office will take no positions on tariffs or pipelines, other than to work hard to ensure the public is aware, knowledgeable, and equipped with the resources required to meaningfully participate.

Environmental Justice

- **The FERC OPP should have an Environmental Justice Managing Director tasked with dedicated outreach and coordination of financial assistance to encourage participation.**
- **The FERC OPP should consult with the Council on Environmental Quality and its guidance on Environmental Justice under the National Environmental Policy Act, along with the White House Office of Climate Policy, relevant state attorney general environmental justice programs, the EPA's Office of Environmental Justice, and the U.S. Dept of Energy's Energy Justice office.**

The FERC Office of Public Participation must have field staff to meet the public where they live

- **For all applications for construction and operation of interstate natural gas pipelines, and applications for pipeline abandonment, FERC OPP staff should immediately engage impacted communities and serve as a point of contact for assistance. Communities should hear from OPP before being contacted by lawyers for the pipeline companies. OPP staff must travel onsite for some period to work with the local community.**
- **The FERC OPP should have dedicated staff tasked to each of the six Regional Transmission Organizations: California-ISO, PJM (13 states from Illinois to Maryland/DC), New York-ISO, ISO-New England, Midcontinent Independent System Operator (15 states from Montana to Louisiana) and Southwest Power Pool (parts of 9 states from North Dakota to Texas), including the consideration of field offices at each of these six RTOs/ISOs.**
- **FERC OPP staff will have unfettered access to RTO meetings, and provide reports on RTO proceedings for public dissemination.**
- **Consideration could be made to extend qualifying intervenor funding for the public interest to meaningfully participate in RTO stakeholder processes (and similar North American Electric Reliability Corporation stakeholder meetings).**

Intervenor Funding Mechanics

- **Parties seeking compensation could be required to submit A Notice of Intent to Claim Intervenor Compensation at the beginning of the proceeding.**
- **In no later than 60 days after the issuance of an order in the proceeding, those seeking compensation should file a claim.**
- **The claim would be processed and evaluated by an Administrative Law Judge, who would be required to issue a Proposed Decision on the award within 75 days of the claim being filed by the party.**
- **The party seeking compensation would have 15 days to dispute any clerical or substantive errors in the Proposed Decision, which could be appealable to a panel of ALJs.**
- **No later than 30 days after a Final Decision on awarding compensation, the claim would be paid to the applicant.**

Attorney Referral Program

- **In comments to FERC in Docket No. AD21-9, we proposed that the Office of Public Participation designate *Most In Need* status for those organizations and individuals that lack resources or infrastructure to utilize the intervenor funding process.**
- **For *Most In Need* intervenors, the Office should oversee a *Public Interest Attorney Referral Program* to provide immediate, up-front assistance for those intervenors that cannot ride out the intervenor compensation process.**

RTO Stakeholder Process In Need of Economic & Environmental Justice Representation

I made a presentation to PJM's Board of Managers at the May 5, 2021 meeting of the Public Interest & Environmental Organizations User Group noting the lack of any economic and environmental justice representation in the stakeholder process, and urged reforms.

FERC must issue a Notice of Inquiry to Order 719 to revisit RTO governance standards to include requirements that the stakeholder engagement include economic and environmental justice communities.