



Affected With A Public Interest: Restoring Accountability, Reliability and Affordability For Utility Service

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Regulatory Treatment of Public Utilities Is Unique From Other Private Enterprises In The Economy

The Federal Power Act of 1935 and the Natural Gas Act of 1938 designated electricity and natural gas as essential utility services, in part because of sweeping corporate utility scandals, and because households and businesses were physically connected to the interstate power and gas transmission systems.

The Federal Power Act was enacted to ensure abundant domestic electricity supply and to protect customers from economic exploitation at the hands of utilities.

Federal Power Act

- Section 201 of the Federal Power Act declares “that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest.” 16 USC § 824(a).
- Section 202a declares its purpose as “assuring an abundant supply of electric energy throughout the United States with the greatest possible economy” 16 USC § 824a(a)
- Section 202c grants Dept of Energy emergency authority over transmission and generation to “serve the public interest” 16 U.S. Code § 824a(c)
- Congress was clear that the purpose of FPA Section 202 is “assuring an abundant supply of electric energy throughout the United States” and 202e disallows “any electric energy” exports if they “would impair the sufficiency of electric supply within the United States”. 16 USC § 824a(e).

Just and Reasonable Rates

- Section 205 of the FPA requires that all rates and charges made, demanded, or received by power wholesalers be just and reasonable. 16 USC § 824d(a). All rates and charges for sales and transmission of power are subject to FERC's review. § 824d(a), (d), (e). The FPA requires every public utility to file with FERC schedules showing all rates and charges together with all contracts which in any manner affect or relate to such rates, charges. § 824d(c). Any change in a rate, charge, or contract requires notice, publicly filed with FERC, sixty days in advance of the change unless FERC otherwise orders. § 824d(d).
- Section 206 subjects any unjust and unreasonable rate to refunds.

Public Citizen Challenged Lawfulness Of Market Based Rates – SC Declined to Review

Public Citizen v. FERC (2010)

In this case, Public Citizen, together with the Colorado Office of Consumer Counsel and the Public Utility Law Project of New York, challenged the promulgation of rules by the Federal Energy Regulatory Commission (FERC) allowing sellers of wholesale electric power to charge “market rates” for electricity and to avoid the Federal Power Act’s requirements that rates be just and reasonable and that all changes in rates be filed with FERC before they go into effect. In October 2011, the U.S. Court of Appeals upheld FERC’s action, and Public Citizen and its allies sought review in the U.S. Supreme Court, which had consistently rejected similar efforts by agencies to change congressionally mandated regulatory requirements. The Attorneys General of Illinois, Connecticut and Rhode Island joined Public Citizen’s petition for certiorari asking the Supreme Court to hear this challenge to the lawfulness of FERC’s market-based-rate regime. The Supreme Court denied review.

Our Challenge To ISO-NE Capacity Auction Manipulation Led To Congress Amending Federal Power Act

Public Citizen v. FERC (ISO-NE)

This case challenged a Federal Energy Regulatory Commission (FERC) action refusing to review the lawfulness of an increase in rates for wholesale electric capacity, which resulted from a noncompetitive auction conducted by the New England Independent System Operator. At the time, FERC had a vacancy and, therefore, only four commissioners. The four sitting commissioners deadlocked: Two would have set the issue of the rates' lawfulness for a hearing, but two would have dismissed the challenge to the rates because of their view that FERC could not consider whether the actual rates resulting from an auction conducted under rules approved by FERC were lawful. Because FERC required a majority vote to proceed, the deadlock resulted in the rates' going into effect.

Public Citizen, as well as Connecticut agencies and officials, filed petitions for review in the D.C. Circuit. FERC challenged the court's jurisdiction, arguing that it issued no order and took no action subject to judicial review. Public Citizen's briefs argued that the agency's deadlock was a reviewable action because it effectively rejected the challenge to the rates, and that the rationale of the Commissioners who blocked the agency action—namely, that the agency lacked authority to review the lawfulness of the rates—was contrary to law.

Public Citizen Gets The Fair Rates Act Passed

- Collaborated personally with then U.S. Rep. Joe Kennedy III to get unanimous consent of the GOP-controlled house to pass his Fair Rates Act in January 2017.
- Incredible work by Rep. Kennedy to ensure the act got folded into the America's Water Infrastructure Act of 2018 as Section 3006 signed into law October 2018.



FERC Cannot Rely on The Intent of Market Rules To Ensure Just and Reasonable Rates – FERC Must Ensure The Resulting Rates Are J&R

Public Citizen v. FERC (2020)

In April 2015, the Midcontinent Independent System Operator (MISO) held an auction for wholesale electric capacity that resulted in raising rates for downstate Illinois by close to 1000 percent. Those rates, totaling approximately \$100 million, were passed on to consumers in Illinois in the next twelve months. The rate increase was the result of Dynegy acquiring power plants that allowed it to control the auction for MISO's Zone 4 and essentially set the price in order to maximize its own revenues. Public Citizen, together with Illinois government officials, immediately challenged the auction results before FERC, contending that they resulted in rates that were not "just and reasonable" as required by the Federal Power Act (FPA) and also violated the FPA's prohibition of market manipulation. Later that year, FERC recognized that the way the auction was structured was not just and reasonable and allowed manipulation of prices, and it made some changes to the auction procedures to prevent companies from controlling the outcome as Dynegy had done in 2015. As a result, prices in Zone 4 fell considerably in 2016-17 and even further in 2017-18 and later years. But, after more than four years of delay, FERC eventually refused to do anything about the excessive prices resulting from the 2015-16 auction, claiming that no matter how high the auction prices were, they were "just and reasonable" as long

Public Citizen Strengthens Affiliation Standards

OCTOBER 20, 2022

FERC Vote a Victory Against Corporate Energy Raiders

WASHINGTON, D.C. — The Federal Energy Regulatory Commission (FERC) today issued a unanimous ruling against hedge fund Bluescape Energy Partners, finding that any investor that obtains less than 10% of a utility, but gets control over a board seat occupied by its employee, is now automatically deemed to be an affiliate.

Public Citizen and the Communications Workers of America had previously filed a joint protest regarding Evergy's affiliation with the hedge funds Elliott Management and Bluescape Energy Partners.

Public Citizen Helps Create Office of Public Participation

- Our 2016 Petition kicked it off. We then prepared a lawsuit to sue FERC for ignoring the petition, but COVID hit and we had to pause, as we couldn't ask the DC Circuit to force FERC to initiate a rulemaking when we were urging the Circuit to stop other federal rulemakings due to COVID.

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

**Petition To Initiate A Rulemaking To Establish The Office Of Public Participation As
Established By Congress And To Fund Its Work**

Pursuant to Rule 207 of the Commission's Rules of Practice and Procedure¹, the undersigned organizations hereby petition FERC to implement 16 USC § 825q-1 by initiating a rulemaking to carry out the instructions from Congress to establish the Office of Public Participation and fund its work.

We pursued a second legislative track, securing language to compel FERC to create the office

- 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](#)):
- “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.”

December 2025



UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
GRID DEPLOYMENT OFFICE

Morgan Stanley Capital Group Inc.

GDO Docket No. EA-185-F

Motion to Intervene and Protest of Public Citizen, Inc.

The U.S. Department of Energy noticed in the Federal Register the June 18, 2025 application of Morgan Stanley for renewal of authority to export electricity to Canada for an additional five-year term.¹

The application must be denied, as the requested export authority would impair the sufficiency of electric supply within the United States. On December 16, 2025, the U.S. Secretary of Energy declared “that an emergency exists within the Western Electricity Coordinating Council (WECC) Northwest assessment area due to a shortage of electric energy”, issuing an emergency under Section 202c of the Federal Power Act mandating that Unit 2 of the coal-fired Centralia Generating Station in Washington State remain open past its scheduled retirement.² The WECC Northwest assessment area includes all or parts of Washington, Idaho, Montana, Oregon and California. The DOE’s order declaring an emergency means that Morgan Stanley’s proposed electricity exports “would impair the sufficiency of electric supply within the United States” and therefore the application must be denied. The Department of Energy cannot simultaneously determine “that an emergency exists within the Western Electricity Coordinating Council Northwest assessment area due to a shortage of electric energy” while

FERC Creates RTOs to “reduce the need for Commission oversight and scrutiny”

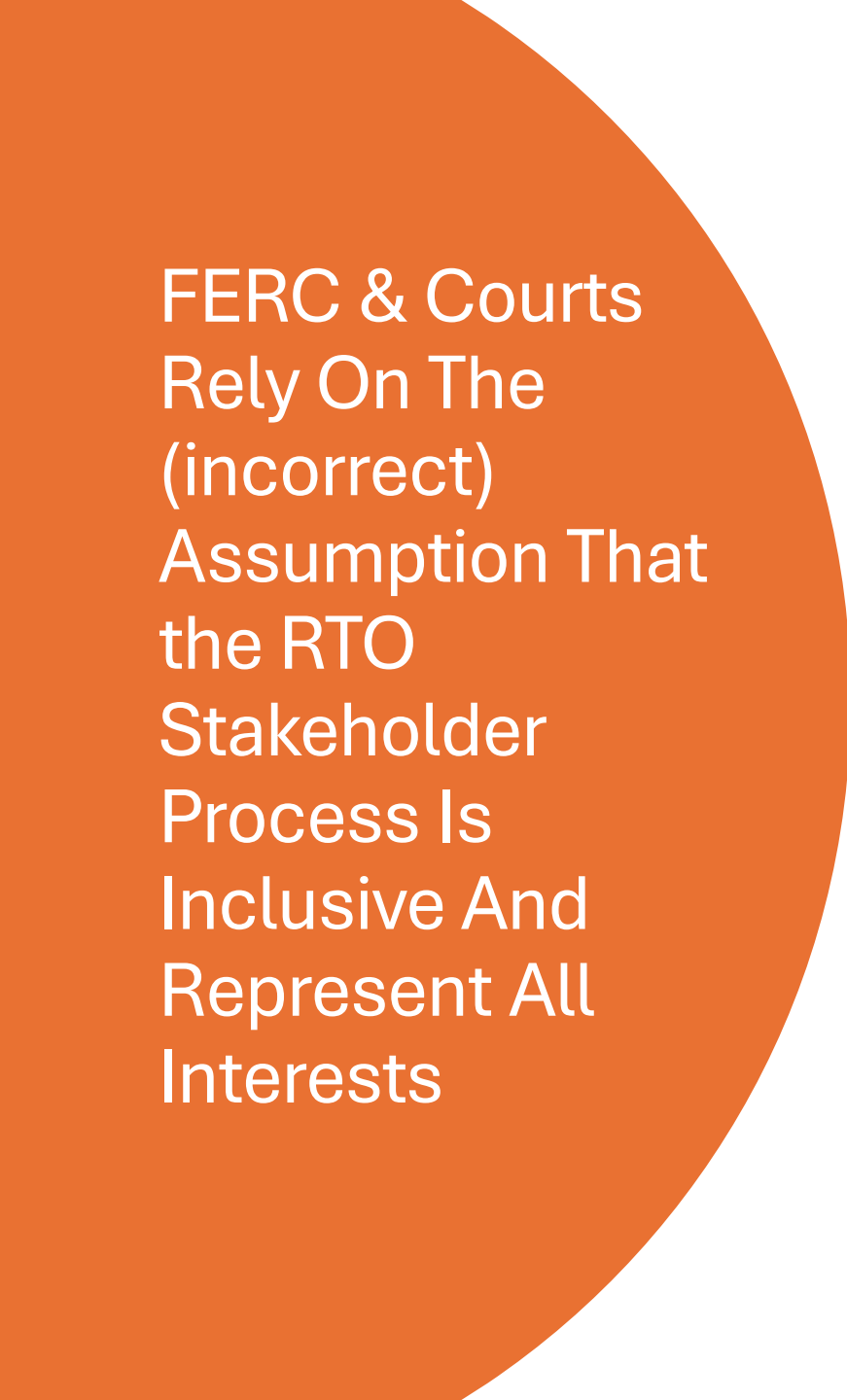
- In 1996, FERC Order 888 suggested the concept of an Independent System Operator as one way to satisfy the requirement of providing non-discriminatory access to transmission.
- In December 1999, [FERC Order 2000](#) encouraged the voluntary creation of ISOs/RTOs to “facilitate lighter handed regulation” so that ISOs/RTOs “would reduce the need for Commission oversight and scrutiny.” (at pages 3 and 96 of the order). Membership must be voluntary because Congress has never explicitly authorized them. RTOs are an administrative creation of FERC.

FERC Has Allowed ISOs/RTOs To Privatize Electricity Policy Making

FERC has delegated the heavy lifting of designing energy markets to the private RTOs. The RTOs (other than CAISO) administer internal stakeholder processes where lobbyists for utilities, power plants and Wall Street energy traders are free to not only offer their market design proposals but are granted voting rights by the RTO.

It is therefore unsurprising that RTOs pursue market designs that are hostile to renewables and the public interest.

RTOs are responsive to their members, not the public interest.

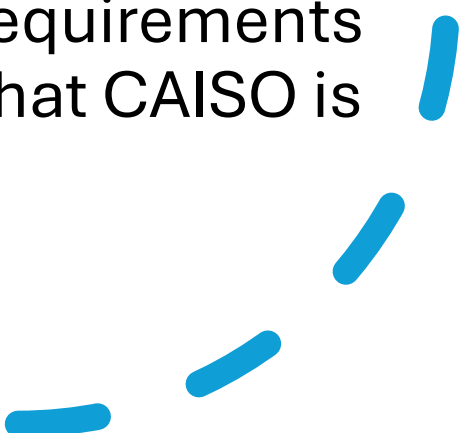
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FERC & Courts Rely On The (incorrect) Assumption That the RTO Stakeholder Process Is Inclusive And Represent All Interests

- NRG Power Marketing, LLC v. FERC (2017) limits FERC's ability to alter RTOs § 205 filings, thereby vastly empowering the ability of RTOs to dictate the direction of market reforms. The court in NRG specifically mentions the rights of RTO stakeholders under § 205 in ruling against FERC.
 - An RTO's stakeholder process is relied upon not just as the primary vehicle to formulate and deliberate electricity policy, but votes cast in the stakeholder process lend needed creditability in the eyes of FERC and the courts for market reform proposals.
 - Therefore, FERC needs to ensure that an RTOs stakeholder process—and the underlying transparency of its broader governance process—is as accountable and accessible to the public as possible.
 - In reality, the RTOs only are responsive to their members (owners of transmission, power plants, energy traders, etc) and not the public interest.
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In January 2001, We Supported California Taking Control of CAISO Board of Directors

- In *California Independent System Operator Corporation v FERC* (2004) the court was clear that FERC has complete jurisdiction over RTOs, including their internal governance processes:
 - “If FERC concludes that CAISO lacks the independence or other necessary attributes to constitute an ISO for purposes of Order No. 888, then it need not approve CAISO as an ISO . . . If California stubbornly refuses to make CAISO conform to FERC’s requirements for ISOs, then FERC can declare that CAISO is not an ISO, or threaten to do so.”
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But A Recent FERC
Order Claims Limited
Authority Over Internal
RTO Governance—
Hence RTOs Are
FERC's Frankensteins:
Entities FERC Created
But No Longer Controls

“NEPOOL rules prohibiting press and public attendance at NEPOOL meetings do not directly affect” just and reasonable rates, and therefore the Commission lacks jurisdiction to order NEPOOL to open its deliberations to the public. “NEPOOL’s policies prohibiting press and public attendance at and reporting on NEPOOL stakeholder meetings are further removed from jurisdictional rates than the board selection practices at issue in CAISO” and so FERC dismissed challenges to allow the public and journalists to attend. (RTO Insider LLC v. New England Power Pool Participants Committee, Docket No. EL18-196, Issued April 10, 2019, at 48 and 50)

FERC's Assumption That Non-Voting Public Attendance in RTO Stakeholder Meetings Would be "Passive" is Erroneous

The Commission's order, therefore, relies in part on the erroneous assumption that non-member attendance would be limited to that of mute spectators, when in fact non-members in other RTOs can actively participate in the debate and freely ask questions of participants. Active public participation during stakeholder debates is profoundly different from the Commission's notion of a voiceless audience. An active, engaged public that is free to not only witness stakeholder proceedings, but has rights to speak during the debate and ask questions of NEPOOL members and staff can play a role in influencing the debate, and therefore admission of the general public can impact rates.

OCTOBER 17, 2019

FERC Ruling Endorses Pay-to-Play Politics

Statement of Tyson Slocum, Director, Public Citizen's Energy Program

Note: Today, the U.S. Federal Energy Regulatory Commission (FERC) unanimously ruled that a private corporation tasked with operating the power grid for 65 million people that is funded through household utility bills, can give money to political organizations that provide VIP access based on those contributions. The decision has immediate negative impacts on rooting out pay-to-play political activities. The case began with a complaint filed by Public Citizen in 2018.

Energy Affordability/Market Accountability Reforms

- 206 proceeding examining whether current utility cost of capital/ROE transmission rates are just and reasonable, and explicitly link ROE to customer affordability.
- As Chairman Christie suggested – [end all transmission incentive rates](#), including CWIP.
- Require the default reporting of all trade association dues in [Account 426.4, for nonrecoverable expenses](#).
- Disallow MBR price-gouging with rate review of MBR seller profit margins, and [institute soft-price caps in all energy markets](#).
- File RTO capacity auction results as stand-alone 205 proceeding.
- Apply [broader public interest criteria for 203 proceedings](#) – FERC's lax standards encourage consolidation and misallocation of capital investment towards existing infrastructure at the expense of new.
- Improve [natural gas market transparency](#).

Reforms, Cont'd

- Notice of Inquiry of Order 719
 - RTOs must have board of directors directly accountable to ratepayers within its geographic footprint.
 - Subject RTOs to FOIA and federal open meeting laws
 - Replace stakeholder functions with FERC Advisory Committees
- Provide [intervenor funding](#) through the Office of Public Participation.
- Establish MBR [corporate character standards](#).
- Restore [CFTC oversight of FTR market](#).
- Strengthen reporting and other [standards for private equity, hedge funds](#) and other investors.