



The Federal Energy Regulatory Commission (FERC) is tasked with ensuring reliable, efficient, and sustainable energy for consumers at a fair cost. The agency also is responsible for developing energy infrastructure that serves the public interest. FERC's activities in meeting these goals affect us all. Yet, participating in FERC proceedings on these and other matters is so challenging for consumers and advocates that they are almost entirely shut out of the process. Because of their highly technical nature, FERC dockets require an enormous amount of time and knowledge to understand. To follow and be actively involved in a FERC case, one needs to either be a lawyer or hire one – which most advocates and organizations representing consumers cannot afford.

The result is a powerful federal agency, with sweeping authority over power markets and controversial infrastructure projects, which acts with limited public engagement and oversight. But it wasn't supposed to be this way.

**Take Action:** [Urge FERC to establish an Office of Consumer Advocate and Public Participation](#)

## Efforts to Shed Light on FERC

In 1978, an Office of Public Participation was proposed at FERC as part of the Public Utility Regulatory Policy Act (PURPA). In addition to the creation of the office, a provision would have allowed for intervenor funding, whereby public interest groups would have been reimbursed for the costs associated with participating in key dockets. But because the office was never funded, it was never created.<sup>i</sup>

Since 1978, Congress has failed to fund the office or establish a consumer advocate for FERC despite adequate support and several attempts:

- An "Office of Consumer Advocacy" for FERC was in the Senate-approved version of HR 6, the Energy Policy Act of 2003 (specifically, in Section 253). But it called for the office to be placed in the Department of Justice (rather than within FERC).<sup>ii</sup> This version never made it into law.
- Section 198 of the Waxman-Markey cap-and-trade bill (H.R.2454) would have established an Office of Consumer Advocacy in FERC and given it broad investigatory responsibilities. The bill failed in 2010.
- Section 151 of the Kerry-Lieberman climate bill (S.1733), which largely mirrored the Waxman-Markey measure, would have created an Office of Consumer Advocacy for FERC. That bill failed in 2010.<sup>iii</sup>

In testimony before the Senate Committee on Environment and Public Works in 2009, then-FERC Chairman Jon Wellinghoff recommended Congress

consider funding an Office of Public Participation as imaged under PURPA.<sup>iv</sup>

And in November 2010, the National Association of Regulatory Utility Commissioners (NARUC) passed a resolution supporting the establishment of a "Federal Office of Consumer Advocacy" at FERC.<sup>v</sup>

## The State of Consumer Advocacy

In the 1970s, states began establishing state utility consumer advocate offices after it had become clear that simply having a state utility commission wasn't enough to protect consumers. Today, these consumer advocacy offices promote transparency and help to ensure that people have an effective voice in the often-complex world of state utility regulation.

Twenty-seven states have an office dedicated to representing consumer interests in proceedings that affect households' access to affordable, efficient and sustainable energy. Though having a designated consumer advocate is essential, it does not mean the public interest always prevails in state utility cases. But funding for public interest organizations can facilitate a more a robust public interest presence before state public utility commissions.

California is the only state to provide funding for public interest organizations participating in Public Utility Commission proceedings.<sup>vi</sup>

## Public Distrust: A Situation

A growing coalition of communities and individuals who are fighting fracking infrastructure development have targeted FERC for the agency's lack of transparency and public engagement. The group launched a sustained protest against the agency in November 2014, which includes attending and disrupting FERC's monthly public meetings. Speaking at the National Press Club in January, then-Chairman Cheryl LaFleur said, "These groups are active in every FERC docket ... as well as in my email inbox seven days a week, in my Twitter feed, at our open meetings demanding to be heard, and literally at our door closing down First Street so FERC won't be able to work. We've got a situation here."

## Inaccessible, Unacceptable

FERC's activities and reach are extensive. According to its FY 2016 budget request, FERC expects to receive 120 pipeline construction request, 25 license applications for hydropower facilities, 160 merger and acquisition applications, and thousands of proceedings related to setting electricity rates.<sup>vii</sup>

Dockets related to these activities undoubtedly will be filled with lawyers representing generators and industry interests, but not with lawyers representing the communities and working families impacted by FERC rulemakings and actions.

And navigating the myriad filings on FERC's eLibrary requires advance knowledge of which dockets are significant, leaving resource-strapped public interest advocates unable to figure out where to start to be effective. At the state level, consumer advocates play a critical role. At FERC, they are nowhere to be found.

## Advocating for the Public Interest

Public Citizen urges the creation of an Office of Consumer Advocate and Public Participation at FERC along the following principles:

- The office should be organized in a way to maximize independence. Financing for the Office should be clearly allocated to support the activities of the office.

- The office must be able to conduct its own investigations and not be limited to the scope of FERC dockets or proceedings.
- The office should include authority to provide intervenor funding to consumer groups to encourage their participation in FERC proceedings.
- The office should coordinate assistance and outreach to the public with respect to authority exercised by FERC.
- The office should have an advisory board composed of representatives of the non-governmental consumer advocacy community, including organizations representing low-income households and the elderly, and both national and state-based consumer organizations.

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### Endnotes

<sup>i</sup> <https://www.law.cornell.edu/uscode/text/16/825q-1>

<sup>ii</sup> <http://www.gpo.gov/fdsys/pkg/BILLS-108hr6eas/pdf/BILLS-108hr6eas.pdf>

<sup>iii</sup> <http://www.gpo.gov/fdsys/pkg/BILLS-111s1733is/pdf/BILLS-111s1733is.pdf>

<sup>iv</sup> <http://www.ferc.gov/EventCalendar/Files/20091027115535-Wellingshoff-10-27-09.pdf>

<sup>v</sup> <http://naruc.org/Resolutions/Resolution%20Supporting%20Federal%20Office%20of%20Consumer%20Advocacy.pdf>

<sup>vi</sup> <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=puc&group=01001-02000&file=1801-1812>

<sup>vii</sup> <http://www.ferc.gov/about/strat-docs/2015/FY16-Budget-Request.pdf>