

# Establishing the Federal Energy Regulatory Commission Office of Public Participation

A Review of Stakeholder Input



## Executive Summary

In 1978, as part of the sweeping changes to the Federal Power Act (FPA) under the Public Utility Regulatory Policies Act of 1978 (PURPA), Congress ordered the creation of an “Office of Public Participation” at the Federal Energy Regulatory Commission (FERC). For forty years, this mandate remained unfilled. On February 22, 2021, in response to a further congressional directive, FERC issued Docket No. AD-21-9 to solicit public input on how the Commission should establish and operate the Office of Public Participation (OPP) and held a series of listening sessions over the following months.

**Over the course of spring 2021, FERC received more than a dozen hours’ worth of spoken comment and more than 100 written comments on the form, function, and goals of the OPP.** Stakeholders included landowners and community members affected by proposed projects, environmental and consumer advocates, energy companies, State and Tribal governments, and many more.

Broadly, commenters provided ideas on how the OPP can serve to improve the decision making of FERC through improving informed input to the Commission’s proceedings and activities. While there was not necessarily consensus across all issues, commenters were united in their belief that FERC has room to improve in establishing accessible, streamlined process for soliciting stakeholder input and providing resources to facilitate greater participation.

This report explores in detail the key recommendations from this diverse and experienced set of commenters. Across these recommendations, we have identified four common themes: authority and independence; improved accessibility; educational, technical, and financial assistance; and dedicated assistance for specific stakeholder groups.

**The Office of Public Participation must have both the authority to have real influence in FERC’s decision-making and the independence to serve as an objective entity to assist the public.**

Stakeholders emphasized that the OPP must move beyond a “box-checking” or “rubber stamp” exercise to receive public input and instead ensure that it actively supports the public’s ability to meaningfully inform decision making.

Additionally, most commenters recommended that the OPP serve as a neutral, coordinating entity that facilitates public participation in FERC proceedings and assists the public. Core functions of this role would include information dissemination, providing technical and financial assistance, facilitating systemic changes to remove barriers, and serving as a conduit between FERC’s existing offices and all public participants.

Many commenters recommended the creation of an Advisory Board that could guide the OPP, establish its charter, and serve as an audit authority for the office.

**Increasing the overall accessibility of FERC to the general public through procedural and administrative updates will be an important and central part of the OPP’s work.**

Stakeholders nearly unanimously agreed that FERC’s existing process and administration erected barriers to participation, and provided myriad recommendations for increasing access and opportunity for engagement. Key recommendations included:

- *Improving the website:* Even regular participants in FERC process find the FERC website hard to navigate and utilize—one commenter, with whom many it appears would agree, called the website “nearly unusable.” A third party experienced in web design and user interfaces could be valuable in helping to identify top priority and high impact improvements.
- *Improved Outreach:* Outreach to potentially affected stakeholders, especially landowners, is a critical way that these stakeholders receive notice of a potential project and gain an opportunity to engage. Commenters in general found the existing process severely inadequate and recommended significant changes. A key recommendation was to ensure that the OPP, not the project applicant, has the responsibility of notifying affected landowners and community members of a potential project.
- *Field Staff:* A common recommendation was to establish either rotating or permanent field staff and/or field offices to address and understand regional differences. Field staff could improve public participation by engaging with communities directly, building stronger relationships with impacted communities, and fostering greater public participation by reaching a wider audience.

## Educational, technical, and financial assistance can help level the playing field and provide additional resources to stakeholders without extensive experience with FERC.

Once stakeholders are engaged, the OPP can provide a broad range of resources to improve the input received. These resources can take three general forms.

First, educational assistance can allow the public to have more thoughtful and insightful engagement in FERC processes. Commenters suggested a broad range of potential forums, including written materials posted on the website, workshops and webinars, and one-on-one interactions with staff. Topics could include guides to commenting, overviews of FERC rules and procedures, history of important FERC decisions and policies, and background on key energy and permitting topics.

Second, technical assistance can provide direct services to assist stakeholders in intervening, commenting, or otherwise engaging the FERC. The OPP could provide technical assistance in a variety of forms, including assigning OPP staff experts to assist the public, offering templates for FERC filings, increasing access to data and information, and facilitating connections to experienced counsel and other experts.

Third, many commenters highlighted the importance of intervenor compensation to ensure that non-industry intervenors have the financial resources to engage experts and support informed engagement. Section 319 of the FPA gives the OPP the authority to provide compensation for intervening and/or participating in Commission proceedings, though the OPP must establish definitions and qualifications for any such program. Commenters recommended that the OPP establish and publish clear eligibility guidelines for intervenor funding. Many commenters also emphasized the need for environmental justice (EJ) and marginalized communities to have access to intervenor compensation.

## Specific stakeholder groups, including landowners, marginalized groups, and Tribal governments may be best served by dedicated or special assistance.

While the OPP can and should provide resources to all parties, specific stakeholder groups were emphasized and may particularly benefit from certain resources.

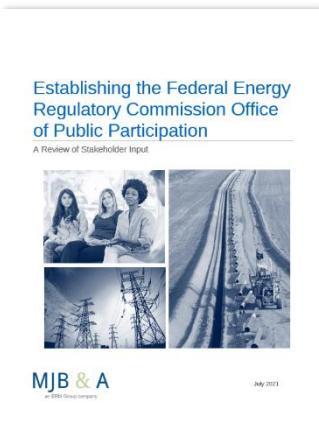
- *Landowners:* Landowners are affected by proposed projects that either pass directly through their land or in close proximity to their land. However, many stated that they have lacked adequate representation and engagement in FERC processes. Landowners suggested that early outreach and engagement with them should be conducted by the OPP, including information on their legal rights, how to intervene, and easy access to any relevant information such as important deadlines and data.
- *Marginalized communities:* EJ and marginalized communities are often disproportionately burdened by proposed projects, but historically have lacked adequate representation and engagement in FERC processes. Specific recommendations to improve outreach to these communities include increasing focus on projects’ EJ effects, ensuring dedicated staffing, and reestablishing past policies, such as National Environmental Policy Act (NEPA) EJ guidelines.

- *Tribal governments:* Many of FERC’s actions impact lands that have cultural, historical, or environmental significance to Tribal Nations. Tribal Nations noted that, as independent sovereign governments, tribes are not the general public and therefore require a separate process for consultation and engagement under existing law. While these commenters supported the creation of the OPP, they noted that the office may not adequately address how FERC should communicate and consult with tribal governments.

This report was prepared by M.J. Bradley & Associates for the Sustainable FERC Project of the Natural Resources Defense Council (NRDC). For the full report, “Establishing the Federal Energy Regulatory Commission Office of Public Participation: A Summary of Stakeholder Input,” click [here](#).

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