

Panel 4: Coordinating Public Assistance

Bios and Testimony

Workshop Regarding the Creation
of the Office of Public Participation

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FEDERAL ENERGY REGULATORY COMMISSION



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Previously, she served as the Assistant Secretary for Policy at the U.S. Department of Energy. She was the Secretary of Environmental Affairs in Massachusetts, Commissioner at the Massachusetts Department of Public Utilities, Chairman of the Board of the Massachusetts Water Resources Authority, and Executive Director of the Massachusetts Energy Facilities Siting Council.

Dr. Tierney has authored numerous articles and speaks frequently at industry conferences. She serves on a number of boards and advisory committees, including chairing the Board of ClimateWorks Foundation and the Board of Resources for the Future. She is a trustee of the Barr Foundation, and a director of World Resources Institute and the Energy Foundation. She is a member of the advisory councils at Duke University's Nicholas Institute for Environmental Policy Solutions, Columbia University's Center for Global Energy Policy, New York University's Institute for Policy Integrity, and the New York Independent System Operator (NYISO).

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She chairs the External Advisory Council of the National Renewable Energy Laboratory (NREL) and recently chaired the Department of Energy's Electricity Advisory Committee. She was co-lead author of the energy chapter of the National Climate Assessment. She was recently a Visiting Fellow in Policy Practice at the University of Chicago's Energy Policy Institute. She chaired the Policy Subgroup of the National Petroleum Council's *Prudent Development* study of the natural gas and oil resource base in North America, and served on the U.S. Secretary of Energy Advisory Board.

She taught at the Department of Urban Studies and Planning at MIT and at the University of California at Irvine. She received NARUC's Mary Kilmarx Award in 2015, and in 2020 was designated as a National Associate of the National Research Council of the Academies of Sciences, Engineering and Medicine. She earned her Ph.D. and M.A. in regional planning at Cornell University and her B.A. at Scripps College.

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

Workshop on the Creation of the)
Office of Public Participation)

Docket No. AD21-9-000

**COMMENTS OF
SUSAN F. TIERNEY, Ph.D.
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On her own behalf

**Coordinating Public Assistance
Through FERC's New Office of Public Participation**

April 16, 2021

INTRODUCTION

Thank you for giving me the opportunity to comment on issues related to the establishment and future operations of a new Office of Public Participation (“OPP”) within the Federal Energy Regulatory Commission (“FERC” or “the Commission”).

Although Congress authorized and directed FERC to establish the OPP, it is not yet a functioning office. Starting up a well-designed and well-resourced OPP will be an important new capability that can aid and enhance the Commission’s ability to satisfy its public interest mandates. Bringing more voices from affected communities and interests into the Commission’s processes and being intentional about examining FERC’s processes to look for and remove barriers to public participation cannot help but improve the integrity of and evidence base for the Commission’s work for Americans.

I commend the Commission for its renewed interest in the OPP and for calling attention to its possibilities through today’s Technical Conference. As set forth in the Notice for this workshop, the issues of interest to the Commission include how the OPP could facilitate greater understanding of Commission processes, what types of public engagement practices the OPP should perform, and how might the OPP support communications on complex energy and regulatory topics. I will comment on these topics below.

CONTEXT

As the Commission well knows, the nation’s energy systems are undergoing significant transitions, influenced by the changing economics of energy fuels and technologies, the changing preferences of energy consumers and the investment community for clean energy supplies, the changing perceptions of Americans about the threat of climate change and the need for government action to address it, the changing commitments of energy utilities and other suppliers to achieve net zero emissions in future decades, and the changing policies of federal, state and local governments.

Many researchers, analysts and experts have studied these transitions in the US¹ and examined the many further technological and electric portfolio changes that will be needed to accelerate reductions in greenhouse gas (“GHG”) emissions so that they are consistent with levels needed to achieve the goal of limiting global temperature increases to between 1.5°-2.0°C.

Insights from these many studies suggest that there will need to be: significant build-out of renewable energy projects; expansion of the electric transmission systems; retention of zero-carbon generation sources such as at existing hydroelectric and nuclear plants; careful consideration of what, if any, new fossil generation and delivery infrastructure is needed; other potential delivery infrastructure investment; and RDD&D to eventually bring new firm generation, low-carbon fuels, and long-duration storage solutions to market.

Such outcomes will require efforts by countless actions, including by the Commission and the entities it regulates. Examples include: utility and non-utility investment in new infrastructure whose costs will flow through FERC-regulated rates; changes in wholesale market designs so that they are better suited for ensuring reliable electricity from resources with high upfront capital cost and virtually no variable costs;² and the potential certification of new natural gas pipelines and the licensing of hydroelectric facilities.

Even before the current energy transitions got underway in earnest, members of the public have always had an inherent interest in FERC’s decisions, for countless reasons: for example, they ultimately pay cost-based or market-based rates approved by FERC, or they live in communities (or on land) that hosts energy facilities, or they enjoy the benefits of a reliable grid.

But clearly, only a small portion of the public actually participates in FERC proceedings and its other processes. Those that participate often do so at great time, effort and/or out-of-pocket expense. Some that might be interested in participating have been inhibited because they lack information or understanding about how FERC’s processes and energy systems work. Other people end up learning too late about the facility proposals that might affect them. And others are unable to take time off

¹ Examples include: Electric Power Research Institute, “Powering Decarbonization: Strategies for Net-Zero CO2 Emissions,” February 23, 2021, <https://www.epri.com/research/programs/109396/results/3002020700>; E. Larson *et al.*, “Net-Zero America: Potential Pathways, Infrastructure, and Impacts - Interim Report,” Princeton University, December 15, 2020, https://netzeroamerica.princeton.edu/img/Princeton_NZA_Interim_Report_15_Dec_2020_FINAL.pdf.

² See, for example: Susan Tierney, “Wholesale Power Market Design in a Future Low-Carbon Electric System: A Proposal for Consideration,” prepared for the WRI-RFF Workshop on Market Design for the Clean Energy Transition: Advancing Long-Term Approaches, November 20, 2020; Paul Joskow, “Challenges for wholesale electricity markets with intermittent renewable generation at scale: the US experience,” *Oxford Review of Economic Policy*, Summer 2019; Sonia Aggarwal, *et al.*, “Wholesale Electricity Market Design for Rapid Decarbonization,” Energy Innovations, June 2019.

from work or family obligations in order to show up to make their views known, or cannot pay for legal and expert assistance, or face other practical constraints that make it impossible to participate.

Going forward, as the nation's energy systems undergo accelerating changes and as members of the public may be impacted in different ways than in the past, it is all the more important for the Commission to provide new, viable and meaningful opportunities to expand the public's ability to participate in FERC's business. This is particularly true in light of the need for the energy transition to address the inequities associated with our energy systems that have disproportionately impacted communities of color, Indian tribal members, and other low-income and disadvantaged people.

The need for such real opportunities for public participation is an important theme in the new report from the National Academies committee on decarbonizing the U.S. energy economy.³ (I am a member of this National Academies committee.)

Like many other decarbonization studies, this one addresses the important "what" question: "what would it take, from an economic and technology point of view, to reach net zero GHG emissions in the U.S. economy by 2050."

But unlike many other decarbonization studies, this one also addresses several equally important questions: "To what ends" is the nation undergoing energy transitions? And "how" should the nation undertake the transition so that it incorporates and addresses a host of other issues that people care deeply about.

This National Academies' study concluded that "the net-zero transition represents an opportunity to build a more competitive U.S. economy, to increase the availability of high-quality jobs, to build an energy system without the social injustices that permeate our current system, and to allow those that are marginalized today to share equitability in future benefits. To maintain public support through a thirty-year transition, the U.S. will also need specific policies to ensure a fair distribution of both costs and benefits."⁴ The study concluded that doing so would require deliberate efforts to include the participation and voices of current and historically marginalized groups into clean energy planning and decision making:

- Ensuring meaningful public participation by those most affected is not just a matter of ethics. It is critical to ensuring that policies are well designed to address equity and work for all Americans, as well as to upholding the U.S. commitment to democratic decision making that is open to and inclusive of all voices. Without attention to equity, the policies and implementation will not garner sustained public support and may face significant opposition or backlash....
- Significant and sustained efforts will be required to strengthen and expand public participation in energy decision making in order to counter both misinformation and efforts to hamper public engagement in climate policy that threaten the social contract for deep decarbonization....
- Policy and financial commitments will be needed to ensure not only that decision-making processes that shape the future of energy are transparent to and inclusive of the voices of diverse communities but also that these communities have the resources and are able to develop the capacity to participate effectively....⁵

The National Academies' decarbonization committee recommended a number of actions⁶ that are relevant to the issues raised by the Commission in this workshop (even if not all of these recommendations are directed to FERC itself):

- Congressional appropriations of \$8 million per year for the FERC Office of Public Participation and Consumer Advocacy.
- Congressional appropriations of \$25 million per year for DOE to fund technical assistance and planning grants to states, communities, and tribal nations to enable meaningful participation in regional electric transmission planning and siting activities.
- Various recommendations related to "extensive and new forms of coordination across sectors (e.g., between electricity and transportation), across jurisdictions (e.g., between cities and suburbs and their rural neighbors), among utilities (e.g., within regional markets), and between the public and private sector (e.g., between utilities and cities)." Related recommendations call for significantly more resources to be

³ National Academies of Sciences, Engineering, and Medicine, *Accelerating Decarbonization of the U.S. Energy System*, February 2021, National Academies Press (hereafter "NASEM Decarbonization Report (2021)"), <https://www.nap.edu/catalog/25932/accelerating-decarbonization-of-the-us-energy-system>.

⁴ NASEM Decarbonization Report (2021) (including highlights and recommendations at <https://nap.edu/resource/25932/interactive/>).

⁵ NASEM Decarbonization Report (2021), pages 104-105.

⁶ NASEM Decarbonization Report (2021), pages 128-129, 135-136, 151, 160.

appropriated by Congress to support regional planning efforts related to energy transitions and to support stakeholders' ability to participate in them.

PRACTICAL PROBLEMS FACED BY PUBLIC STAKEHOLDERS IN PARTICIPATING IN REGULATORY PROCESSES

Providing ways to increase the public's opportunities to participate meaningfully in FERC's processes is not a new or easy issue. The current effort by the Commission to tap the insights of many commenters with lived experiences and institutional vantage points is a great step in the right direction.

For my part, I have been involved in regulatory proceedings and studies related to energy infrastructure and utility ratemaking for many decades.⁷ These experiences have given me a long window into the difficulties faced by members of the public in participating in such processes, and the kinds of structural issues that agencies need to address to reduce these difficulties. Public participation challenges are particularly acute in litigated or contested adjudicatory proceedings, but they can arise in other contexts as well.

Consider, for example, the types of aggravations and impediments to participation that many people have faced in the context of FERC's natural gas certification proceedings (as reflected in comments filed by parties in 2018 and 2019 in FERC's PL 18-1-000,⁸ the docket in which the Commission was considering what, if any, changes were needed to its 1999 Natural Gas Policy Statement⁹).¹⁰

Many local landowners and communities, state agencies, and non-governmental organizations are frustrated with processes that seem intimidating, demanding of significant time and attention and technical expertise, and structured in ways that do not provide meaningful opportunities to influence the routing or design of proposed projects and/or the Commission's decisions on whether to approve them.¹¹

Many stakeholders ask the Commission to change its processes to assure that all interested parties—regardless of their resources and including members of EJ communities and tribes—have meaningful and timely opportunities to participate in certification processes.¹²

Many commenters ask FERC to provide additional opportunities for members of the public to learn about project proposals in timely and more easily accessible ways, so as to enable them to provide informed and relevant input into FERC's process. Suggestions include:

- Creating and funding an Office of Public Participation at FERC;
- Expanding stakeholder outreach and public meetings in the pre-filing stage and in NEPA reviews;

⁷ I have had an on-going interest in public participation issues, particularly with regard to energy facility siting processes, starting with a research study I conducted early in my professional career (Susan Fallows, "The Evolution of the Nuclear Debate: Role of Public Participation," *Annual Review of Energy*, 1978). Since then, I have worked in agencies that held both public hearings and allowed intervenor participation in agency proceedings as: Director of the Massachusetts Energy Facilities Siting Council (with its own jurisdiction to review power plant and transmission line proposals, and in its role of holding public meetings to take comment from Massachusetts stakeholders for submission in FERC pipeline certification proceedings); Commissioner of the Massachusetts Department of Public Utilities (in its capacity to issue certificates of public convenience and necessity for electric and local gas projects); Massachusetts Secretary of Environmental Affairs (in reviewing and approving environmental impact statements for a wide variety of types of facilities under the Massachusetts Environmental Policy Act). Also, I have paid close attention to public participation processes in energy facility development and state and federal agency reviews of proposed projects in the context of my service: on several National Academies' studies (including on resiliency of the grid (2017, <https://www.nap.edu/catalog/24836/enhancing-the-resilience-of-the-nations-electricity-system>) and on the future of the electric power in the U.S. (2021, <https://www.nationalacademies.org/our-work/the-future-of-electric-power-in-the-us>); and on the Natural Gas Subcommittee of the Secretary of Energy Advisory Board's 2011 study of the safety and performance of natural gas hydraulic fracturing <https://cybercemetery.unt.edu/archive/shalegas/20170503213427/shalegas.energy.gov/shalegas/>).

⁸ FERC, *Certification of New Interstate Natural Gas Facilities*, 163 FERC ¶ 61,042, Notice of Inquiry, Docket No. PL18-1-000, April 19, 2018 (hereafter "FERC NOI").

⁹ FERC, Statement of Policy, *Certification of New Interstate Natural Gas Pipeline Facilities*, Docket No. PL99-3-000; 88 FERC ¶ 61,227 (September 15, 1999) (hereafter "Policy Statement").

¹⁰ Over 1,600 organizations and individuals submitted formal comments in response to the inquiry. In 2019, I prepared a white paper in which I summarized the themes that emerged from the comments: Susan Tierney, "FERC's Certification of New Interstate Natural Gas Facilities: Revising the 1999 Policy Statement for 21st Century Conditions," November 2019 (hereafter "Tierney White Paper"), https://www.analysisgroup.com/globalassets/content/insights/publishing/revising_ferc_1999_pipeline_certification.pdf.

¹¹ Tierney White Paper, page 39.

¹² Tierney White Paper, page 39.

- Changing FERC's current public meeting format (in which individuals are separated into small groups) so as to allow members of the public to hear and learn from each other;
- Loosening *ex parte* communications rules for certain parties, especially for tribes, to enable them to ask questions of FERC staff on an informal basis;
- Improving FERC's website to make it more user-friendly;
- Providing timely updates and notifications to interested members of the public;
- Having applicants bear the initial burden of proof by requiring them to provide sufficient information that the project serves the public interest and therefore should be approved;
- Holding hearings (and allowing for discovery) where there are disputed issues of material fact;
- Eliminating FERC's current practice of issuing "tolling orders," which indefinitely delay judicial review.¹³

Given the inherent and increasingly controversial nature of the Commission's decisions about whether new gas pipeline projects are in the public interest, the agency could improve the public credibility of such decisions by providing more plentiful, more engaging, more informative, and more timely opportunities for public input into the need for, and the routing and impacts of, specific facility proposals.

It is heartening to see that the Commission is endeavoring to do just that.

RESPONSES TO FERC'S QUESTIONS FOR PANEL 4: COORDINATING PUBLIC ASSISTANCE

FERC's notice for this workshop asked this panel to comment on how the OPP could (a) facilitate greater understanding of Commission processes through public engagement and education and (b) coordinate public requests for assistance from persons seeking to intervene or participate in proceedings before the Commission.

My comments focus in this section on a handful of the questions posed by the Commission for Panel 4.¹⁴

- What public engagement practices should the OPP perform? (Question #2)
- How can the OPP communicate complex energy topics and assist in making energy terms and regulations easier to understand? (Question #4).

First, it is clear that although there is a natural and understandable presumption that the OPP should focus on assisting the public's participation in FERC's processes and proceedings related to specific energy infrastructure facilities – e.g., for gas pipelines or for hydroelectric facilities – there is a broader range of FERC processes that warrant the benefits of greater public participation (and therefore warrant the attention of the OPP). The Commission's decisions would benefit from building stronger records informed by greater public participation in proceedings that focus on ratemaking, rulemaking, reliability, and even enforcement activities. But practically speaking, it is more likely that members of the public will be motivated to participate when they perceive they will be specifically affected by a real facility proposal as opposed to a general rate increase. This would suggest that FERC should focus its OPP activities on the former rather than the latter. That said, I encourage FERC to make efforts to increase the overall level of energy literacy that might affect the timing, level and character of public participation in its processes and proceedings.

Second, the OPP should take on a role within FERC of advocating for a public engagement, inclusion and equity lens across the activities of the various offices of the agency and even in various rulemaking proceedings. For example, had there been an OPP at the time FERC opened its inquiry into any changes that might be appropriate in the 1999 Natural Gas Policy Statement (Docket PL 18-1-000), staff from that office might have submitted comments in that docket to weigh in on what elements of FERC's Policy Statement (and of its administration of it in actual gas-pipeline certification applications) needed to change in ensure that the public had a meaningful opportunity to comment on questions related to the agency's public interest findings. (For example, the agency's reliance on Precedent Agreements as the sole indicator of public need in pipeline certification proceedings does not invite or even allow for members of the public to comment on important public interest considerations. As I wrote in my review of comments filed in Docket PL18-1-000: "Such [precedent] agreements

¹³ Tierney White Paper, pages 41-42. Footnotes in the original text have been omitted here.

¹⁴ I have focused on my comments on these issues, because they are the topics on which I feel most comfortable offering advice and opinions. By addressing these few and not other questions, I do not mean to convey that the other questions are not important. I respect that other commenters are in a better position than I to provide advice to the Commission on these other topics.

reflect the private interests of two counterparties, and do not necessarily reflect the public interest.”¹⁵) An important role for the OPP would be to identify and speak up about ways in which FERC’s processes and design of policies either support the inclusion of unrepresented or underrepresented constituencies or have the effect of structural or systematic exclusion of voices informing the agency’s work.

Third, the OPP should work with other FERC offices to make sure that their communications are not just legally correct but also provide useful and actionable information to the public. As a small example to make the point: FERC’s website states, with respect to providing information to landowners about the eminent domain process associated with interstate gas pipeline projects, that “FERC has no involvement in eminent domain proceedings.”¹⁶ Although that is technically true – because pipeline companies go to court (rather than to FERC) to condemn the landowner’s land to obtain an easement – such a statement omits important information about the agency’s role in issuing a Section 7 certificate approving a project, which is what gives the pipeline company the ability to go to court to take land by eminent domain. By the time a landowner faces an eminent domain proceeding in court, it is too late for that person to participate in FERC’s proceedings related to the need for the project, the routing of the facilities, and the environmental impacts related to them. The OPP should take on the responsibility to stand in the shoes of members of the public and look for ways to improve how FERC not only conveys useable information to the public but how FERC’s processes reach out to potentially affected parties to ensure that they can represent their own interests in a timely way before FERC.

Fourth, as a basic entry point for the public’s access to information about the agency, it seems important for FERC to update and modernize its website so that it is more accessible and attractive to users.

- I am an experienced and frequent user of information on FERC’s website. In my opinion, FERC’s website is not user friendly for anyone besides energy insiders. (Commenters in the FERC PL 18-1-000 docket on the Natural Gas Policy Statement made this same point.) One needs to be relatively knowledgeable about FERC’s jurisdiction, processes, and roles in order to navigate the website.
- From what I can tell from a thorough but not necessarily exhaustive review of the FERC webpages with an eye toward issues related to public participation, the principal pages of the FERC website that specifically address such issues tend to be ones that are tied to the relicensing of hydroelectric facilities and the certification of natural gas pipeline projects,¹⁷ but not necessarily about other matters (e.g., how to get involved in rulemaking or ratemaking processes) before FERC. My noting of this fact is a criticism of the information that FERC does provide to the public about the agency’s reviews of specific facilities, but rather a comment on the need for other points of access for the public into FERC’s processes.

Fifth, I encourage FERC’s OPP to undertake an initiative to communicate information about the agency’s work through various forms of media. The website does include a number of schematics relating gas pipeline certifications¹⁸ and hydrolicensing¹⁹ processes, has primers on certain topics (e.g., on hydropower²⁰; on what a person needs to know if a gas pipeline is on or is proposed to be located on his/her property²¹), and offers e-learning modules about FERC’s jurisdiction, processes, and work.²² But even findings such types of resources requires a certain level of understanding about energy systems and FERC’s business. Perhaps FERC could use its home page to help non-experts navigate to pages that are specifically designed to learn about energy terms and energy systems and how to get involved in various forms of public participation. The OPP should seek assistance from communications experts with a focus on visual and multi-media strategies to engage effectively with different publics. (For example, the e-learning modules (e.g., videos with voice-overs describing various FERC functions and activities of regulated industries²³) communicate legal and technical information, but their production

¹⁵ Tierney White Paper, page 4 (and see also page 16).

¹⁶ <https://www.ferc.gov/industries-data/natural-gas/landowner-topics-interest>.

¹⁷ For example: <https://www.ferc.gov/industries-data/resources/how-get-involved>.

¹⁸ For example: <https://www.ferc.gov/sites/default/files/2020-04/FERCNaturalGasCertificateProcess.pdf>.

¹⁹ For example: <https://www.ferc.gov/resources/processes/flow/hydro-2>.

²⁰ <https://www.ferc.gov/sites/default/files/2020-04/HydropowerPrimer.pdf>

²¹ <https://www.ferc.gov/sites/default/files/2020-04/gas.pdf>

²² <https://www.ferc.gov/industries-data/natural-gas/environment/e-learning>.

²³ <https://www.ferc.gov/industries-data/natural-gas/environment/e-learning>.

quality could be improved to make them more accessible and appealing to potential laymen who might seek to participate in the agency's activities or the planning processes conducted by regulated entities like regional transmission organizations and interstate pipeline companies).

Finally, given the fundamental goal of ensuring that FERC makes decisions based on sound evidence, the OPP should develop and support enhanced and diverse mechanisms to bring the public's voices into the decision making process. Processes that rely on robust communications to reach out to potentially affected communities and to assist individuals and groups in being able to participate will help ensure full and fair records for decision and enhance the credibility of FERC's decisions. FERC should devote greater resources to provide opportunities for more informed and effective public participation processes. And FERC should recommend to Congress that the agency be provided with the financial resources needed to support those processes and the members of the public that seek to use them.



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governance, the politics of electricity governance in the U.S. South, and, more broadly, the relationship between energy and democracy. Her scholarship has appeared or is forthcoming in the *California Law Review*, *UCLA Law Review*, *Columbia Law Review*, *Michigan Law Review*, *New York University Law Review*, *University of Colorado Law Review*, and *Harvard Environmental Law Review*, among other journals. At the University of South Carolina, she teaches Administrative Law, Energy Law, Environmental Law and Policy, and Climate Change Law.

Prior to academia, Professor Welton worked as the Deputy Director of Columbia Law School's Sabin Center for Climate Change Law. She also clerked for Judge David Trager of the Eastern District of New York and Judge Allyson Duncan of the Fourth Circuit. She received her Ph.D. in Law from Yale Law School, her J.D. from NYU School of Law, a Master of Public Administration in Environmental Science and Policy from Columbia University's School of International and Public Affairs, and her B.A. from the University of North Carolina at Chapel Hill.

FERC Workshop on the Creation of the Office of Public Participation

April 16, 2021

Panel 4. Coordinating Public Assistance

Opening Remarks of Shelley Welton

Thank you for the invitation to participate in this workshop about the creation of what I hope will become a transformative office at FERC. I will focus my opening remarks on relating research on public participation in federal agencies to some of the challenges FERC faces today. And I will do so in the context of Chairman Glick's laudable efforts to promote increased and sustained engagement at FERC with issues of equity and environmental justice.

As I have spoken with many community groups through my research on energy and democracy, it has been inspiring to hear their hopeful visions of energy system change, many of which center around a cleaner, more distributed, and more just energy system. FERC policy shapes the potential of such visions in critical but often difficult-to-discern ways. Bringing these connections to the fore, so as to foster deeper democratic engagement at FERC, should be a central goal of the Office of Public Participation ("OPP" or "the Office").

I have three points about how OPP might best foster this engagement. The first relates to *who* the Office should seek to engage, and in what ways. The statute's implicit charge, in asking FERC to engage "the public," is for the agency to engage new and broader constituencies. Given the agency's priorities, the OPP should focus on engaging historically marginalized communities and communities disproportionately burdened by energy infrastructure. There is both a "translating out" and a "translating in" function that the Office could play in this regard. "Translating out" refers to those activities that OPP could undertake to make technocratic FERC proceedings legible and relevant to the public. Beyond basic improvements to the ease of intervention and commenting, OPP might also provide trainings, layperson-oriented informational materials, and designated point-persons of contact for significant proceedings.¹

¹ To facilitate consistent efforts in this regard, the OPP might consider developing a "process rule" that outlines the public engagement efforts that the agency commits to undertake for various types of proceedings. See MICHAEL SANT'AMBROGIO & GLEN STASZEWSKI, PUBLIC ENGAGEMENT WITH RULEMAKING, FINAL REPORT TO THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES, at 142-43 (2018) (describing Department of Energy's process rule that "sets forth the agency's procedures for promulgating consumer appliance efficiency standards").

OPP might also have field staff, trained in grassroots engagement, who work to build relationships with constituencies underrepresented at FERC.²

“Translating in” is an equally important role for OPP. Researchers have found that when “undervoiced” stakeholders engage in federal rulemakings, they often provide what is termed “situated knowledge,” or knowledge that arises from lived reality.³ These stakeholders raise highly germane issues but do so in language and framing different from industry stakeholders or repeat interveners. Here, OPP staff might highlight for commissioners and their staffs the ways in which these comments speak to key issues in proceedings. In doing so, there may be good reasons for OPP staff to avoid assuming direct advocacy roles that subject them to ex parte restrictions. Perhaps, however, valuable “translating in” could be accomplished without requiring staff to cross the line into advocacy—including through non-proceeding-specific training and ongoing discussions within FERC about the role of situated knowledge within the agency’s mission.⁴ Situated knowledge will be particularly important as FERC considers how to better integrate equity and environmental justice into its activities and frameworks.

My second point relates to the *when* of participation. Research consistently shows that earlier participation is more valuable, at the stage before a proposed project or rule is formally before the Commission.⁵ In the case of electric proceedings at FERC, timing challenges equate to venue challenges: Section 205 filings are often shaped within Regional Transmission Organization (RTO) governance processes for months before they arrive at FERC, at which point the Commission is limited by deferential review standards and the restrictions of *NRG Power Marketing v. FERC* in its ability to shape these proposals.⁶ For this reason, OPP must also devote attention to improving participation and transparency in notoriously opaque RTO/ISO processes and other regional transmission planning processes. Under a robust staffing model, OPP might position field staff within regions to play similar “translating out” and “translating in” functions as they do at FERC. At a minimum, a centralized OPP staffer might

² *Id.* at 52 (observing that the Consumer Financial Protection Bureau “focuses its outreach efforts on specific communities of absent stakeholders, such as the elderly, students, and ‘the unbanked’”); Cynthia Farina, Mary Newhart, & Joshua Heidt, *Rulemaking vs. Democracy: Judging and Nudging Public Participation that Counts*, 2 MICH. J. ENVTL. & ADMIN. L. 123, 156 (2012) (suggesting that getting newcomers to participate in federal agencies requires “deliberately planned outreach”); Admin. Conf. of the United States, Recommendation No. 2018-7, Public Engagement in Rulemaking (Dec. 20, 2018), <https://www.acus.gov/recommendation/public-engagement-rulemaking> (suggesting targeted outreach efforts that “include proactive strategies to bring the rulemaking to the attention of traditionally absent stakeholders”).

³ Farina, Newhart, & Heidt, *supra* note 2, at 148 (“By situated knowledge, we mean information about impacts, problems, enforceability, contributory causes, unintended consequences, etc. that is known by the commenter because of lived experience in the complex reality into which the proposed regulation would be introduced.”).

⁴ SANT’AMBROGIO & STASZEWSKI, *supra* note 1, at 30 (recommending that agencies consider “broadening the types of comments that count in rulemaking and developing a greater appreciation for the non-technical values that inform discretionary policymaking”).

⁵ *Id.* at 25.

⁶ See 862 F.3d 108, 110, 114 (D.C. Cir. 2017) (observing that “Section 205 puts FERC in a passive and reactive role,” and holding that FERC can only require “minor” modifications to RTO section 205 filings).

field inquiries and complaints about regional stakeholder participation and report to FERC about regional participation experiences and recommendations for reform.

Finally, I want to emphasize how essential it is to link participation with a substantive commitment to reform. At its best, OPP could help FERC receive a wealth of new and valuable perspectives on how to interpret and apply the Commission’s broad and malleable charges of statutory authority⁷—e.g., “just and reasonable rates,”⁸ and “public convenience and necessity.”⁹ But researchers caution heavily against government facilitating public participation that it does not value, thereby “peddling democratic snake oil” that is likely to disenchant participants over time and harm an agency’s reputation.¹⁰

This risk counsels for two additional roles for OPP in public engagement efforts: first, OPP should clearly flag for the public those proceedings—and even particular issues within proceedings—where the Commission believes that public input would be most beneficial.¹¹ Second, the Commission, assisted by OPP, should clearly communicate to public interveners the ways in which their input has shaped decisions, beyond including responses to comments in hundreds-page-long orders.

Thank you again for the opportunity to share these thoughts.

⁷ Cf. Nina A. Mendelson, *Foreword: Rulemaking, Democracy, and Torrents of E-mail*, 79 GEO. WASH. L. REV. 79, 1343, 1346 (2011) (observing how agencies must often make value choices in implementing their statutes, for which “[p]ublic comments filed with an agency in reaction to a concrete proposal would seem to have considerable potential as a source of information on citizen values and preferences”).

⁸ 16 U.S.C. § 824d(a) (2018).

⁹ 15 U.S.C. § 717f (2018).

¹⁰ Farina, Newhart, & Heidt, *supra* note 2, at 151.

¹¹ Along these lines, Michael Sant’ Ambrogio and Glen Staszewski describe how the Department of Transportation creates “effects reports,” in which “[t]he agency regularly produces 21 separate reports for each ‘effect’ of its proposed or potential rules. Members of the public can sign up to receive a specific effects report when a proposed or potential rule has an ‘effect’ that is of interest to them.” SANT’ AMBROGIO & STASZEWSKI, *supra* note 1, at 71-72. The Environmental Protection Agency’s “situation assessment” tools might also prove useful here. See U.S. Evtl. Prot. Agency, Introduction to the Public Participation Toolkit, at 8-11,



Rebecca L. Tepper

**Chief, Energy and Environment Bureau
Office of the Massachusetts Attorney General**

As the Chief of the Energy and Environment Bureau in the Massachusetts Attorney General's Office (AGO), Rebecca serves as the Attorney General's chief advisor on energy and environmental policy. The Massachusetts Attorney General is the statutorily designated ratepayer advocate for the Commonwealth. Rebecca leads the AGO's federal/regional energy team, including the office's activities as a NEPOOL member, the AGO's participation in ISO-NE matters and FERC proceedings, representation of the Commonwealth in energy/environment-related federal litigation, and building coalitions with other state Attorneys General and consumer advocates on energy and environmental matters.

During Rebecca's tenure, the AGO launched an educational campaign to raise public awareness and provide the public with tools to participate in a more informed manner in discussions at FERC and ISO-NE. Among other actions, the AGO hosted a symposium and issued a white paper on market design for a clean energy future, conducted a public "teach in" on ISO-NE and FERC matters, and produced educational videos for social media.

Rebecca currently serves as:

- The treasurer of the National Association of Utility Consumer Advocates (NASUCA)
- The chair of the Coordinating Committee of the ISO-NE Consumer Liaison Group
- A member of the Consumer Advocates of New England (CANE)

Prior to joining the Attorney General's Office, Rebecca was the General Counsel to the Massachusetts Department of Public Utilities (DPU). Prior to the DPU, Rebecca served as the Director of the Massachusetts Energy Facilities Siting Board.

Before joining the State in 2009, Rebecca had 15 years of experience in the private sector, representing developers throughout the Northeast in siting, permitting, financing and contracting of renewable, distributed generation and conventional energy facilities. She also advocated on behalf of various stakeholders before state public utility commissions and the FERC in proceedings involving rates, energy efficiency, demand response, and the ISO-NE markets and rules.

Rebecca is a *magna cum laude* graduate of Boston University Law School and received her Bachelor of Arts from the University of Wisconsin/Madison.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

The Office of Public Participation

Docket No. AD21-9

**Opening Statement of Rebecca Tepper,
Chief, Energy and Environment Bureau,
Massachusetts Office of the Attorney General**

Good afternoon. My name is Rebecca Tepper. I am the Chief of the Massachusetts Attorney General Office's Energy and Environment Bureau. In Massachusetts, the Attorney General is the statutorily designated ratepayer advocate. I am honored to provide my thoughts regarding how the Office of Public Participation (OPP) can serve and educate the public about the Commission's processes and provide for meaningful public participation in its proceedings.

The thoughts I share this afternoon are based on my experience as a ratepayer advocate working with a broad range of consumers who are impacted by and are interested in what is happening at the Commission and by the direct experience the Massachusetts Attorney General's Office has had as a New England Power Pool (NEPOOL) member and a frequent participant in Commission proceedings.

I agree with the Commission that a well informed and engaged public will result in better, more widely trusted Commission decisions. Stakeholders have shared many creative and impactful actions that the Commission can explore to enhance its public education efforts and provide meaningful public participation in its proceedings. In considering options I encourage the Commission to follow seven guideposts:

First, proactively encourage and plan for public participation. This could include, for instance, developing public participation plans for individual Commission proceedings. Public participation plans allow a case team in the early stages of a proceeding to plan for and to tailor the Commission's outreach efforts to the particular case. Case teams and the OPP could work together at the beginning of a proceeding to identify the relevant stakeholders and consider options for reaching them and encouraging and facilitating their participation. To assist case teams, the OPP could provide general templates or guidelines for different case types. For cases of significant public interest, like one involving land use, the case team could seek public comment on their draft public participation plan before moving forward. All of these outreach efforts should be accompanied by a clear message that public input is both welcome and will be considered in the Commission's decision making.

Second, make it easy. Right now, there is nothing easy about participation in Commission proceedings. Recently, a grassroots organization reached out to the Massachusetts Attorney General's Office asking for assistance in submitting comments in a Commission docket. The organization spent hours figuring out how to register to "eFile," that many comments cannot be filed as "eComments" (despite the name), and that the format of their comments had to be an attached file. When a tenacious and dedicated

member of the organization finally figured it all out she drafted a 12-step tutorial so other members could replicate the process; all so that they could simply file a comment. That is the opposite of easy. The Commission should reevaluate all of its touch points with the public, focusing on simplification and ease of use. And the Commission should consider new ways to solicit public input outside of the typical processes that are accessible to all stakeholders affected by its decisions.

Third, provide live help. Nothing beats talking to a human being. In larger cases, the Commission might consider designating a specific public liaison and providing interested parties with a direct phone number and e-mail to ask questions. Other agencies, including the Massachusetts Attorney General's Office, utilize hot lines to ensure that questions reach the correct agency expert for a substantive response.

Fourth, meet people where they are. This includes ensuring language access, having a physical presence in RTO regions, being cognizant of work schedules and time zones when planning public meetings, and utilizing on-line opportunities for hearings and meetings.

Fifth, provide accessible educational opportunities. There are many good models for this. Two years ago, for example, the Massachusetts Attorney General's Office launched an educational campaign to raise public awareness about New England's evolving energy system and provide the public with tools to participate in a more informed manner in discussions at the Commission and ISO New England (ISO-NE) regarding market modernization and clean energy. As part of this effort, we produced a series of educational videos in multiple languages that we promoted on our website and social media. We also conducted a virtual public "teach in" for over 300 participants to help the public better understand how decisions are made about the power markets and why it matters.¹

Sixth, collaborate with the state consumer advocates. Consumer advocates who work on behalf of customers know their customers. They can help the OPP strategize effective community outreach plans, put the OPP in touch with interested parties, and provide other state-specific information. Each state consumer advocate should be paired with an OPP staffer to build relationships on both sides. In addition, the OPP should look for opportunities to collaborate with the National Association of Consumer Advocates.

Seventh, ensure that the statutorily designated consumer advocates have the tools they need to provide robust representation in Commission proceedings. Today, most consumer advocates simply do not have the funds to actively participate in RTO stakeholder processes or Commission proceedings. Creation of regional consumer advocacy organizations, like the Consumer Advocates of the PJM States (CAPs) in other RTOs would help consumer advocates participate more effectively in the RTO stakeholder process. With respect to Commission proceedings, funding for statutorily designated consumer advocates to hire expert witnesses would help address information imbalances and allow parties other than the utilities to present affirmative cases in complex and technical adjudicatory proceedings. In Massachusetts, by statute, the ratepayer advocate may hire experts and consultants for Department of Public Utility proceedings with funds allocated under the state utility tariff. This has dramatically changed the quality of decision-making by ensuring a robust record. We do not have similar funding for Commission proceedings, however. If adopted at the Commission, this type of funding could be capped per case, per state.

Thank you, I look forward to participating in further discussions on these issues.

¹ See <https://www.mass.gov/info-details/modernizing-power-markets-for-a-clean-energy-future>.



Chandra Farley

Just Energy Director

Partnership for Southern Equity

Chandra Farley is an activist at heart and credits her parents with instilling a sense of duty to always do what she can to advance justice and fairness. Currently, as the Just Energy Director at the Partnership for Southern Equity (PSE), Chandra leads a team of program staff and organizers towards developing local and regional strategies to advance energy equity through coalition building, leadership development, community organizing and leveraging data and research. Understanding the equity impacts of the sourcing and commodification of power generation is critical for marginalized populations such as Black people, communities of color and low-wealth communities. While unfamiliar to many residents, equity-centered energy and utility policies significantly enhance household economic stability and improve the overall quality of air, water and other natural resources that affect our health and well-being.

Chandra is a graduate of the EPA's Environmental Justice Academy, President Emeritus of the Environmental Justice Academy Alumni Association, Co-Chair of the Hive Fund for Climate and Gender Justice Advisory Board and serves on the Board of Directors for Community Movement Builders, Georgia Conservation Voters Education Fund, the People's Justice Council/Alabama Interfaith Power & Light and Greenlink Analytics.



Maranda S. Compton, Esq.

Tribal Citizen and Federal Indian Law Expert

Maranda Compton is a citizen of the Delaware Tribe of Indians and an expert in Native American law and policy, particularly as it relates to project development and permitting. Maranda works closely with both Tribal governments and non-Tribal entities in permitting and licensing processes before the Federal Energy Regulatory Commission and other Federal permitting agencies, advising on issues of environmental review, Tribal engagement, and Tribal treaty rights.



Kyle Stephens

Vice President, Regulatory Affairs

**Boardwalk Pipelines, LP, on behalf of the Interstate
Natural Gas Association of America**

Kyle Stephens is currently the Vice President of Regulatory Affairs for Boardwalk Pipelines, LP. He has responsibility for state and Federal regulatory affairs, including FERC certificates and project outreach and communications.

Mr. Stephens has 30 years of industry experience and has held positions of increasing responsibility with such companies as Natural Gas Pipeline Company of America, Texas Eastern Transmission, DCP Midstream, and Boardwalk Pipelines.

Mr. Stephens holds a Bachelors of Business Administration and a Masters of Science in Energy and Mineral Resources from the University of Texas at Austin. He also has a Juris Doctorate from South Texas College of Law.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

The Office of Public Participation)

Docket No. AD21-9-000

Statement of Kyle Stephens

Vice President, Regulatory Affairs
Boardwalk Pipelines, L.P.

Speaking on Behalf of the Interstate Natural Gas Association of America
April 16, 2021 Workshop on Creation of Office of Public Participation

Boardwalk and INGAA appreciate the opportunity to work with the Commission to improve the opportunity for the public to participate in the natural gas pipeline certificate process. INGAA represents 25 companies which comprise the majority of the Nation's interstate natural gas transportation and storage sector.

The Office of Public Participation's (the "Office's" or "OPP's") goal should be to assist landowners and stakeholders who need help navigating the FERC process so they can understand how to participate in an individual pipeline's certificate docket in order to ensure that landowner and community concerns are reflected in the National Environmental Policy Act (NEPA) documents and addressed, as appropriate. Such outreach will improve decision documents by making them more robust and creating a more fulsome record on which the Commission may make its certification decisions.

The Office should focus on larger natural gas pipeline projects that are filed during the Commission's pre-filing process, under either Section 7(c) (construction) or Section 7(b) (abandonment) of the Natural Gas Act (NGA). The Commission's Alternative Dispute Resolution staff serves a valuable but separate role and should continue to manage individual affected landowner complaints both during and after construction, and other matters, as they do today.

The Office should be designed to work within the Commission's current certificate processes and NEPA process and staff should be assigned to appropriate projects once filed. Assigning staff to projects early in the process will allow the Office to immediately become an informational resource for stakeholders who historically may not have participated at the Commission or who need help navigating the FERC process. If the Office determines that assistance to the public is warranted, the Office would assign staff to a project at the inception of the NEPA process for each NGA 7(c) and 7(b) proceeding. This staff could

assist stakeholders by answering questions about the FERC certification process and how to participate in the process, if desired. Mirroring the NEPA process also allows the public and other Commission staff to easily understand the scope, schedule and obligations of participants by identifying the project sponsor, project name and docket number, as they do today.

INGAA offers the following suggestions to improve the current notices and documentation procedures, flow of information, and processes used by applicants and the Commission.

Change the Initial Stakeholder Notice. During listening sessions and during project outreach, many people have expressed concern that they do not understand the information disseminated by the pipeline developer or the Commission. For that reason, it would be helpful if the applicant's initial Affected Landowner and stakeholder notice included an acronym guide and glossary. There also should be a means for the landowner to specify his/her preferred communication method (e.g., email, U.S. mail, link to the project sponsor's website, etc.) when the pipeline developer is seeking survey permission.

We have also heard concerns that the applicant's initial notice is sometimes interpreted as threatening that the pipeline developer will use eminent domain authority to take the landowner's property. To address this concern, the applicant's initial notice should no longer include "a brief summary of what rights the landowner has at the Commission and in proceedings under the eminent domain rules of the relevant state" under 18 C.F.R. § 157.6(d)(3)(v) of the Commission's regulations. Some landowners interpret inclusion of this reference in early communications from the pipeline developer as a threat of plans to take eminent domain action. INGAA proposes that applicants include this summary of rights prior to engaging in easement negotiations.

Consider Sending Notices to Renters in Addition to Affected Landowners. INGAA is committed to discussing within its membership whether pipeline developers should, on a best efforts basis, provide the applicant's Initial Notice of the filing of a certificate application to all tenants and renters at the Affected Landowners' address (in addition to complying with the current requirement of providing notice to all Affected Landowners who are the property owners of record on a best efforts basis).

Office Should Send a Companion Initial Notice. If the Office determines that stakeholders or landowners need assistance from OPP, it should consider sending Affected Landowners and stakeholders a companion notice to the applicant's initial notice to provide landowners and stakeholders information about their rights and how to intervene in Commission proceedings. This companion notice would be a second communication, but it would come directly from a federal agency, the Commission, which may increase the likelihood that the information is opened and read.

This companion notice would (1) introduce stakeholders to the Office, (2) provide the name of the OPP staff member(s) assigned to the project, and (3) share project-specific emails linking to the official docket to enable landowners and other stakeholders to intervene and/or file comments (including NEPA comments). This information should also be included in the Commission's NEPA Scoping Notice.

Provide Periodic Updates. Applicants should periodically update their Affected Landowner lists and share those lists with the Commission or the OPP so that the Commission has an updated list of landowner emails and addresses that should receive periodic updates about the status of the Commission's review of proposed projects. Periodically receiving information from the Commission, as opposed to from just the pipeline developer itself, would serve to remind landowners of the Commission's ongoing supervision of pipeline projects and close review of project proposals.

Broaden the Landowner Pamphlet. The Commission should add more information to the pamphlet entitled, "An Interstate Natural Gas Facility on My Land? What Do I Need to Know?" The Commission should consider updating and splitting this FERC landowner pamphlet into four different pamphlets to better reflect the type of facility and nature of the construction: (1) pipelines, (2) compression facilities, (3) storage facilities, and (4) meter stations and small aboveground facilities.

These four pamphlets should be in plain language, describe the proposed physical facilities, explain the need for civil and environmental surveys and survey permission, the opportunities for stakeholders to comment at various stages of the certification process, and landowners' rights with respect to the pipeline, including a plain language explanation of the eminent domain process under the NGA and a link to the Commission's website for a more expansive explanation. These pamphlets should clearly describe what information is available on the Commission's website and where that information can be found. These pamphlets should be available on the FERC website in a downloadable format and in multiple languages.

Improve the Commission's Website. The OPP should assist the Commission to improve FERC's website for landowners. The Commission should add a step-by-step flowchart and narrative to the website, explaining the steps the Commission takes during the certification process, from pre-filing through project operation. This visual aid and narrative would improve the public's understanding of the process and opportunities to negotiate with pipeline companies regarding survey permission, rights-of-way, and workspace.

FERC also should consider including on its website an explanation of survey permission and the benefits of engagement and videos of the right-of-way and temporary workspace construction process (both during and post-construction). Furthermore, as noted above, the

website should be updated to provide a plain language guide to explain eminent domain. The Commission should also create an online, downloadable form for landowners to grant survey permission to pipelines. In addition, the Commission should consider creating an up-to-date list of proposed projects on its website, listing projects by state and providing the name of each applicant, the project name and docket number, as well as a map showing the route of each proposed pipeline. When viewing a specific project, stakeholders should be able to see the Location of Facilities (Exhibit F) from the applicant's pending certificate filing.

Other opportunities for Engagement by the Office. To accommodate stakeholders that work non-traditional schedules, the Office should work with the Commission and the applicant to schedule FERC's Scoping Meetings at different times of day (including evening meetings) and at convenient locations. While social media, the internet and other electronic communications are helpful, relying solely on such communications may not ensure that the necessary information is reaching all interested stakeholders. Other vehicles for outreach such as providing information at local libraries can also be challenging for those who work non-traditional hours to access.

Therefore, the Office should have periodic workshops focused on explaining how and why to intervene.

Identify Environmental Justice (EJ) Communities. In addition to ensuring adequate notice and participation for stakeholders generally, the Office should assist applicants with identifying which communities near the proposed project qualify as EJ communities. EPA's EJScreen is a general tool which typically provides large polygons developed using census and broad emissions exposure data which is divorced from the actual community on the ground. In Boardwalk's experience, an EJ community may be a single subdivision underneath a much larger exposure or economic polygon provided by EJScreen. The Office should assist the applicant in finalizing the identification of communities.

Address Tribal Concerns. The Office should assist the applicant with outreach to tribal leaders and communities to identify EJ issues. This process could mirror the Commission's government-to-government consultation process currently in place for cultural resources under Section 106 of the National Historic Preservation Act.



Megan C. Gibson

**Senior Staff Attorney
Niskanen Center**

As a senior staff attorney with the Niskanen Center, Megan C. Gibson manages Niskanen’s pipeline litigation docket, representing landowners affected by pipelines throughout the country in both administrative proceedings and federal courts, and leads landowner advocacy efforts related to section 7 pipelines.

Prior to joining the Niskanen Center, she distinguished herself in private practice by successfully litigating complex cases against government and corporate entities. She is licensed in the District of Columbia, Maryland, New York, and Virginia, and while in private practice was named to the prestigious list of Washington, D.C. Super Lawyers Rising Stars. Attorney Gibson received her J.D. from the Georgetown University Law Center and her M.A. from American University.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

The Office of Public Participation)

Docket No. AD21-9-000

OPP WORKSHOP APRIL 16, 2021
OPENING REMARKS OF MEGAN C. GIBSON

Many thanks to Chairman Glick and Commissioner Clements for making OPP a top priority, to Commissioner Chatterjee for his continued landowner support, and to all the Commission and staff. I'm Megan Gibson, a Senior Staff Attorney with the Niskanen Center, and we represent landowners affected by pipelines throughout the country in court and administrative proceedings.

Landowners face something uniquely horrible in FERC pipeline proceedings: the permanent taking of their land, home, or livelihood. Despite these high stakes, landowners meet overwhelming obstacles at every step of the process—often with no resources, guidance, or legal assistance.

FERC should seize this opportunity with OPP to address these harms, first by remedying broken notice and communication methods. FERC is required to provide notice to landowners that a pipeline seeks authorization to take their property, and of their rights. However, FERC delegated this responsibility to pipeline companies—entities with *the least* interest in ensuring that landowners get or understand the notice. Unsurprisingly, this has resulted in almost every landowner—from the poor, elderly widow to the highly educated anesthesiologist and professor—either not receiving or understanding it. The importance of notice cannot be overstated; if notice is not properly provided, landowners lose their only shot to seek court review of FERC's decisions.

Even if a landowner understands the need to intervene (which usually stems from assistance of other landowners and activists), FERC provides contradictory instructions on how to do so.

Landowners' confusion then snowballs, from FERC not explaining what a DEIS is or why it matters, not providing meaningful access to the DEIS, through the end of the process—wherein many

landowners believe that if they filed comments, they have preserved their rights, but have in fact forfeited them—through no fault of their own.

The OPP can fix this by:

- automatically making affected landowners parties.

Assuming intervention remains, the OPP can:

- take ownership and have accountability over providing notice;
- ensure that such notice is accessible and easy to understand;
- provide real and continuous guidance on intervention and the process;
- make all affected landowner lists public; and
- have more community-based meetings, and automatically record, transcribe, and file comments made.

And generally—and most importantly—meet landowners where they are, and not where FERC or a pipeline company wants them to be. FERC needs to think about these problems as if an elderly loved one lives on a hill with no internet and slow mail service, how would they want a powerful federal agency communicating with that person?

Then there is the huge problem of land agents—land agents make misrepresentations, threaten and pressure landowners into signing easements, at times with the support of local law enforcement—including by (these are real stories): a sheriff banging on the door of an elderly couple near 9:00 at night on orders from the pipeline for permission to access their land; after a landowner says no thank you, showing up on the street outside their home every day *and* at their work; aside from intimidation tactics, the list of blatant lies, such as “99% of landowners have already signed, you’re the only holdout”, etc., is too long to note here. OPP needs to house a way to report and discuss these issues; at least to be the trigger of accountability and investigatory measures.

OPP also needs to assist landowners with the enforcement of conditions, which now is non-existent. How this lack of accountability currently translates into reality is as follows: 1. Pipeline violates condition, by say, constructing in an unapproved manner; 2. Landowner calls FERC, writes FERC, writes again, calls again; 3. Landowner receives either no response, or a response indicating that

the landowner should just deal with it and/or go to the perpetrator of the harm—the pipeline company itself—for a remedy.

The OPP could help streamline a complaint system for landowners' legitimate complaints to be heard about land agents and condition violations, all of which will help bolster FERC's credibility and ability to enforce its own certificates.

Lastly, in order to level the playing field, it is an absolute necessity for FERC to allocate funding in the intervenors' compensation fund solely for landowners, including for legal representation and the hiring of experts. Niskanen plans to provide a model budget in our comments.

It's important to remember that landowners are painfully aware that some peripheral inclusion in a process does not mean that there is equity in that process, and landowners want and need actual change to occur through the creation of the OPP, as *it's been a long time coming*. Thank you for your time.

Respectfully submitted,

/s/ Megan C. Gibson
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