

REPORT OF THE FERC PRACTICE SECTOR OF THE PRACTICES STEERING COMMITTEE

This report covers significant Federal Energy Regulatory Commission (FERC or Commission) practice and procedural issues, including appellate court decisions, major FERC orders and rulemakings, and administrative actions, from July 1, 2021 through June 30, 2022.*

I.	Procedural Holdings from Federal and State Courts.....	2
A.	U.S. Court of Appeals for the District of Columbia Circuit.....	2
	1. Evans v. FERC	2
	2. Food & Water Watch v. FERC	3
	3. Bohon v. FERC	4
B.	Other Court Decisions.....	5
	1. Mountain Valley Pipeline v. Terry.....	5
	2. Adorers of the Blood of Christ v. Transcontinental Gas Pipe Line.....	6
II.	Federal Energy Regulatory Commission Headlines and Notable Administrative Actions	6
A.	Update on Commissioners	6
	1. Richard Glick Named as FERC Chairman.....	6
	2. Willie Phillips Sworn in as FERC Commissioner.....	7
B.	FERC Office and Staffing Updates.....	7
	1. Pamela Quinlan Appointed Acting Chief of Staff and Matthew Christiansen Appointed FERC General Counsel ...	7
	2. Debbie-Anne A. Reese Appointed Deputy Secretary of the Office of the Secretary at the Commission.....	8
	3. Benjamin Williams Appointed Deputy Director of the Office of External Affairs.....	8
	4. Montina Cole Appointed Senior Counsel for Environmental Justice and Equity.....	8
	5. Valerie Teeter Appointed Deputy Director of the Office of Energy Market Regulation	9
	6. Elin Katz and Nicole Sitaraman Appointed Director and Deputy Director of the OPP	9
	7. David Ortiz Appointed Head of the Office of Electric Reliability	10
C.	FERC Budget	10
	1. FERC Strategic Plan for Fiscal Years 2022-2026.....	10
D.	Rulemakings.....	11

* The Practices Steering Committee thanks Sylvania Dakowitz, Gaetano Decrescenzo (EEI Intern), Lauren Temento Evans, Amanda James, Joey Lee Miranda, Sandra Safro, Will Simmerson, and Gizelle Wray for their contributions to this report.

1. FERC Issues Final Rule on Dam Safety Regulations	11
2. FERC Issues Final Rule on Transmission Line Ratings.....	11
3. FERC Issues Draft Policy Statements on Natural Gas Pipeline Certification and Greenhouse Gas Emissions	12
4. FERC Issues Notice of Proposed Rulemaking Regarding Format for Natural Gas Pipelines' Submission of Documents.....	13
5. FERC Issues Notice of Proposed Rulemaking on Climate Change, Extreme Weather & Electrical System Reliability	13
6. FERC Issues Notice of Proposed Rulemaking on Transmission Planning and Cost Allocation and Generator Interconnection.....	14
E. Notices and Decisions	15
1. FERC Issues Notice of Inquiry Seeking Comment on Oil Pipeline Capacity Allocation Practices	15
2. FERC Notice of Inquiry on Use of Dynamic Line Ratings to Promote Grid Efficiency	15
3. FERC Issues Order on Rehearing Revising Five-Year Oil Pipeline Price Index.....	16
4. FERC Order Approving Natural Gas Price Indices Updates.....	17
5. FERC Order on Energy and Ancillary Services Market Reforms to Address Changing System Needs.....	17
F. Other Issuances	18
1. FERC Reports on Cybersecurity, Reliability, and Storm Response.....	18
2. FERC Issues Equity Action Plan.....	20
3. FERC Workshops on Federal-State Joint Transmission Task Force and Transmission Incentives	20
4. FERC Technical Conference on Hydropower Project Financial Assurances.....	21
5. FERC Technical Workshops on the OPP and New England Winter Gas-Electric Forum	22

I. PROCEDURAL HOLDINGS FROM FEDERAL AND STATE COURTS

A. *U.S. Court of Appeals for the District of Columbia Circuit*

1. *Evans v. FERC*

In *Evans v. FERC*,¹ petitioners sought D.C. Circuit review of orders issued by the Federal Energy Regulatory Commission (the FERC) that authorized construction and operation of the Jordan Cove Liquefied Natural Gas Terminal in

1. *Evans v. FERC*, No. 20-1161, 2021 U.S. App. LEXIS 32494 (D.C. Cir. Nov. 1, 2021).

Coos County, Oregon pursuant to section 3 of the Natural Gas Act (NGA)² and construction of a related connector gas pipeline pursuant to NGA section 7(c).³

In briefs and during oral argument, the project developers represented that they were “reassessing” the project.⁴ Observing that it appeared “circumstances have changed substantially” since the FERC’s “last consideration of a stay,” the court remanded the record to the FERC “to consider whether a stay of the . . . authorizations [would be] appropriate.”⁵

On remand, the developers informed the FERC that they were terminating the project because of their inability to obtain necessary state authorizations.⁶ Accordingly, on December 16, 2021, the FERC vacated the authorizations, subject to leave from the court.⁷ On January 25, 2022, the D.C. Circuit granted the FERC’s unopposed motion to dismiss and remanded the cases to the FERC, thereby giving effect to the December 16, 2021, vacatur order.⁸

2. Food & Water Watch v. FERC

In *Food & Water Watch v. FERC*,⁹ two environmental organizations sought D.C. Circuit “review of the [FERC’s] decision to authorize” construction and operation of “a new natural gas pipeline and compressor station in Agawam, Massachusetts.”

While the FERC did not challenge either of the Petitioners’ standing, the court independently determined that Petitioner Berkshire Environmental Action Team failed to establish Article III standing.¹⁰ Consequently, the court concluded that even though the parties filed a joint petition for review, it only had jurisdiction under the NGA to review issues “adequately preserved” by Petitioner Food & Water Watch.¹¹ The court noted that “[p]arties seeking review of FERC orders must petition for rehearing of those orders and must *themselves* raise in that petition *all* of the objections urged on appeal.”¹² Further, “[f]iling a joint petition for review does not permit an end-run around the party-specific nature of the exhaustion requirement. Rather, to determine the issues that a particular party can properly raise before us, we must look to that party’s filings before the Commission.”¹³

2. 15 U.S.C. § 717(b) (2005).

3. 15 U.S.C. § 717(f) (2005).

4. *Evans*, 2021 U.S. App. LEXIS 32494, at *3.

5. *Id.*

6. *Pacific Connector Gas Pipeline, LP, Jordan Cove Energy Project L.P.*, 177 FERC ¶ 61,198 at P 3 (2021).

7. *Id.* at P 7.

8. *See Evans v. FERC*, No. 20-1161, 2022 U.S. App. LEXIS 2321 (D.C. Cir. Jan. 25, 2022); 177 FERC ¶ 61,198.

9. *Food & Water Watch v. FERC*, 28 F.4th 277, 281 (D.C. Cir. 2022).

10. *Id.* at 284.

11. *Id.* at 283.

12. *Id.* at 284 (quoting *Platte River Whooping Crane Critical Habitat Maint. Tr. v. FERC*, 876 F.2d 109, 113 (D.C. Cir. 1989) (citing 16 U.S.C. § 825l(b) (2005)).

13. *Food & Water Watch*, 28 F.4th at 284.

Food & Water Watch raised numerous claims alleging that the FERC “failed to comply with [the National Environmental Policy Act].”¹⁴ The court rejected all but two of these claims on the basis that Food & Water Watch had failed to raise these arguments “with specificity” during rehearing, such that the court was jurisdictionally barred from addressing those arguments under “the Natural Gas Act’s exhaustion requirement.”¹⁵ However, noting now-Chairman Glick’s dissent that the Commission’s “overly narrow” assessment of the project’s downstream impacts ignored the pipeline’s purpose to facilitate natural gas consumption,¹⁶ the court determined that Food & Water Watch’s arguments regarding the foreseeability of the “downstream effects went beyond mere conclusory assertions.”¹⁷

Considering the evidence available to the FERC – which included a projected “incremental capacity of 72,400 dekatherms per day” – the court concluded that the FERC’s failure to explain why that information was too “generalized” to reasonably foresee an “indirect effect of the project” “was unreasonable.”¹⁸ Finding the FERC rationales, which were offered for the first time on review, “unpersuasive,”¹⁹ the court found that its analysis in *Sierra Club v. FERC (Sabal Trail)*²⁰ “points the way to concluding that the available information was sufficiently specific to render downstream emissions reasonably foreseeable.”²¹ It concluded that

the end use of the transported gas is reasonably foreseeable, and the Commission, in response, invokes nothing more than a mere possibility of offsetting reductions. For those reasons, we remand to the agency to perform a supplemental environmental assessment in which it must either quantify and consider the project’s downstream carbon emissions or explain in more detail why it cannot do so.²²

3. Bohon v. FERC

In *Bohon v. FERC*,²³ the D.C. Circuit upheld on appeal the U.S. District Court for the District of Columbia’s decision to dismiss landowners’ petition challenging Mountain Valley Pipeline’s exercise of eminent domain authority under the NGA. Before the district court, the Bohons had argued that the congressional delegation of federal eminent domain authority to the FERC “is unconstitutional and that all

14. *Id.* at 281.

15. *Id.* at 290. *See id.* at 287 (“On rehearing before the Commission . . . Food & Water Watch failed to argue that the Commission’s focus on additional wellheads was misplaced. Such an argument, at best, could be seen to fall implicitly within Food & Water Watch’s broader request for the Commission to consider upstream effects. But under the statute’s exhaustion requirement, 15 U.S.C.S. § 717r(b), “[p]etitioners must raise each argument with specificity; objections may not be preserved either indirectly or implicitly.”); *id.* at 290 (“Food & Water Watch targets the Commission’s selection criteria, arguing that universal acceptance is an unreasonably exacting standard. Once again, however, Food & Water Watch’s argument runs afoul of the Natural Gas Act’s exhaustion requirement. Before the Commission, Food & Water Watch did not make that argument.”).

16. *Id.* at 288.

17. *Food & Water Watch*, 28 F.4th at 287.

18. *Id.* at 287-88.

19. *Id.* at 288.

20. *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017).

21. *Food & Water Watch*, 28 F.4th at 288.

22. *Id.* at 289.

23. *Bohon v. FERC*, 37 F.4th 663, 664 (D.C. Cir. 2022).

[prior NGA section 7] certificates . . . are void.”²⁴ “They also sought injunctive relief” to prevent the FERC from issuing NGA section 7 certificates in the future and to prevent the exercise of federal eminent domain authority by certificate holders.²⁵

The D.C. Circuit explained that the record for the Mountain Valley FERC proceeding was filed in earlier challenges to the FERC’s approval of the project.²⁶ Under NGA section 19(b), once that record was filed with the D.C. Circuit, its “jurisdiction became ‘exclusive.’”²⁷ Therefore, the Bohons’ claims could only be properly filed with “the district court . . . if their facial nondelegation challenge [was] outside the [NGA’s] judicial-review scheme.”²⁸ The Bohons offered three reasons for why its claims fell outside of the NGA’s judicial review requirements: first, that the “review scheme does not cover *any* facial constitution challenges”²⁹; second, “that the *structural* nature of their nondelegation argument takes it out of the NGA’s review provision’s scope”³⁰; and third, that the U.S. Supreme Court’s decision in *PennEast Pipeline Company v. New Jersey*³¹ (*PennEast*) required the court to reverse.³² The court rejected each of these arguments.³³

Specifically, the court found that that the Bohons’ decision to present their arguments as a facial constitutional challenge was not controlling, the Bohons’ claims went to the heart of the FERC’s authority to grant certificates under the NGA, and that *PennEast* was both readily distinguishable and did not stand for the proposition that “district courts [have] jurisdiction over all nondelegation challenges.”³⁴ Consequently, the court concluded that the district court did not have jurisdiction to hear petitioners’ claims and, therefore, that the lower court’s dismissal of the petition was appropriate.³⁵

B. Other Court Decisions

1. Mountain Valley Pipeline v. Terry

In *Mountain Valley Pipeline, LLC v. 13.47 Acres of Land Owned by Terry*,³⁶ the U.S. District Court for the Western District of Virginia dismissed for lack of jurisdiction a landowner complaint seeking to enjoin Mountain Valley Pipeline

24. *Id.* at 664.

25. *Id.* at 664–65.

26. *Id.* at 665.

27. *Bohon*, 37 F.4th at 665.

28. *Id.*

29. *Id.*

30. *Id.*

31. *PennEast Pipeline Co. v. New Jersey*, 141 S. Ct. 2244 (2021).

32. *Bohon*, 37 F.4th at 665–66.

33. *Id.* at 666.

34. *Id.*

35. *Id.*

36. *Mountain Valley Pipeline, LLC v. 13.47 Acres of Land Owned by Terry*, No. 7:20-CV-135, 2022 WL 972610, at *1, 3 (W.D. Va. Mar. 29, 2022).

from engaging in blasting activities. The court explained that, while it has jurisdiction to hear claims from the “[FERC] certificate holders [seeking] to condemn property for approved routes, . . . and to enforce the FERC’s orders,” “the court does not . . . have jurisdiction to revise or modify those orders.”³⁷ The court also declined to extend *PennEast*,³⁸ explaining that “[t]he exercise of jurisdiction in *PennEast* to address an affirmative defense to eminent domain has no connection to a request to interfere with [Mountain Valley Pipeline]’s construction activities after the power to exercise eminent domain has been established and approved by the court.”³⁹

2. Adorers of the Blood of Christ v. Transcontinental Gas Pipe Line

In *Adorers of the Blood of Christ v. Transcontinental Gas Pipe Line Company, LLC*,⁴⁰ the Adorers sought monetary damages “for alleged violations of the Religious Freedom Restoration Act of 1933 (RFRA)” stemming from the FERC’s issuance of a “Certificate of Public Convenience and Necessity” for the Atlantic Sunrise Pipeline project. This petition followed a U.S. Court of Appeals for the Third Circuit decision dismissing the Adorers’ RFRA claims seeking injunctive relief, stating that the court lacked jurisdiction because the Adorers had not raised their arguments before the FERC.⁴¹ The U.S. District Court for the Eastern District of Pennsylvania dismissed the Adorers’ claims, explaining that, while “nothing . . . prevents [the] FERC from hearing a claim for money damages under RFRA,” the Adorers had not raised these claims before the Commission.⁴² As such, the court held that the allegations were a “collateral attack” on the FERC certificate and therefore “inconsistent with the process Congress [outlined] in . . . the NGA.”⁴³

II. FEDERAL ENERGY REGULATORY COMMISSION HEADLINES AND NOTABLE ADMINISTRATIVE ACTIONS

A. Update on Commissioners

1. Richard Glick Named as FERC Chairman

On January 21, 2021, “President Joseph R. Biden named Rich Glick as the new Chairman of the . . . FERC.”⁴⁴ “Chairman Glick joined the FERC in November 2017 after serving as general counsel for the Democrats on the Senate Energy

37. *Id.* at *2 (internal citations and quotation marks omitted).

38. *PennEast*, 141 S.Ct. at 2244.

39. *Mountain Valley Pipeline, LLC*, 2022 WL 972610, at *2.

40. *Adorers of Blood of Christ v. Transcon. Gas Pipe Line Co.*, No. 20-5627, 2021 WL 4477677 (E.D. Pa. Sept. 30, 2021).

41. *Adorers of the Blood of Christ v. FERC*, 897 F.3d 187 (3d Cir. 2018).

42. *Adorers of the Blood of Christ*, 2021 WL 4477677, at *3.

43. *Id.* at *4.

44. *President Biden Names Glick as Chairman of FERC*, FERC (Jan. 21, 2021), <https://www.ferc.gov/news-events/news/president-biden-names-glick-chairman-ferc>.

and Natural Resources Committee”⁴⁵ “He also served as a senior policy advisor to U.S. Energy Secretary Bill Richardson, and before that was legislative director and chief counsel to U.S. Senator Dale Bumpers of Arkansas.”⁴⁶ “Chairman Glick is a graduate of The George Washington University and Georgetown Law.”⁴⁷

2. Willie Phillips Sworn in as FERC Commissioner

On December 3, 2021, “Willie L. Phillips was sworn in . . . as a member of the [FERC]” to serve a “five-year term that ends June 30, 2026.”⁴⁸ “Commissioner Phillips most recently served as the Chairman of the Public Service Commission of the District of Columbia (DCPSC), serving in that capacity since 2018, and serving on the [DCPSC] since 2014.”⁴⁹ “Prior to his DCPSC service[,] Commissioner Phillips served as Assistant General Counsel for the North American Electric Reliability Corporation (NERC).”⁵⁰ Commissioner Phillips earned his “Juris Doctor from Howard University School of Law, and a Bachelor of Science from the University of Montevallo.”⁵¹

B. FERC Office and Staffing Updates

1. Pamela Quinlan Appointed Acting Chief of Staff and Matthew Christiansen Appointed FERC General Counsel

On February 1, 2021, FERC Chairman Glick appointed “Pamela Quinlan as Acting Chief of Staff and Matthew Christiansen as [the] FERC’s General Counsel.”⁵²

“Quinlan has more than 15 years of public and private sector experience in energy market regulation and policy.”⁵³ She also “served as a Technical Advisor to Chairman Glick.”⁵⁴ Quinlan “earned a Master of Science degree in Sustainability Management from Columbia University, where she also earned a bachelor’s degree.”⁵⁵

“Prior to being named General Counsel, Matt Christiansen served as a Legal Advisor to Chairman Glick.”⁵⁶ He has also “served as a law clerk to . . . [Judge] Stephen F. Williams on the U.S. Court of Appeals for the District of Columbia

45. *Id.*

46. *Id.*

47. *Id.*

48. *Willie L. Phillips Sworn in as FERC Commissioner*, FERC (Dec. 3, 2021), <https://cms.ferc.gov/news-events/news/willie-l-phillips-sworn-ferc-commissioner#>.

49. *Id.*

50. *Id.*

51. *Id.*

52. *FERC Chairman Makes Chief of Staff, General Counsel Appointments*, FERC (Feb. 1, 2021), <https://www.ferc.gov/news-events/news/ferc-chairman-makes-chief-staff-general-counsel-appointments>.

53. *Id.*

54. *Id.*

55. *Id.*

56. *FERC Chairman Makes Chief of Staff, General Counsel Appointments*, *supra* note 52.

Circuit and . . . [to Judge] Jesse M. Furman on the U.S. District Court for the Southern District of New York.”⁵⁷ Christiansen “is graduate of Yale Law School and Columbia University.”⁵⁸

2. Debbie-Anne A. Reese Appointed Deputy Secretary of the Office of the Secretary at the Commission

On May 3, 2021, FERC Chairman Glick “appointed Debbie-Anne A. Reese as the Deputy Secretary of the Office of the Secretary at the Commission.”⁵⁹ Reese previously “served as the managing attorney in the [FERC] Office of the General Counsel (OGC)-Energy Markets.”⁶⁰ She was also recently “involved with the [FERC’s] policy statement on carbon pricing in organized wholesale power markets and in the development of the Office of Public Participation [(OPP)].”⁶¹ Reese’s education includes a “Juris Doctor from the Georgetown University Law Center and . . . a Bachelor of Business Administration in Finance from Howard University.”⁶²

3. Benjamin Williams Appointed Deputy Director of the Office of External Affairs

On May 10, 2021, FERC Chairman Glick “named Benjamin Williams as Deputy Director of the Office of External Affairs.”⁶³ “He has more than 10 years of federal service, having joined the FERC in 2013.”⁶⁴ “Before joining [the] FERC, [Williams] worked for U.S. Senator Tom Harkin (D-Iowa).”⁶⁵ “Williams earned his Master of Science in Communications . . . at Syracuse University” and “his Bachelor of Arts in History from Simpson College.”⁶⁶

4. Montana Cole Appointed Senior Counsel for Environmental Justice and Equity

On May 20, 2021, FERC Chairman Glick “announced the appointment of Montana Cole to serve as Senior Counsel for Environmental Justice and Equity.”⁶⁷ “Cole previously served as Senior Attorney in the Climate & Clean Energy Program at the Natural Resources Defense Council.”⁶⁸ “She also spent many years in

57. *Id.*

58. *Id.*

59. *Glick Names Reese as Deputy in FERC Office of the Secretary*, FERC (May 3, 2021), <https://www.ferc.gov/news-events/news/glick-names-reese-deputy-ferc-office-secretary>.

60. *Id.*

61. *Id.*

62. *Id.*

63. *FERC Chairman Glick Names Williams to OEA Deputy Position*, FERC (May 10, 2022), <https://www.ferc.gov/news-events/news/ferc-chairman-glick-names-williams-oea-deputy-position>.

64. *Id.*

65. *Id.*

66. *Id.*

67. *Glick Names Montana Cole to Top Environmental Justice Post at FERC*, FERC (May 20, 2021), <https://www.ferc.gov/news-events/news/glick-names-montina-cole-top-environmental-justice-post-ferc>.

68. *Id.*

private practice at several law firms.”⁶⁹ “Cole’s education includes a Juris Doctor from the University of Virginia School of Law, and [a] Bachelor of Arts in political science . . . from Washburn University.”⁷⁰

5. Valerie Teeter Appointed Deputy Director of the Office of Energy Market Regulation

On August 16, 2021, FERC Chairman Glick “named Valerie Teeter to the position of Deputy Director of the Office of Energy Market Regulation.”⁷¹ “Teeter most recently served as Senior Manager for Federal Regulatory Affairs at Exelon Corporation.”⁷² “Teeter is a graduate of Carnegie Mellon University and the Gerald R. Ford School of Public Policy at the University of Michigan.”⁷³

6. Elin Katz and Nicole Sitaraman Appointed Director and Deputy Director of the OPP

On October 12, 2021, FERC Chairman Glick announced Elin Katz as the inaugural director of the FERC’s OPP.⁷⁴ “Katz most recently served as Vice President of Utilities for Tilson Technology Management, Inc.”⁷⁵ She “has also served in several attorney and associate attorney positions for law firms and state agencies in Connecticut, Massachusetts, and Washington D.C.”⁷⁶ Her education includes “a Bachelor of Science in Industrial and Labor Relations from Cornell University, a Master of Arts in English from Trinity College, and a Juris Doctorate degree from the Boston University School of Law.”⁷⁷

On February 17, 2022, Chairman Glick announced that Nicole Sitaraman joined the OPP as Deputy Director.⁷⁸ Prior to joining the FERC, Sitaraman “served as Vice President of External Affairs and Policy” at Sustainable Capital Advisors.⁷⁹ “She [also] served as Senior Manager of Public Policy at Sunrun, Inc. Sitaraman also served as an Assistant People’s Counsel in the Office of the People’s Counsel for the District of Columbia.”⁸⁰ Her education includes “a Bachelor

69. *Id.*

70. *Id.*

71. *FERC Chairman Names Teeter as Deputy Director of Office of Energy Market Regulation*, FERC (Aug. 16, 2021), <https://www.ferc.gov/news-events/news/ferc-chairman-names-teeter-deputy-director-office-energy-market-regulation>.

72. *Id.*

73. *Id.*

74. *FERC, Glick Announces Appointment of Elin Katz as Director of FERC’s New Office of Public Participation*, FERC (Oct. 12, 2021), <https://www.ferc.gov/Elin-Katz-Director-Of-OPP>.

75. *Id.*

76. *Id.*

77. *Id.*

78. *FERC Chairman Announces Sitaraman as Deputy Director, Office of Public Participation*, FERC (Feb. 17, 2022), <https://www.ferc.gov/news-events/news/ferc-chairman-announces-sitaraman-deputy-director-office-public-participation>.

79. *Id.*

80. *Id.*

of Arts degree in English from Yale University, and has a Juris Doctor from Boston University School of Law.”⁸¹

7. David Ortiz Appointed Head of the Office of Electric Reliability

On July 20, 2022, FERC Chairman Glick “named David Ortiz as the Director of the Commission’s Office of Electric Reliability (OER).”⁸² Ortiz has served “as OER’s Deputy Director since 2016.”⁸³ Prior to joining the FERC, Ortiz worked as the Deputy Assistant Secretary for the U.S. Department of Energy.”⁸⁴ His education includes “a B.S.E. in Mechanical and Aerospace Engineering from Princeton University”, as well as “a M.S.E. in Mechanical and Aerospace Engineering” and “a Ph.D. in Electrical Engineering and Computer Science – Control Systems,” both from the University of Michigan.⁸⁵

C. FERC Budget

1. FERC Strategic Plan for Fiscal Years 2022-2026

On March 28, 2022, the FERC issued a five-year Strategic Plan for Fiscal Years 2022–2026⁸⁶ (Strategic Plan). The Strategic Plan “outline[s] the Commission’s critical priorities, including modernizing and protecting the electric grid, improving energy infrastructure siting reviews, and bolstering public participation in FERC proceedings”⁸⁷ To support the FERC’s core mission of “ensuring reliable, safe, secure and economically efficient energy for consumers at a reasonable cost,”⁸⁸ the Strategic Plan describes six priorities:

modernizing electricity market design; improving the siting and review process for FERC-regulated energy infrastructure; safeguarding electric infrastructure from emerging threats to reliability and security; facilitating development of the electricity infrastructure needed for the changing resource mix; improving accessibility and participation in FERC proceedings; and promoting a strong and robust enforcement program.⁸⁹

“The [FERC] will report progress made toward each priority in its annual Congressional Justification document.”⁹⁰

81. *Id.*

82. *FERC Chairman Glick Names David Ortiz Head Office of Electric Reliability*, FERC (July 20, 2022), <https://www.ferc.gov/news-events/news/ferc-chairman-glick-names-david-ortiz-head-office-electric-reliability>.

83. *Id.*

84. *Id.*

85. *Id.*

86. FERC, STRATEGIC PLAN FISCAL YEARS 2022-2026 (2022), <https://www.ferc.gov/media/ferc-fy22-26-strategic-plan> [hereinafter STRATEGIC PLAN].

87. *FERC Strategic Plan Sets Priorities for Energy Infrastructure, Participation*, FERC (Mar. 31, 2022), <https://www.ferc.gov/news-events/news/ferc-strategic-plan-sets-priorities-energy-infrastructure-participation>.

88. *Id.*

89. *Id.*

90. *Id.*

D. Rulemakings

1. FERC Issues Final Rule on Dam Safety Regulations

On December 16, 2021, the FERC issued Order No. 880, revising its regulations governing the safety of hydroelectric projects to address “shortcomings” identified following the Oroville Dam spillway incident.⁹¹ Order No. 880 “implement[ed] two tiers of part 12 independent consultant safety inspections” to include a comprehensive assessment (“a more in-depth review than the current part 12 inspection”) and a periodic inspection (“focus[ing] primarily on the performance of projects between comprehensive assessments”).⁹² Order No. 880 also requires that licensees are to submit an independent consultant team proposal as opposed to a single independent consultant’s qualifications.⁹³ In addition, the Commission directed licensees of one or more high or significant hazard potential dams to “prepare, maintain, file with the [FERC], and periodically review and update an Owner’s Dam Safety Program.”⁹⁴ Finally, Order No. 880 “revise[d] the definition of a ‘project-related’ incident to clarify that licensees are required to report . . . public safety incidents . . . related to project operation”, as well as “rescues in addition to deaths and serious injuries,” “and to prepare, maintain, and submit a public safety plan” to the FERC.⁹⁵

2. FERC Issues Final Rule on Transmission Line Ratings

On December 16, 2021, the FERC issued Order No. 881,⁹⁶ aimed at “improve[ing] the accuracy and transparency of electric transmission line ratings.” Specifically, Order No. 881 requires

public utility transmission providers to implement ambient-adjusted ratings [AAR] on the transmission lines over which they provide transmission service; regional transmission organizations (RTO[s]) and independent system operators (ISO[s]) to establish and implement the systems and procedures necessary to allow transmission owners to electronically update transmission line ratings at least hourly; public utility transmission providers to use uniquely determined emergency ratings; public utility transmission owners to share transmission line ratings and transmission line rating methodologies with their respective transmission providers and with market monitors in RTOs/ISOs; and public utility transmission providers to maintain a database of transmission owners’ transmission line ratings and transmission line rating methodologies on the transmission provider’s Open Access Same-Time Information System site or other password-protected website.⁹⁷

91. *Safety of Water Power Projects and Project Works*, 177 FERC ¶ 61,204 at PP 1-3, 11 (2021).

92. *Id.* at P 17.

93. *Id.* at PP 18-19.

94. *Id.* at P 20.

95. 177 FERC ¶ 61,204 at P 21.

96. *Managing Transmission Line Ratings*, 177 FERC ¶ 61,179 (2021).

97. *Id.*

The Commission issued an order on rehearing that largely affirmed Order No. 881 and provided clarification on issues, including “the AAR requirements related to transmission providers’ transmission protection relay settings.”⁹⁸

3. FERC Issues Draft Policy Statements on Natural Gas Pipeline Certification and Greenhouse Gas Emissions

To provide a more comprehensive analytical framework, in February 2022, the FERC issued a draft Updated Pipeline Certificate Policy Statement (“Draft Updated Certificate Policy Statement”),⁹⁹ modifying its “1999 Policy Statement on the certification of new interstate natural gas facilities” “under section 7(c) of the . . . NGA.”¹⁰⁰ The Draft Updated Certificate Policy Statement proposes to maintain the Commission’s prior approach of balancing a project’s public benefits against adverse impacts and provides proposed updates to the Commission’s consideration of project need; “[i]mpacts on [e]xisting [c]ustomers of [p]ending [p]rojects before the Commission”; “[i]mpacts on [e]xisting [p]ipelines and their [c]ustomers,” including “whether the captive customers will end up paying for unsubscribed capacity”; “[e]nvironmental impacts”; “landowner impacts”; and “[i]mpacts on [e]nvironmental [j]ustice [c]ommunities.”¹⁰¹

The FERC also issued a Draft Interim Greenhouse Gas Policy Statement¹⁰² that proposes a process for “assess[ing] the impacts of natural gas infrastructure projects on climate change in its reviews under the National Environmental Policy Act” and sections 3 and 7 of the NGA.¹⁰³ The FERC proposes that projects with greenhouse gas (GHG) emissions above “100,000 metric tons per year” will require an environmental impact statement and proposes a method for quantifying such emissions and the scope of upstream and downstream emissions that will be included.¹⁰⁴ The FERC proposes to consider applicants’ mitigation proposals and may condition approval on further mitigation measures.¹⁰⁵ The Draft Interim GHG Policy Statement “encourages the project sponsor[s] to propose measures to mitigate [a project’s] direct GHG emissions . . . to the extent these emissions have a significant adverse environmental impact,” as well as the “reasonably foreseeable upstream or downstream emissions associated with their projects.”¹⁰⁶ “The

98. *Managing Transmission Line Ratings*, 179 FERC ¶ 61,125 at P 24 (2022).

99. *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,107 (2022); updated by *Certification of New Interstate Nat. Gas Facilities*, 178 FERC ¶ 61,197 (2022).

100. *Updated Pipeline Certificate Policy Statement (PL18-1-000)*, FERC (Feb. 17, 2022), <https://www.ferc.gov/news-events/news/fact-sheet-updated-pipeline-certificate-policy-statement-pl18-1-000>.

101. *Id.*

102. Interim Policy Statement, *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews*, 87 Fed. Reg. 14,104 (2022) [hereinafter Interim Policy Statement].

103. *Interim Greenhouse Gas (GHG) Emissions Policy Statement (PL21-3-000)*, FERC (Feb. 17, 2022), <https://www.ferc.gov/news-events/news/fact-sheet-interim-greenhouse-gas-ghg-emissions-policy-statement-pl21-3-000>.

104. *Interim Policy Statement*, *supra* note 102, at 14,104, 14,124.

105. *Id.* at 14,104.

106. *Id.* at 14,110, 14,120.

[FERC] plans to evaluate proposed mitigation plans on a case-by-case basis and [does] not mandate[e] a standard level of mitigation.”¹⁰⁷

Throughout April and May 2022, the FERC took public comment on these proposed policies; a final decision remains outstanding.¹⁰⁸

4. FERC Issues Notice of Proposed Rulemaking Regarding Format for Natural Gas Pipelines’ Submission of Documents

On May 19, 2022, the FERC issued a Notice of Proposed Rulemaking (NOPR) proposing a new rule that would require natural gas pipelines filing a general rate case under section 4 of the NGA “to submit all supporting statements, schedules and workpapers in native format . . . with all links and formulas intact.”¹⁰⁹ The NOPR is in response to a petition requesting that the FERC “revise its regulations, or . . . issue an order revising and updating [its] *Implementation Guide for Electronic Filing of Parts 35, 154, 284, 300 and 341 Tariff Filings*.”¹¹⁰ The FERC explained that, among other things, this proposed new rule seeks to “address information gaps,”¹¹¹ “enable rate case participants to manipulate the cost-of-service components . . . to evaluate different rate outcomes without the need to create their own models”¹¹² and evaluate “settlement offers from the same baseline.”¹¹³

5. FERC Issues Notice of Proposed Rulemaking on Climate Change, Extreme Weather & Electrical System Reliability

The FERC issued NOPRs on various cybersecurity and reliability issues. In the NOPR issued on January 20, 2022, the FERC solicited feedback to address an identified “gap” in the Critical Infrastructure Protection (CIP) Reliability Standards.¹¹⁴ Specifically, the FERC sought “comments on all aspects of a proposed directive to the NERC to modify the CIP Reliability Standards to require [Internal Network Security Monitoring] (INSM) for high and medium impact [Bulk Electric System] (BES) Cyber Systems.”¹¹⁵ Further, the FERC sought “comments on the usefulness and practicality of implementing INSM to detect malicious activity in networks with low impact BES Cyber Systems, including any potential benefits, technical barriers, and associated costs.”¹¹⁶

107. *Id.* at 14,120.

108. *Interim Policy Statement*, *supra* note 102, at 14,104.

109. Notice of Proposed Rulemaking, *Revised Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs*, FERC Stats & Regs. ¶61,114, 87 Fed. Reg. 31,783 (2022) [hereinafter Notice of Proposed Rulemaking].

110. *Id.* See FERC, IMPLEMENTATION GUIDE FOR ELECTRONIC FILING OF PARTS 35, 154, 284, 300 AND 341 TARIFF FILINGS (2016), <https://www.ferc.gov/sites/default/files/2020-05/implementation-guide.pdf>.

111. Notice of Proposed Rulemaking, *supra* note 109, at 31,784.

112. *Id.*

113. *Id.*

114. Notice of Proposed Rulemaking, *Internal Network Security Monitoring for High and Medium Impact Bulk Electric System Cyber Systems*, 87 Fed. Reg. 4173 (2022).

115. *Id.* at 4174.

116. *Id.*

In its NOPR issued on June 16, 2022,¹¹⁷ the FERC initiated a “rulemaking to propose to direct transmission providers to submit one-time informational reports describing their current or planned policies or processes for conducting extreme weather vulnerability assessments,” defined as “any analysis that identifies where and under what conditions jurisdictional transmission assets and operations are at risk from the impacts of extreme weather events, how those risks will manifest themselves, and what the consequences will be for transmission system operations.” The draft proposed rules stem from the FERC’s technical conference on “climate change and extreme weather events” held on June 1–2, 2021.¹¹⁸ The deadline for comments on the NOPR was August 30, 2022.¹¹⁹

6. FERC Issues Notice of Proposed Rulemaking on Transmission Planning and Cost Allocation and Generator Interconnection

On July 15, 2021, the FERC issued an Advanced Notice of Proposed Rulemaking (ANOPR).¹²⁰ Through the ANOPR, the FERC sought comments on reforms related to “cost allocation for interconnection-related network upgrades,” “interconnection queue processes,” “interregional transmission coordination” and planning, and “oversight of transmission planning and cost[s].”¹²¹ The FERC requested that stakeholders determine which “changes are necessary to ensure that transmission rates remain just and reasonable and not unduly discriminatory or preferential and that reliability is maintained.”¹²² In light of extensive comments submitted on the ANOPR suggesting that the FERC’s regional transmission planning and cost allocation requirements are inadequate and in need of reform, the FERC subsequently issued a NOPR, as described below.¹²³

The NOPR addresses many of the transmission planning and cost allocation issues described in the ANOPR.¹²⁴ Specifically, the NOPR seeks comments on ways to “remedy deficiencies in the Commission’s existing regional transmission planning and cost allocation requirements to ensure that Commission-jurisdictional rates remain just and reasonable and not unduly discriminatory or preferential.”¹²⁵ The NOPR contains six proposed changes in the following areas for achieving its objectives of improving existing transmission planning and cost allocation requirements:

117. Notice of Proposed Rulemaking, *One-Time Informational Reports on Extreme Weather Vulnerability Assessments Climate Change, Extreme Weather, and Electric System Reliability*, 87 Fed. Reg. 39,414, 39,417 (2022).

118. *Id.*

119. *Id.* at 39,415.

120. Advanced Notice of Proposed Rulemaking, *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 86 Fed. Reg. 40,266 (2021).

121. *Id.* at 40,267, 40,275, 40,277.

122. *Id.*

123. *Notice of Proposed Rulemaking, Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 87 Fed. Reg. 26,504, 26,510 (2022).

124. *Id.* at 26,504.

125. *Id.* at 26,506.

- **Regional Transmission Planning:** The NOPR proposes to require transmission planning processes to engage in long-term planning and evaluate transmission needs-driven changing resources and demands.
- **Dynamic Line Ratings and Advanced Power Flows Devices:** The NOPR proposes to require that regional transmission planning processes consider dynamic line ratings and advanced power flows.
- **Transmission Cost Allocation and State Participation/Agreement:** The NOPR proposes to require transmission providers to seek agreement regarding cost allocation from relevant state entities within the applicable transmission planning region and include in their Open Access Transmission Tariffs (OATT): (1) an *ex ante* regional cost allocation method; (2) a *ex post* process for achieving state agreement for a particular planned facility; or (3) some combination of these two methods. The NOPR also proposes to require transmission providers to seek state agreement on which of these three options to use. The NOPR proposes to have transmission providers file state-agreed cost allocations for specific projects with FERC under section 205.
- **Construction Work in Progress (CWIP) Incentive:** The NOPR proposes to prohibit the CWIP incentive for transmission facilities selected in regional plans for purposes of cost allocation.
- **Federal Right of First Refusal (ROFR):** The NOPR proposes to permit incumbent transmission providers the use of a federal ROFR in regional plans for purposes of cost allocation on the condition that the facilities be jointly owned.
- **Transparency and Coordination:** The NOPR proposes enhanced transparency and coordination requirements within, and between, regional and local transmission planning processes so as to “right-size” replacement transmission facilities.¹²⁶

E. Notices and Decisions

1. FERC Issues Notice of Inquiry Seeking Comment on Oil Pipeline Capacity Allocation Practices

The FERC issued a Notice of Inquiry (NOI)¹²⁷ seeking feedback on oil pipeline capacity allocation issues resulting from irregular events or factors. The NOI seeks comment on issues including whether it should change existing policies that permit capacity allocation mechanisms for pro-rationing that rely on historical use data, as well as how the COVID-19 pandemic has impacted pipeline capacity for jet fuel.¹²⁸ Initial comments on the NOI were due April 25, 2022 and the deadline for reply comments was May 25, 2022.¹²⁹ The final order has not yet been issued.

2. FERC Notice of Inquiry on Use of Dynamic Line Ratings to Promote Grid Efficiency

On February 17, 2022, the FERC issued an NOI on the Use of Dynamic Line Ratings to Promote Grid Efficiency (DLR NOI).¹³⁰ The DLR NOI will examine

126. *Summary of FERC's April 2022 NOPR on Transmission Planning, Cost Allocation, and Generator Interconnection*, TROUTMAN PEPPER (April 28, 2022), <https://www.jdsupra.com/legalnews/summary-of-ferc-s-april-2022-nopr-on-6376114/>.

127. Notice of Inquiry, *Oil Pipeline Capacity Allocation Issues and Anomalous Conditions*, 87 Fed. Reg. 10,355, 10,356 (2022).

128. *Id.*

129. *Id.*

130. Notice of Inquiry, *Implementation of Dynamic Line Ratings*, 87 Fed. Reg. 10,349, 10,350 (2022).

whether the use of DLRs would help “ensure just and reasonable wholesale rates” by “improve[ing] the accuracy and transparency” of line ratings.¹³¹ The DLR NOI stemmed from Order No. 881¹³² (issued December 2021), whereby the FERC directed transmission providers to use “ambient-adjusted ratings” as the basis for evaluating near-term transmission service as well as for the determination of the necessity of certain curtailment, and interruption or redispatch of near-term transmission service.¹³³ Similarly, the FERC acknowledged that DLRs can detect situations where “flows should be reduced . . . [for] safe and reliable operation and [to] avoid unnecessary wear on transmission equipment.”¹³⁴

The NOI requests additional information so that the FERC can “evaluate the relative benefits, costs and challenges of [DLR] implementation.”¹³⁵ “[The DLR] NOI seeks to further explore: whether the lack of DLR requirements renders current wholesale rates unjust and unreasonable; potential criteria for DLR requirements; the benefits, costs and challenges of implementing DLRs; the nature of potential DLR requirements; and timeframes for implementing potential DLR requirements.”¹³⁶ Initial comments were due April 25, 2022 with a deadline for reply comments of May 25, 2022; further Commission action is pending.¹³⁷

3. FERC Issues Order on Rehearing Revising Five-Year Oil Pipeline Price Index

The FERC issued an order on rehearing revising the five-year index level used to determine annual changes to the rate ceilings for interstate oil pipelines.¹³⁸ Rather than continue calculating the index level based upon the middle 80 percent of pipeline cost changes over a per-barrel mile basis under its December 2020 decision, the FERC will revert to its prior policy of calculating the index level based on the middle 50 percent of pipeline cost changes.¹³⁹ The FERC also established an index level of Producer Price Index for Finished Goods minus 0.21%.¹⁴⁰

131. *Id.*

132. *Id.* See Final Rulemaking, *Managing Transmission Line Ratings*, 87 Fed. Reg. 2,244 (2021) (to be codified at 18 C.F.R. pt. 35).

133. *Id.* at 2,252.

134. *Id.* at 2,283.

135. *FERC Opens Inquiry on Use of Dynamic Line Ratings to Promote Grid Efficiency*, FERC (Feb. 17, 2022), <https://www.ferc.gov/news-events/news/ferc-opens-inquiry-use-dynamic-line-ratings-promote-grid-efficiency>.

136. *Id.*

137. *Id.*

138. *Five-Year Review of the Oil Pipeline Index*, 178 FERC ¶ 61,023 at P 1 (2022).

139. *Id.* at P 2.

140. *Id.*

4. FERC Order Approving Natural Gas Price Indices Updates

On April 21, 2022, the FERC revised its price index policy set forth in its Policy Statement on Natural Gas and Electric Price Indices (Initial Policy Statement),¹⁴¹ effective December 31, 2022.¹⁴² The revisions were made “to encourage more market participants to report their transactions to price index developers [(data providers)], . . . to provide greater transparency into the natural gas price formation process”, and to “increase confidence in the accuracy and reliability of wholesale natural gas prices.”¹⁴³ Revisions include: the requirement “for price index developers to . . . indicate when they use a market assessment to calculate an index price”; “that each price index developer should seek approval or re-approval from the FERC every seven years” so that it complies with the standards in the Initial Policy Statement;

interstate natural gas pipelines and public utilities proposing to use price indices in jurisdictional tariffs will no longer be entitled to the rebuttable presumption that a price . . . indices produce just and reasonable rates unless the price index developer has obtained the approval or re-approval from the [FERC] within the last seven years

and “the review period for assessing the liquidity of natural gas price indices submitted for reference in [FERC]-jurisdictional tariffs” has been clarified.¹⁴⁴

5. FERC Order on Energy and Ancillary Services Market Reforms to Address Changing System Needs

On September 7, 2021, the FERC issued a staff paper on “Energy and Ancillary Services Market Reforms to Address Changing System Needs” (E&AS Report).¹⁴⁵ FERC staff prepared this report to frame the discussions of the FERC-led technical conferences that were held on “September 14 and October 12, 2021.”¹⁴⁶ The E&AS Report summarized the “[b]ackground on [a]ncillary [s]ervices in RTO/ISO [m]arkets,” the evidence and need to reform ancillary service markets, and what reforms have been approved by the FERC or efforts unilaterally taken by RTO/ISOs to address this issue.¹⁴⁷

Generally, the FERC concluded “that RTO/ISOs will need more operational flexibility from resources to reliably serve loads as resource mix evolves to include more weather dependent variable energy resources and load change due to weather dependent distributed energy resources, . . . electrification, and other factors.”¹⁴⁸ The FERC also noted that:

141. *Price Discovery in Nat. Gas and Electric Markets*, 104 FERC ¶ 61,121 (2003).

142. *Actions Regarding the Commission’s Policy on Price Index Formation and Transparency, and Indices Referenced in Nat. Gas and Electric Tariffs*, 179 FERC ¶ 61,036 (2022).

143. *Id.* at P 1.

144. *Id.* at P 3.

145. FERC, ENERGY AND ANCILLARY SERVICES MARKET REFORMS TO ADDRESS CHANGING SYSTEM NEEDS (2021), <https://www.ferc.gov/news-events/news/ferc-staff-issues-report-energy-and-ancillary-services-market-reforms-address>.

146. *Id.* at 3.

147. *Id.* at 4-21.

148. *Id.* at 3.

RTOs/ISOs and their stakeholders are actively evaluating options to reform energy and ancillary services markets to address the need for greater operational flexibility [using multiple approaches]. These approaches largely consist of reforms of energy and ancillary services markets rules in the areas of increasing shortage prices, procuring higher quantities of existing or “traditional” ancillary services products, . . . and creating new ancillary services products.¹⁴⁹

On April 21, 2022, the FERC issued an Order directing each RTO/ISO to submit a report that describes:

(1) current RTO/ISO system needs given changing resource mixes and load profiles; (2) how each RTO/ISO expects its system needs to change over the next five years and over the next 10 years; (3) whether and how each RTO/ISO plans to reform its energy and ancillary services markets to meet expected system needs over the next five years and over the next 10 years; and (4) information about any other reforms, including capacity market reforms and any other resource adequacy reforms that would help each RTO/ISO meet changes in system needs.¹⁵⁰

After reviewing the comments from public stakeholders, the Commission concluded that there would not be one “generic solution to address changing system needs across the RTOs/ISOs because of the diversity of those needs and the lack of a compelling record to support anyone-size-fits-all solution for meeting those needs.”¹⁵¹ Instead, the FERC required “additional information from the RTOs/ISOs . . . to enhance [their] understanding of the changing system needs in each RTO/ISO and potential mechanisms for addressing those needs as they change over time.”¹⁵² “The FERC will review the reports and comments to determine whether further action is appropriate” when reports are filed in October 2022.¹⁵³

F. Other Issuances

1. FERC Reports on Cybersecurity, Reliability, and Storm Response

The FERC issued various reports on cybersecurity and reliability issues, including:

- FERC/NERC E-ISAC “SolarWinds and Related Supply Chain Compromise” Report¹⁵⁴;
- “2021 Staff Report - Lessons Learned from Commission-Led CIP Reliability Audits”¹⁵⁵;

149. ENERGY AND ANCILLARY SERVICES MARKET REFORMS TO ADDRESS CHANGING SYSTEM NEEDS, *supra* note 145, at 16.

150. *Modernizing Wholesale Electricity Market Design*, 179 FERC ¶ 61,029 at P 1 (2022).

151. *Id.* at P 7.

152. *Id.*

153. *Id.* at P 1.

154. FERC, SOLAR WINDS AND RELATED SUPPLY CHAIN COMPROMISE – LESSONS FOR THE NORTH AMERICAN ELECTRIC INDUSTRY (2021), <https://cms.ferc.gov/media/solarwinds-and-related-supply-chain-compromise-0> [hereinafter SOLAR WINDS AND RELATED SUPPLY CHAIN COMPROMISE].

155. FERC, 2021 STAFF REPORT, LESSONS LEARNED FROM COMMISSION-LED CIP RELIABILITY AUDITS (2021), <https://www.ferc.gov/media/2021-report-commission-led-cip-audits> [hereinafter 2021 REPORT ON CIP AUDITS].

- FERC-NERC-Regional Entity Staff Release “Joint Review of Protection System Commissioning Programs”¹⁵⁶; and
- FERC-NERC-Regional Entity Final Report on February 2021 Freeze.¹⁵⁷

In the Compromise Report, FERC staff and the Electricity Information and Analysis Sharing Center “emphasize[d] the need for continued vigilance by the electricity industry related to supply chain compromises and incidents and recommend[ed] specific cybersecurity mitigation actions to better ensure the security of the bulk-power system (BPS).”¹⁵⁸ In the 2021 Report on CIP Audits, “[FERC] staff found that . . . most of the cybersecurity protection processes and procedures [audited] . . . met the mandatory requirements of the [Critical Infrastructure Protection] (CIP) Reliability Standards” and offered recommendations to help improve compliance with the CIP reliability standards.¹⁵⁹

In the PSC Programs Report, the FERC, the NERC, and the Regional Entities (REs) “initiated a joint review to assess certain registered entities’ . . . protection system testing or protection system commissioning (PSC) programs and procedures” “to reduce misoperations attributable to PSC by identifying opportunities for improvement and developing recommendations and best practices for registered transmission and generator owners’ PSC programs.”¹⁶⁰ In the Winter Storm Uri Report, the FERC, the NERC and the REs examined the impact severe cold weather event had on the bulk electric system in Texas and other parts of the South Central United States.¹⁶¹ The report stressed the preliminary recommendations released earlier and included recommendations to strengthen rules for cold weather preparedness and coordination to prevent a recurrence.¹⁶²

156. FERC, FERC-NERC-REGIONAL ENTITY JOINT REVIEW OF PROTECTION SYSTEM COMMISSIONING PROGRAMS (2021), <https://www.ferc.gov/news-events/news/ferc-nerc-regional-entity-staff-release-joint-review-protection-system> [hereinafter JOINT REVIEW OF PROTECTION SYSTEM COMMISSIONING PROGRAMS].

157. FERC, FERC-NERC- REGIONAL ENTITY STAFF REPORT, THE FEBRUARY 2021 COLD WEATHER OUTAGES IN TEXAS AND THE SOUTH CENTRAL UNITED STATES (2021), <https://www.ferc.gov/media/february-2021-cold-weather-outages-texas-and-south-central-united-states-ferc-nerc-and> [hereinafter FERC-NERC FINAL REPORT ON FEBRUARY 2021 FREEZE].

158. SOLAR WINDS AND RELATED SUPPLY CHAIN COMPROMISE, *supra* note 154, at 4.

159. 2021 REPORT ON CIP AUDITS, *supra* note 155, at 3.

160. JOINT REVIEW OF PROTECTION SYSTEM COMMISSIONING PROGRAMS, *supra* note 156, at 1.

161. FERC-NERC FINAL REPORT ON FEBRUARY 2021 FREEZE, *supra* note 157, at 8.

162. *Id.* at 18-21.

2. FERC Issues Equity Action Plan

On April 15, 2022, the FERC issued its Equity Action Plan (EAP).¹⁶³ The purpose of the EAP is “to better integrate environmental justice and equity considerations in its decision making processes.”¹⁶⁴ The EAP includes numerous initiatives within the Agency.¹⁶⁵ These initiatives will expand the size and capabilities of the OPP, increase the staff’s capacity to support meaningful engagement with Tribal governments, and strengthen the FERC’s understanding of how equity impacts their mission.¹⁶⁶ Under the EAP, the FERC will also “conduct an environmental justice review” of both its natural gas siting procedures and “hydro-power licensing policies . . . while also obtaining stakeholders’ input on these issues.”¹⁶⁷

To ensure attainment of these initiatives, the EAP includes tracking and accountability procedures.¹⁶⁸ The FERC “will evaluate whether and how relationships and interactions” with the public have improved through implementation of the EAP.¹⁶⁹ The public and Tribal governments will be prompted to provide feedback on the FERC’s communication strategies and consultation efforts.¹⁷⁰ The EAP is set to take effect over a two-year time span, which began on April 15, 2022.¹⁷¹

3. FERC Workshops on Federal-State Joint Transmission Task Force and Transmission Incentives

The FERC held workshops and took comments on various electricity transmission issues, including incentives for “deployment of transmission technologies” and joint federal-state transmission planning.¹⁷² On September 10, 2021, FERC staff “conven[ed] a workshop to discuss certain shared savings incentive approaches that may foster deployment of transmission technologies.”¹⁷³ Between November 10, 2021, and May 6, 2022, the Joint Federal-State Task Force on Electric Transmission held a series of meetings¹⁷⁴ and accepted comments regarding the following topics:

163. *FERC Issues Equity Action Plan*, FERC (April 15, 2022), <https://www.ferc.gov/news-events/news/ferc-issues-equity-action-plan>.

164. FERC, *EQUITY ACTION PLAN 2* (2022), <https://www.ferc.gov/news-events/news/ferc-issues-equity-action-plan> [hereinafter *EQUITY ACTION PLAN*].

165. *Id.*

166. *Id.* at 2-3.

167. *Id.* at 3.

168. *EQUITY ACTION PLAN*, *supra* note 164, at 7.

169. *Id.* at 6.

170. *Id.* at 5-7.

171. *FERC Issues Equity Action Plan*, *supra* note 163.

172. FERC Docket Nos. RM20-10-000, AD19-19-000 (Apr. 15, 2021).

173. *Id.*

174. *Third Meeting of the Joint Federal-State Task Force on Electric Transmission*, FERC, <https://www.ferc.gov/news-events/events/third-meeting-joint-federal-state-task-force-electric-transmission-05062022> (last updated June 30, 2022).

- “Incorporating State Perspectives into Regional Transmission Planning”¹⁷⁵;
- “Specific Categories and Types of Transmission Benefits that Transmission Providers Should Consider for the Purposes of Transmission Planning and Cost Allocation”¹⁷⁶;
- “Cost Allocation Principles, Methodologies, and Decision Processes for the Purposes of Transmission Planning and Cost Allocation”¹⁷⁷;
- “Generator Interconnection Queue Processes and Current Backlog”¹⁷⁸; and
- “Cost Allocation for Generator Interconnection-Related Network Upgrades, Including Participant Funding.”¹⁷⁹

4. FERC Technical Conference on Hydropower Project Financial Assurances

On April 26, 2022, the FERC held a “technical conference to discuss whether, and if so, how it should require additional financial assurance mechanisms in the licenses and other authorizations the FERC issues for hydroelectric projects.”¹⁸⁰ Topics discussed during the technical conference included: (1) how a financial assurance requirement could mitigate project-specific risks (e.g., “condition of project facilities), regional risks (e.g., changes to the project area since construction), and global risks (e.g., climate change”); (2) “the factors that should inform [whether] the [FERC] . . . should establish a financial assurance requirement” and “the appropriate amount of financial assurance”; and (3) “mechanisms licensees could use to satisfy a financial assurances requirement.”¹⁸¹ The FERC also invited stakeholders to issue post-conference comments on these issues.¹⁸²

175. *First Meeting of the Joint Federal-State Task Force on Electric Transmission*, FERC, <https://www.ferc.gov/news-events/events/first-meeting-joint-federal-state-task-force-electric-transmission-11102021> (last updated Feb. 2, 2022).

176. *Second Meeting of the Joint Federal-State Task Force on Electricity Transmission*, FERC, <https://www.ferc.gov/news-events/events/second-meeting-joint-federal-state-task-force-electric-transmission-02162022> (last updated Sept. 7, 2022).

177. *Id.*

178. *Third Meeting of the Joint Federal-State Task Force on Electric Transmission*, *supra* note 174.

179. *Id.*

180. *Technical Conference on Financial Assurance Measures for Hydroelectric Projects*, FERC, <https://www.ferc.gov/news-events/events/technical-conference-financial-assurance-measures-hydroelectric-projects> (last updated June 9, 2022). See FERC Docket No. RM21-9-000 (April 26, 2022).

181. *Technical Conference on Financial Assurance Measures for Hydroelectric Projects*, *supra* note 180.

182. *Id.*

5. FERC Technical Workshops on the OPP and New England Winter Gas-Electric Forum

On October 7, 2021, the OPP held a virtual workshop on technical assistance.¹⁸³ The workshop focused strictly on electric proceedings and specifically examined how the OPP can prioritize technical assistance for the public, including ways that OPP can work with external entities to facilitate technical assistance.¹⁸⁴

OPP hosted a forum in Burlington, Vermont, on Thursday, September 8, 2022, to discuss the electricity and natural gas challenges facing the New England Region.¹⁸⁵ The forum's objective was to "achieve greater [understanding] . . . among stakeholders in defining the electric and natural gas system challenges in [the] New England [Region]."¹⁸⁶

183. *Office of Public Participation Workshop on Technical Assistance*, FERC, <https://www.ferc.gov/news-events/events/office-public-participation-workshop-technical-assistance-10072021> (last updated Oct. 18, 2021). See FERC Docket No. AD21-9-000 (Aug. 23, 2021); FERC Docket No. AD21-9-000 (Sept. 8, 2021).

184. *Office of Public Participation Workshop on Technical Assistance*, *supra* note 183.

185. *New England Winter Gas-Electric Forum*, FERC, <https://www.ferc.gov/news-events/events/new-england-winter-gas-electric-forum-09082022> (last updated Sept. 23, 2022).

186. *Id.*