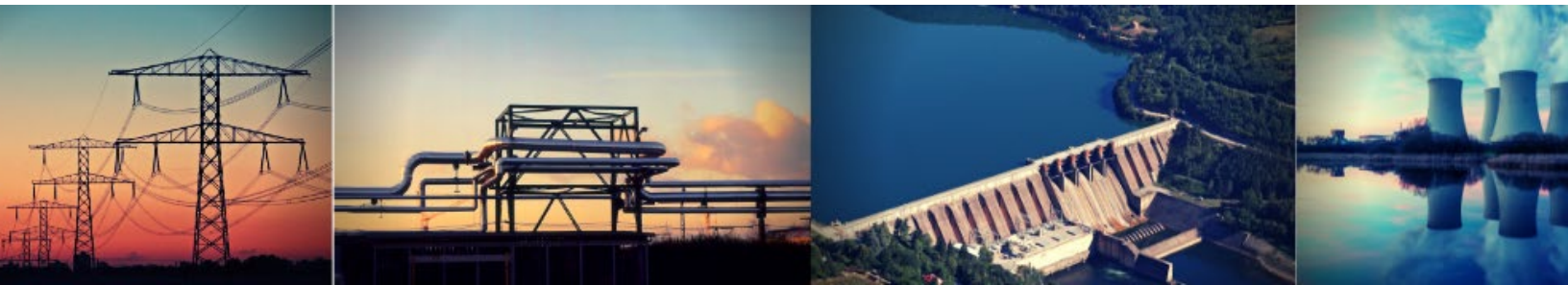


# EBA BRIEF

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## Why We Should Not Be Quick to Move Away From Single Clearing Price Auctions In RTO Markets

Matt Estes<sup>1</sup>

I read with interest Federal Energy Regulatory Commission (“FERC” or “Commission”) Commissioner Mark C. Christie’s recent article in the Energy Law Journal calling for the review of the markets administered by Regional Transmission Organizations (“RTOs”)—and raising questions regarding the continued use of single-clearing price auctions in those markets. Commissioner Christie asserts that it is “appropriate to consider whether single-clearing price mechanisms can still produce just and reasonable rates, which is, after all, what the Federal Power Act [(“FPA”)] requires.”<sup>2</sup>

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### Single-Clearing Price Auctions

Before explaining my conclusion, it is helpful to review how single-clearing price auctions work and why they are beneficial. Commissioner Christie starts off on the right path by drawing on the useful description of these auctions provided in U.S. Supreme Court Justice Elena Kagan's opinion for the Court in *FERC v. Elec. Power Supply Association*.<sup>3</sup>

Operators accept the generators' bids in order of cost (least expensive first) until they satisfy the [load serving entities'] total demand. The price of the last unit of electricity purchased is then paid to every supplier whose bid was accepted, regardless of its actual offer . . . . So, for example, suppose that at 9 a.m. on August 15 four plants serving Washington, D. C. can each produce some amount of electricity for, respectively, \$10/unit, \$20/unit,

\$30/unit, and \$40/unit. And suppose that [load serving entities'] demand at that time and place is met after the operator accepts the three cheapest bids. The first three generators would then all receive \$30/unit. That amount is (think back to Econ 101) the marginal cost—i.e., the added cost of meeting another unit of demand—which is the price an efficient market would produce.<sup>4</sup>

Justice Kagan does a good job here of explaining how a single-clearing price auction works and why that price represents the marginal price that would result from an efficient market. But after quoting from this opinion, Commissioner Christie goes on to question why low-cost suppliers should receive a clearing price well above their offers. He instead proposes consideration of alternative pricing mechanisms, such as “pay as offered” auctions or bilateral trading markets. Commissioner Christie asserts that these alternative mechanisms would result in lower rates for consumers by reflecting the lower offers submitted by low-cost suppliers—offers that are not reflected in the rates resulting from single-clearing price auctions.<sup>5</sup>

But there is another important aspect of single-clearing price auctions that was not mentioned in Justice Kagan’s opinion because it was not relevant to the Court’s decision. Specifically, and as discussed in more detail below, the use of a single-clearing price auction incentivizes suppliers to submit offers that are lower than they would be under other pricing mechanisms. Consequently, under the alternative pricing mechanisms that Commissioner Christie identifies for consideration, suppliers would not submit the low price offers he wants to capture for consumers.

This aspect of single-clearing price auctions can be illustrated by the hypothetical quoted above from Justice Kagan’s opinion, applied where a pay as offered price mechanism is employed (i.e., where each winning supplier is paid what it offers instead of the market-clearing price). Suppose the prices of the units in her example represent each unit’s cost of production. If the owners of the \$10/unit and the \$20/unit can predict that the system load will be greater than their combined output—and in fact it is not difficult in most markets to accurately project load levels to least a general

degree—then their incentive will be to offer above their costs and just below what they believe the marginal offer price will be. They know that the owners of the \$30/unit and \$40/unit likely will not offer below the costs of their units because otherwise they run the risk of having their offer accepted and being required to sell at a price that is below their cost. Consequently, the owners of the lower-cost units will not offer their units at \$10 or \$20, but instead will offer at a price of \$30, or even \$40 if they project that the \$40/unit will be required to serve load.<sup>6</sup>

Failure of the owners of the lower cost units to offer above their costs and near the price they believe will be the price offered by the marginal price unit would result in the loss of revenues that would be readily available to them under the auction. Generation owners are sophisticated profit-maximizing entities, and they simply will not offer into a pay as offered auction at prices well below the anticipated auction clearing price and thereby leave money on the table. Nor will they agree to prices in a bilateral trading system that are well below the expected marginal price offered in the bilateral market.

If the owners of the lower cost units in Justice Kagan’s example correctly forecast load as requiring the dispatch of all three units in the example, and if they correctly determine that the third unit’s costs are \$30, then they likewise will be incentivized to offer at \$30 and, if the \$30/unit offers at its costs, then the result will be exactly same as under a single-clearing price mechanism. But unit costs are not made publicly available, and load forecasts can be incorrect. If the owners of the units incorrectly forecast the load level or the costs of the marginal unit, then the total costs to consumers under a pay as offered auction structure could be even higher than under a single-clearing price mechanism (for example, if the owners of the \$10 and \$20 units offer at a price above \$30).

By contrast, under a single-clearing price mechanism, none of the unit owners need to predict loads or their competitors’ costs to submit the most economically beneficial offer. The owner of each unit can submit an offer at the cost of its unit, thereby ensuring that it will receive the price of the marginal offer, whether that is submitted by the \$30/unit or the \$40 unit. And if the marginal offer price is below an owner’s costs, that owner will not be given an award

and will not be forced to operate its unit at a loss. Further, all units that are given awards will have costs at or below the costs of the marginal unit, and no unit with costs below the marginal unit will fail to receive an award. Thus, under a single-clearing price mechanism, suppliers have an incentive to offer at their costs even when such costs are likely to be well below the market-clearing price. But this incentive exists only if suppliers are awarded the market-clearing price.

Of course, the discussion above is based on a simplified example and outcomes will be somewhat different in the complex RTO markets. But it nevertheless remains true that low-cost sellers that offer into single-clearing price RTO auctions at prices well below the clearing price would not have the same economic incentive to do so under other possible pricing mechanisms.

### **Review of Single-Clearing Price Auctions Under FPA Section 206**

FPA section 205(a) mandates that “[a]ll rates and charges” within the Commission’s jurisdiction, as well as “all rules and regulations” pertaining to those rates and charges, must be “just and reasonable.”<sup>7</sup> In order to enforce this mandate, the Commission reviews proposed new rates and rate changes under section 205. In addition, under FPA section 206, the Commission also reviews rates that were previously reviewed and allowed to go into effect under section 205—either in response to a complaint or *sua sponte* on its own motion.<sup>8</sup> Given Commissioner Christie’s call for the Commission to consider whether single-clearing price auctions continue to be just and reasonable,<sup>9</sup> my comments focus on the analysis under FPA section 206.

Section 206 requires the Commission to follow a two-step process before requiring that a currently effective rate—such as the RTO rates established pursuant to single-clearing price auctions—be replaced by some other rate-setting mechanism. First, the Commission must determine that the currently effective rate is no longer just and reasonable. If it makes such a finding, the Commission then must determine the just and reasonable replacement rate.<sup>10</sup> My comments focus on this first step.

In his article, Commissioner Christie presents two principal concerns regarding single-clearing price

auctions. Both represent a valid concern regarding RTO markets that should be addressed in any Commission review of those markets. But, in my view, neither of these reasons implicates the just and reasonableness of the use of single-clearing price auctions.

First, Commissioner Christie notes that RTO markets, especially capacity markets, impose several different requirements on offers and incorporate a number of assumptions, including assumptions about how much capacity is needed, the shape of the demand curve, and the cost of constructing a new unit that acts as a ceiling on the capacity price to be awarded at the auction. From this, Commissioner Christie concludes that capacity markets “have never been true markets, but rather administrative constructs with some market characteristics.”<sup>11</sup> He asserts that RTO capacity auctions represent an administrative planning exercise similar in nature to the integrated resource planning process followed by state Public Utility Commissions outside of RTOs.<sup>12</sup> “Just don’t pretend,” Commissioner Christie cautions, “that what’s at work in capacity markets is Adam Smith’s invisible hand efficiently allocating capital through a single-clearing price mechanism.”<sup>13</sup> And, based on his frequently repeated characterization of capacity auctions as “administrative constructs,” Commissioner Christie questions whether his criticisms of single-clearing price auctions can “be divorced from the question whether these markets were based on deregulation assumptions that may no longer be valid, if they ever were.”<sup>14</sup>

Commissioner Christie is certainly correct that the various RTO markets incorporate several administrative assumptions and guidelines. But very few, if any, existing markets of any type are completely free from regulation. The stock and commodities exchanges, for example, are subject to extensive rules and regulations, including provisions to prevent market manipulation and the exercise of market power, which are the subjects of several rules governing RTO markets. Further, Commissioner Christie suggests that states could require the procurement of capacity through “competitively-bid PPAs,”<sup>15</sup> a process that certainly would be subject to many of the same assumptions and requirements as the RTO capacity auctions. That these markets are perhaps less free than envisioned by Adam Smith does not mean that competitive forces are absent—or that economic principles are inapplicable.

And although it is certainly valid to question, as Commissioner Christie does, whether the rules governing the various RTO markets could be revised to include more appropriate parameters or even whether those markets should exist at all, I do not think that Commissioner Christie has presented a rationale that would support the conclusion that single-clearing price auctions are not just and reasonable. Whether characterized as a competitive auction or an administrative construct, single clearing price auctions in RTO markets provide for the submission of offers to sell energy, capacity, and certain other products into market-based rate auctions. And Commissioner Christie has presented no reason for us to question whether the use of single-clearing price auctions represents a just and reasonable way to derive the most efficient marginal price from the offers that are submitted for the products that are the subject of the auction.

Commissioner Christie's second reason for questioning the continued reliance on single-clearing price auctions is based on his observations regarding the effect of subsidies on the RTO markets:

State policies mandating that utilities must purchase power based on the type of generator or other attributes, other forms of state subsidies, such as zero emissions credits (ZECs), combined with lavish federal subsidies in the form of investment and production tax credits, undercut any continuing claim that capacity markets are simply procuring the lowest-cost capacity on an agnostic basis.<sup>16</sup>

Commissioner Christie quotes former Commissioner Tony Clark's characterization of these subsidies as "more than a thumb on the scale of energy markets," but rather "a twelve-ton dump truck."<sup>17</sup> He also notes the difficulties of operating multi-state RTOs with divergent policies on subsidies and the intense disagreement over the need for minimum offer price rules to mitigate the effect of subsidies on auctions.<sup>18</sup>

Commissioner Christie has identified what undoubtedly represents a difficult and controversial challenge faced by the electric industry today, which is how to integrate the large and fast-growing number of

highly subsidized renewable resources into the electric grid while maintaining grid reliability. But he follows his identification of this issue with a non-sequitur: "So what purpose is served by giving all sell offers the highest clearing price? If their promises of future deliverables are based on their actual costs, discounted for subsidies, why shouldn't each seller that clears simply get its offer price?"<sup>19</sup>

The answer is that, as explained above, under a pay as offered mechanism or a bilateral transaction mechanism, renewable resources will not offer at "their actual costs, discounted for subsidies." An RTO's single-clearing price auction may represent an administrative construct imposed by the market operator, but marginal price theory is not. Instead, it is an economic principle that has been observed to apply in countless markets and market structures. Prices will tend to be set at or near the marginal price even without a single-clearing price mechanism.<sup>20</sup>

As Commissioner Christie observes, the problem raised by subsidies for renewable resources is that they may depress prices and thereby threaten the financial viability of dispatchable resources that are necessary for system reliability.<sup>21</sup> This is not a problem that can be fixed by eliminating single-clearing price auctions. Yes, the prices set under single-clearing price auctions are affected by subsidies, but the presence in a market of large quantities of low-cost subsidized supply will suppress prices regardless of the market pricing mechanism employed.

As I stated at the outset, Commissioner Christie has raised valid concerns about RTO markets, and he also has identified some interesting ways to address those concerns. For example, I find his reference to the bifurcated market idea being pursued in Europe—which involves separate (single-clearing price) auctions for renewable and dispatchable resources<sup>22</sup>—to be intriguing, although perhaps difficult to implement. And it is absolutely necessary to address the current challenges in maintaining grid reliability. But in doing so, we should focus on the problems that may be threatening the just and reasonableness of the RTO markets. That threat does not come from single-clearing price auctions.



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<sup>1</sup> Mr. Estes recently retired from the Federal Energy Regulatory Commission where he served as a Senior Advisor in the Office of General Counsel, Senior Legal Advisor to Commissioner James Danly, and in the Solicitor's Office. Before that he practiced energy law for over 33 years at the law firm of Skadden, Arps, Slate, Meagher & Flom LLP.

<sup>2</sup> Mark Christie, *It's Time to Reconsider Single-Clearing Price Mechanisms in U.S. Energy Markets*, 44 *Energy Law Journal* 1, 21 (2023) (hereinafter Commissioner Christie article) (citations omitted).

<sup>3</sup> *FERC v. Elec. Power Supply Ass'n*, 577 U.S. 260 (2016).

<sup>4</sup> Commissioner Christie article at 5-6 (quoting *Elec. Power Supply Ass'n*, 577 U.S. at 262) ((citing Alfred E. Kahn, *The Economics of Regulation: Principles and Institutions* 65-67 (John Wiley & Sons, Inc., 1971)).

<sup>5</sup> See, e.g., *id.* at 22 (under a bilateral transaction market construct, “[c]onsumers would benefit from paying the prices offered below the highest clearing price, instead of paying the highest clearing price to all sell offers.”); 25 (“what purpose is served by giving all sell offers the highest clearing price? If their promises of future deliverables are based on their actual costs, discounted for subsidies, why shouldn’t each seller that clears simply get its offer price?”).

<sup>6</sup> This discussion assumes that a pay as offered approach does not include some kind of cost-based cap on offers. The question of whether RTO market-based rates should be replaced by cost-based rates is an interesting one that raises numerous complex issues that are beyond the scope of this article.

<sup>7</sup> 16 U.S.C. § 824d(a); see also *Towns of Concord, Norwood, and Wellesley, Mass. v. FERC*, 955 F.2d 67, 68 (D.C. Cir. 1992).

<sup>8</sup> See *FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 348-49 (D.C. Cir. 2014).

<sup>9</sup> See, *supra* note 2.

<sup>10</sup> See *Md. Pub. Serv. Comm’n v. FERC*, 632 F.3d 1283, 1285 n.1 (D.C. Cir. 2011); *FirstEnergy*, 758 F.3d at 353.

<sup>11</sup> Commissioner Christie article at 4.

<sup>12</sup> *Id.* at 15.

<sup>13</sup> *Id.* at 16.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 28.

<sup>16</sup> *Id.* at 24-25.

<sup>17</sup> *Id.* at 25 (quoting Tony Clark, *Inflation Reduction Act adds fuel to RTO reform imperative, generator interconnection backlog*, UTILITY DIVE, (Nov. 8, 2022), <https://www.utilitydive.com/news/inflation-reduction-act-ira-rto-interconnection-queue-ferc-tony-clark/635959/>).

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> This is not to suggest that, without a single-clearing price mechanism, prices will uniformly be set exactly at the marginal price. But variations in price will result from factors such as less than perfect information, unequal bargaining power, and limitations in transmission capacity. There is no reason to believe that in markets where single-clearing price auctions are not employed the prices charged by owners of subsidized units will be uniformly lower than prices charged by other suppliers.

<sup>21</sup> Commissioner Christie article at 18.

<sup>22</sup> *Id.* at 23.

# The Office of Public Participation at FERC: From Launch to Implementation

Nicole W. Sitaraman and Joseph A. Rosenthal<sup>1</sup>

For several decades, the American public has had substantial interest and engagement in urgent and transformative energy matters impacting their communities, including during the oil crises of the 1970s and the California energy crisis in the early 2000s. Arguably, however, over the course of this last decade, the public's interest and demand for involvement in energy policy development has reached an all-time high resulting from the confluence of various social, environmental and economic factors. These factors include but are not limited to:

- *Technological* advancements such as the rapid expansion of the internet and digital resources that have accelerated access to information, news, and data unlike any other era in history;
- *Global* concerns about climate change and environmental impacts of energy infrastructure, coupled with opportunities to transition toward cleaner energy resources;
- *National* concerns about electric reliability, particularly in the summer and winter, and the related discussions about transmission grid expansion and power plant retirements;
- *Regional* concerns about electric resource adequacy, gas pipeline siting, severe weather events, transmission planning, and cost allocation;
- *Local* concerns about new or relicensed energy infrastructure and impacts on the local environment, public health, agriculture, property values, environmental injustice, disparate impacts, or other issues; and
- *Individual consumer* concerns about affordability, reliability, carbon and methane footprint, technology adoption and obsolescence, health impacts of energy infrastructure, and other factors.

With these evolving factors as the backdrop and an expanding awareness among regulators that public input is indispensable for addressing these significant energy delivery system challenges, the Federal Energy Regulatory Commission ("FERC" or the "Commission") took the lead in 2021 to establish a new program office, the Office of Public Participation ("OPP" or the "Office").<sup>2</sup> OPP's mission is to "empower, promote, and support public voices" at FERC.<sup>3</sup> Since its inception, OPP has established itself as a trusted, reliable, and responsive resource for the public. OPP provides a range of products and services including direct constituent support with navigating FERC's online systems for submitting filings and locating docket information, proactive outreach to communities regarding FERC proceedings, and development of educational materials to foster greater understanding of FERC jurisdictional topics. The next phase for OPP's efforts will include development of a Technical Assistance Division to provide a broad range of technical assistance, expertise, and educational support services to various types of constituents interested in more in-depth learning, education, and intervention in FERC matters. OPP's future work will also include expanding outreach to diverse communities, as well as greater coordination within the Commission and externally with other federal, state and local agencies to increase public participation and engagement.

## I. The Enabling Statute for the Office of Public Participation

The existence and mission of the Office of Public Participation are supported by an enabling statute, Section 319 of the Federal Power Act ("FPA"),<sup>4</sup> which was passed as part of the Public Utilities Regulatory Policies Act of 1978 ("PURPA").<sup>5</sup> Under this statute, the OPP Director is appointed by the FERC Chairman with the approval of the Commission.<sup>6</sup> The FPA frames OPP's work as follows:

*The Director shall coordinate assistance to the public with respect to authorities exercised by the Commission. The Director shall also coordinate assistance available to persons intervening or participating or proposing to intervene or participate in*

*proceedings before the Commission.*<sup>7</sup>

This provision sets forth a broad mandate for OPP encompassing assistance for the public with respect to the full scope of authorities exercised by the Commission. This includes, for example, providing participation guidance and educational support to interested members of the public regarding RTO/ISO proceedings and processes.<sup>8</sup> Stakeholder processes are occurring at regional transmission organizations and independent system operators (“RTO/ISO”) pursuant to FERC-approved tariffs, and thus occur pursuant to “authorities exercised by the Commission.”<sup>9</sup>

Notably, OPP’s statutory charge is to facilitate and support participation, not to be an advocate. OPP is not authorized to intervene directly in FERC proceedings on behalf of the public interest or appeal FERC rulings. Indeed, OPP provides the same level of support to constituents who contact the office regardless of viewpoint or any other factors.

## II. The Process for Development of the Office of Public Participation

Following the passage of Section 319 of the Federal Power Act in 1978, no action was taken to provide resources for an Office of Public Participation at FERC. During interim years, advocates and public officials maintained engagement with the United States Congress and FERC on formally establishing the Office. In 2020, Congress ultimately developed a bill to implement OPP. On December 27, 2020, the President signed the FY2021 Omnibus and COVID Relief and Response Act (HR 133) into law. The Accompanying joint House-Senate Appropriations Committee Report (Division D – Energy and Water) included a requirement for FERC to submit a report within 180 days (June 25, 2021) on how it will establish and fund the Office of Public Participation.<sup>10</sup>

In early 2021, FERC launched an OPP docket (AD21-9) to enable public comment and testimony on the prospective formation and functions of the office.<sup>11</sup> In June 2021, FERC submitted the required FERC OPP Report to Congress, summarizing the public comments and describing how it would establish and operate OPP. The FERC OPP Report empowered OPP with the following functions:

- conduct outreach;
- provide public education;
- provide procedural assistance to intervenors and participants in individual proceedings;
- provide technical assistance;
- improve coordination of public participation across the Commission; and
- advise on a rulemaking establishing the intervenor funding program pursuant to FPA section 319.<sup>12</sup>

After OPP was established, OPP leadership designated the office as non-decisional.<sup>13</sup> As such, OPP can hear the viewpoints and perspectives of constituents regarding contested proceedings without fear of running afoul of *ex parte* rules. Constituents often express appreciation that they may speak freely with OPP to receive the procedural assistance they need and simply feel that they are being heard. FERC’s *ex parte* rules promote fair and equal deliberative process at FERC by disallowing private conversations between FERC decisionmakers and the public as to substantive matters in contested proceedings.<sup>14</sup>

## III. OPP Provides Direct Constituent Support

OPP acts as a liaison to members of the public affected by and interested in Commission proceedings. This includes providing process information on individual proceedings and responding to requests for assistance with the procedures for filing interventions, comments, and other documents with FERC. Since its launch in 2021, OPP has provided assistance for almost 1,000 constituent inquiries.

Many inquiries received by OPP are driven by the Commission’s issuance of Notices of Proposed Rulemaking (“NOPRs”). OPP assists the public by explaining the content of the NOPRs, clarifying deadlines and procedural steps, and providing guidance on how to access the FERC precedents or other citations in NOPRs (which are often numerous) using FERC’s online systems. FERC infrastructure proceedings involving gas pipeline construction, development of LNG export terminals, and hydroelectric plant re-licensing also drive numerous public inquiries to OPP. Members of the public seek information about the location of the infrastructure, FERC processes for commenting and intervening, the nature and timing of community meetings, and land



restoration concerns in the pipeline post-construction phase, among other issues.

A significant share of the inquiries received to date by OPP have assumed FERC jurisdiction where none exists. Where jurisdiction does not exist, OPP directs constituents to the appropriate agency or resource (without offering legal conclusions). For example, OPP may offer constituents contact information for a state public utility commission or consumer advocate office or another federal agency. In some instances, the question may be best answered by the customer's utility.

Additionally, OPP helps the public use FERC's online services, such as accessing docket information in FERC's eLibrary, commenting, or filing for intervention electronically using eComment or eFile, or taking advantage of eSubscription to a docket to receive notice of FERC issuances or filings of other parties. OPP supports constituent efforts to participate in FERC proceedings using existing FERC systems, but also receives input from constituents about challenges they may experience using these systems and their suggestions for improvements. This input has been informative for the Commission as it explores ways to address language access, accessibility, and ease of use of its systems and publicly accessible documents.

#### **IV. OPP Conducts Proactive Outreach**

OPP engages with the public through direct outreach to facilitate greater understanding of Commission processes, enable broader participation in FERC matters, and foster trust between communities and the Commission. OPP's responsibility to facilitate participation in Commission proceedings, including through assistance to underserved communities that face barriers to meaningful participation, has been recognized as a key aspect of FERC's Equity Action Plan developed in response to Executive Order No. 13985.<sup>15</sup>

Consistent with the FERC OPP Report and the goal of encouraging the consideration of a broad set of views in FERC proceedings OPP targets specific categories of constituents for much of its outreach efforts. OPP conducts outreach to traditionally under-represented constituencies such as Tribal members, communities with environmental justice concerns, consumer and environmental advocacy organizations,

and landowners impacted by infrastructure projects, to name a few. OPP has engaged in well over 300 constituent meetings, convenings, and events over the course of the Office's first two years of operation.

OPP is committed to meeting communities where they are physically located. To meet national public participation needs, OPP has hired staff that are based in key regions, including the Gulf Coast, New England, Oklahoma, and the Pacific Northwest. OPP prioritizes FERC infrastructure proceedings of significant interest to constituents for expanded outreach through hard copy mailings to grassroots non-governmental advocacy organizations, elected officials, religious institutions, civic groups, chambers of commerce and other business organizations, labor unions, and local news media. These OPP mailings contain information about the proposed infrastructure project, the Commission, as well as opportunities for public written or verbal comment on the record. Following these mailings, OPP staff regularly attend in-person FERC community meetings related to project proposals to provide additional assistance.

Further, OPP conducts extensive outreach relating to electric markets and transmission matters. OPP's markets-related outreach has included informational meetings with community, academic, Tribal and environmental groups, staffing tables at FERC regional events relating to electric reliability, developing key contacts at RTO/ISOs, and speaking at constituent-coordinated educational forums and webinars.

#### **V. OPP Develops Educational and Training Materials for the Public**

OPP's mission of empowering, supporting and promoting public voices in FERC matters is firmly rooted in the awareness that public participation is enhanced when the public is educated about the scope and limitations of FERC's jurisdiction. Therefore, OPP has developed a robust education initiative that includes the development of workshops (dubbed "WorkshOPPs" using the OPP acronym), explainers, factsheets, and other handouts to build a library of resources to assist the public.

For example, in 2023, OPP worked collaboratively with FERC leadership and other program offices to provide informative, evergreen workshops such as "Tips for Powerful Comments."<sup>16</sup> This workshop educated constituents about the best ways to make

their comments more impactful in FERC proceedings. Presenters included OPP staff, a commissioner and senior program office leadership who shared perspectives on the importance of commenting, how comments are processed, and how comments can be most useful to decisionmakers. Another OPP-led workshop in 2023 was entitled “Public Participation in the Natural Gas Pre-Filing Review Process,”<sup>17</sup> and was designed to help the public understand and take advantage of the valuable information exchanges between companies and communities that can occur during that pre-application phase. Also, OPP produced a video on the Fundamentals of Intervention in FERC matters, explaining how and why a member of the public may want to intervene in different types of FERC proceedings.<sup>18</sup> All of three workshops offered Spanish language translation services and the two live sessions made American Sign Language available upon request.<sup>19</sup>

Moreover, OPP is prolific in its delivery of written educational explainers to constituents. The Office has published explainers on the several complex and lengthy FERC transmission rulemakings, an explainer on electric reliability, a guide on electricity market basics, and a guide for understanding FERC Order 2222 and how it will facilitate participation in energy markets. OPP has also developed a series of explainer documents that provide basic information about each RTO/ISO, their governance and stakeholder proceedings, and opportunities for participation.<sup>20</sup> On the infrastructure side, OPP developed an explainer on an update to FERC’s Plan and Procedures for avoiding, minimizing, or mitigating impacts on the environment from FERC-jurisdictional natural gas projects.<sup>21</sup>

## VI. The Next Phase for OPP at FERC

With a growing team of dedicated and expert professionals, OPP will continue to meet constituent needs both reactively (responding to constituent inquiries) and proactively (including through expanded outreach and in-person attendance at FERC-related meetings across the country) in 2024 and beyond.

In 2024, OPP plans to build out another central aspect of its mission: technical assistance. OPP will soon staff a Technical Assistance Division to provide a broad range of resource development for constituents interested in more in-depth educational products and

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tools on FERC-related topics. Further, OPP will build on its existing community partnerships to achieve broader participation at FERC, particularly in areas that are heavily burdened by energy infrastructure. In addition to infrastructure concerns, OPP also anticipates answering more inquiries about FERC proceedings that relate to the energy transition, including interconnection of renewable energy, transmission planning and opportunities for increased participation in regional electricity markets with aggregated distributed energy resources.

OPP will expand its educational platform and produce more workshop videos and written educational documents based on communications

with constituents about their needs and as FERC opens additional proceedings and complex rulemakings. A growing set of handouts and even postcard-sized products will provide key basic information to attendees at community meetings, conferences, and FERC forums.

OPP will reinforce its internal work with other FERC program offices to continue the progress toward greater public engagement that is supported by Chairman Phillips and throughout the Commission. Such collaboration may include discussions about system upgrades or new methods for filings, further coordination between OPP and other FERC customer-facing offices and helplines and exchanging of information about community outreach.

OPP appreciates the recognition by FERC's leadership that public participation support is a vital and separate government function, requiring a dedicated staff and resources. In partnership with the Commission's Office of External Affairs, OPP shares information about the office's progress with other

federal, state, and international agencies who have or are considering the development of similar offices. These conversations are intended to lead to the establishment of similar public participation offices for the benefit not just of the public but for the regulatory agencies. Public participation and full consideration of a broader set of perspectives in the administrative record are a critical component of energy regulation and will inevitably lead to better, legally durable decisions, settlements, as well as better public understanding and acceptance of outcomes.

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<sup>1</sup> Nicole W. Sitaraman serves as the Acting Director of the Office of Public Participation ("OPP") at the Federal Energy Regulatory Commission. Joseph A. Rosenthal serves as the Senior Policy Advisor of OPP. Ms. Sitaraman and Mr. Rosenthal are founding senior leaders of the Office.

<sup>2</sup> FERC Report on the Office of Public Participation, FEDERAL ENERGY REGULATORY COMMISSION (June 24, 2021) (hereinafter, "FERC OPP Report"). Available at: <https://www.ferc.gov/media/ferc-report-office-public-participation>.

<sup>3</sup> *About the Office of Public Participation*, FEDERAL ENERGY REGULATORY COMMISSION (April 4, 2024). Available at: <https://www.ferc.gov/OPP>.

<sup>4</sup> 16 U.S.C. § 825q-1.

<sup>5</sup> [Pub. L. 95-617, §1, Nov. 9, 1978, 92 Stat. 3117.](#)

<sup>6</sup> *Id.* at (a)(2).

<sup>7</sup> 16 U.S.C. § 825q-1(b)(1).

<sup>8</sup> For basics about RTOs/ISOs, please refer to FERC's *Energy Primer: A Handbook for Energy Market Basics* (2024) available at: <https://www.ferc.gov/news-events/news/ferc-staff-issues-2024-energy-primer-handbook-energy-market-basics>

<sup>9</sup> *Id.*

<sup>10</sup> Consolidated Appropriations Act of 2021, P.L. 116-260, H.R. 133, 116<sup>th</sup> Cong. § 2 Division D – Energy and Water Development and Related Agencies Appropriations Act. Available at: <https://www.appropriations.senate.gov/imo/media/doc/Division%20D%20-%20Energy%20and%20Water%20Statement%20FY21.pdf>.

<sup>11</sup> All materials remain available in FERC's eLibrary in Docket No. AD21-9.

<sup>12</sup> FERC OPP Report at 9. The rulemaking proceeding for intervenor funding has not yet been established by FERC, but OPP currently performs the other functions.

<sup>13</sup> Notice of Designation of Commission Staff as Non-Decisional, 87 Fed. Reg. 32012 (May 26, 2022).

<sup>14</sup> 18 CFR § 385.2201. As a non-decisional office, OPP staff comply with the restriction of not disclosing constituent perspectives on substantive matters in contested proceedings with FERC decisional personnel.

<sup>15</sup> *Equity Action Plan for FERC EO13985*, FEDERAL ENERGY REGULATORY COMMISSION (April 14, 2022). Available at: <https://www.ferc.gov/media/equity-action-plan-ferc-EO13985>

<sup>16</sup> *WorkshOPP on "Tips for Powerful Comments"*, FEDERAL ENERGY REGULATORY COMMISSION (Mar. 28, 2024). Available at: <https://www.ferc.gov/news-events/events/workshopp-tips-powerful-comments-englishspanol-02232023>.

<sup>17</sup> *Virtual Workshop: WorkshOPP On Public Participation In The Natural Gas Pre-Filing Review Process*, FEDERAL ENERGY REGULATORY COMMISSION (Mar. 28, 2024). Available at: <https://www.ferc.gov/news-events/events/virtual-workshop-workshopp-public-participation-natural-gas-pre-filing-review>.

<sup>18</sup> *WorkshOPP on Fundamentals of Intervention in FERC Matters*, FEDERAL ENERGY REGULATORY COMMISSION (April 3, 2024). Available at: <https://www.ferc.gov/news-events/events/workshopp-fundamentals-intervention-ferc-matters-10252023>.

<sup>19</sup> *Id.*

<sup>20</sup> These are available at: <https://www.ferc.gov/energy-markets-0>

<sup>21</sup> *Explainer on FERC's Upland Erosion Control, Revegetation and Maintenance Plan and the Wetland and Waterbody Construction and Mitigation Procedures Update*, FEDERAL ENERGY REGULATORY COMMISSION (Jan. 3, 2022). Available at: <https://www.ferc.gov/explainer-fercs-upland-erosion-control-revegetation-and-maintenance-plan-and-wetland-and-waterbody>.