

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

The Office of Public Participation

Docket No. AD21-9

**COMMENTS OF THE ATTORNEYS GENERAL OF MASSACHUSETTS,
CONNECTICUT, DELAWARE, MARYLAND, MICHIGAN, MINNESOTA, OREGON,
RHODE ISLAND, AND WISCONSIN, AND THE MAINE OFFICE OF THE PUBLIC
ADVOCATE AND MARYLAND PEOPLE’S COUNSEL**

Pursuant to the Federal Energy Regulatory Commission’s (“Commission”) notice dated March 5, 2021, the Attorneys General of Massachusetts, Connecticut, Delaware, Maryland, Michigan, Minnesota, Oregon, Rhode Island, and Wisconsin, and the Maine Office of the Public Advocate and Maryland People’s Counsel (collectively “States”) submit these comments on how the Commission should establish and operate the Office of Public Participation (“OPP”) under section 319 of the Federal Power Act, 16 U.S.C. § 825q-1.

I. COMMENTS

The States support the creation of the OPP as an important complement to the work of state consumer advocates and as an overdue step toward fostering greater participation, transparency, and responsiveness to all stakeholders in the Commission’s exercise of its authorities. We increasingly hear from consumers, landowners, and community groups in our States that they want to be more engaged in Commission decisionmaking but lack the technical expertise and resources to do so effectively. There are significant barriers to participation, including that Commission proceedings are technical and complex, active engagement is expensive, and additional resources are required to monitor ongoing Commission activity to

identify proceedings that affect stakeholder interests. In many instances, even statutorily designated state consumer advocates have insufficient resources to represent their constituents' interests before the Commission. Moreover, there is a perception among many stakeholder groups that the Commission does not welcome or meaningfully consider input from anyone other than market participants. Overcoming these barriers will require financial support programs, targeted education and accessibility initiatives, and new types of outreach and engagement tools. The States offer the following insights and recommendations, based on our collective experience as advocates for our States' ratepayers and residents as well as parties to Commission proceedings, regarding how the OPP can harness such solutions to expand and diversify stakeholder participation.

A. The OPP's Mission Should Be to Proactively Seek and Facilitate Public Participation.

The OPP should seek to foster a broad change in Commission practice to affirmatively encourage, facilitate, and plan for public participation as a key component to fulfilling the Commission's mandate to ensure just and reasonable rates. *See* 16 U.S.C. § 824d. Greater public engagement, and the Commission's embrace of that engagement, are critical steps toward the Commission's goal of better incorporating environmental justice and energy justice concerns into its decisionmaking processes. Increased transparency and accessibility also will help build public trust in, and lend greater legitimacy to, the Commission and its actions. For all these reasons, the Commission should proactively seek and facilitate public engagement throughout all of its processes and proceedings, beginning in the earliest stages.

The OPP could support that effort by developing public participation plans for each case type and/or for individual proceedings on a case-by-case basis, as appropriate. Public participation plans should identify affected categories of stakeholders, including non-market

participants who lack ready access to the Commission, such as residential consumers, local governments, Tribal governments, landowners, environmental justice and energy justice groups, public health and environmental groups, advocates for low-income and elderly households, small-scale renewable energy and distributed energy resource advocates, and young people. The plans should outline tailored strategies for early outreach and facilitating active participation throughout the proceeding. In all of its outreach efforts, the OPP should reinforce the message that the Commission values, and will meaningfully consider, all public input.

B. The Commission Should Look to Successful State Programs and Initiatives as Potential Models to Fund Intervenors and Educate the Public.

The OPP should draw from best practices and models of effective public participation by other federal agencies and governmental entities. Successful state programs, in particular, may offer a useful model for the OPP. Our States have recognized the value of programs to support public engagement in and education about our state public utilities commission proceedings and other energy regulatory proceedings. In our experience, such programs have resulted in better records for decisionmaking, more informed consumers, greater transparency and accountability, and enhanced credibility for agency actions. And the cost of facilitating more public engagement—especially where appropriately borne by project applicants and utility companies that stand to benefit from the state action—is often offset by resulting consumer savings and the savings from avoided legal challenges.

For example, we encourage the Commission to explore the following programs as potential models.

Intervenor Funding

- ***Massachusetts' Funding Program for Experts:*** The Massachusetts Attorney General's Office of Ratepayer Advocacy has statutory authority to hire expert witnesses and

consultants in Department of Public Utilities proceedings. Funding is available up to \$150,000 in each case, with additional funds available for rate cases by request, provided through the distribution tariff. Mass. Gen. Laws ch. 12 § 11E. This funding enables the Office of Ratepayer Advocacy to afford the expert testimony necessary to present an affirmative case, and has dramatically increased the quality of its engagement.

- ***Michigan’s Funding Program for Consumer Advocate Intervenors:*** Michigan has a hybrid intervenor program where the Attorney General is specifically funded and a board oversees grants to other intervenors. In Michigan’s experience, funding for consumer advocacy is the only way to get consistent and beneficial input from intervenors on behalf of utility customers because of the complex nature of the subject matter and the cost of hiring experts. Funding is provided in advance to ensure intervention by consumer advocates; Michigan has found that an after-the-fact funding system creates hardship for most intervenors.
- ***Rhode Island Public Utilities Reserve Fund:*** The Rhode Island Division of Public Utilities and Carriers (“RI DPUC”) and Rhode Island Public Utilities Commission (“RI PUC”) have statutory authority to hire expert witnesses, consultants, and legal counsel as necessary in public utility regulatory proceedings with funding from a Public Utilities Reserve Fund. The Rhode Island General Assembly annually appropriates to the Fund a sum equal to 0.00025% of the gross annual operating revenues of the state’s utility companies. R.I. Gen. Laws § 39-1-26(a). Further, utility companies making an application to, or responding to an investigation of, the RI DPUC or RI PUC are responsible for a portion of the expenses reasonably incurred by the agency up to a cap of \$750,000 per calendar year. *Id.* § 39-1-26(b). This funding allows for expert analysis of

the impact of the proceeding on ratepayers and the community at large, enabling a level of public advocacy otherwise unattainable.

- ***Wisconsin’s Intervenor Compensation Program:*** Since the 1980s, Wisconsin has provided more than \$13.5 million in intervenor compensation funds to a range of organizations whose perspectives help the Public Service Commission make fair and informed decisions, and which may not be able to provide those perspectives without financial support. The Commission seeks to ensure this compensation is available to underrepresented populations and has recently issued a budget proposal to set aside specific intervenor funding for low-income advocates. *See* 2021 Wis. Assembly Bill 27. Wisconsin also provides direct funding to its Citizens Utility Board (“CUB”) in recognition of the benefits CUB’s intervention has for utility customers. The CUB receives a base-figure grant and is also eligible for additional case-specific awards up to a cap. *See* Wis. Stat. §§ 196.31–.315; Wis. Admin. Code PSC ch. 3.

Public Education and Outreach

- ***“Shape Massachusetts’ Clean Energy Future” Campaign:*** In 2019, the Massachusetts Attorney General’s Office launched a public education campaign to raise awareness about the role of the power markets in New England’s transition to affordable clean energy and to provide the public with tools for meaningful participation in relevant discussions at the Commission and ISO New England.¹ The campaign includes a series of educational videos available in multiple languages on the Attorney General’s website and social media. The Attorney General’s Office also conducted a virtual public “teach in” on power markets for approximately 300 participants.

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

- **“A Public Guide to Energy Facility Siting in Oregon”:** The Oregon Energy Facility Siting Council publishes a detailed written guide to its process to assist the public with meaningful participation in the siting of energy facilities in Oregon.² The Guide includes a step-by-step description of both the procedure for site certificate review, from the pre-application phase to the appeal of a final order, and the substantive standards applicable to the Council’s determination to grant or deny a site certificate. The Guide identifies how the public can engage at the different steps in the process.
- **New England States’ “Engage with Energy” Forum:** In March 2021, the Connecticut Department of Energy and Environmental Protection, Maine Governor’s Energy Office, Massachusetts Executive Office of Energy and Environmental Affairs, New Hampshire Public Utilities Commission, Rhode Island Office of Energy Resources, and Vermont Department of Public Service held a joint public forum to address equity and environmental justice concerns related to the New England States’ *Vision for a Clean, Affordable, and Reliable 21st Century Regional Electric Grid*.³ This free, virtual forum introduced the range of issues covered by the New England States’ process in plain language and allowed for questions and discussion with regional policymakers. Forum participants had access to simultaneous Spanish translation.

C. The OPP’s Work Should Support Broader Efforts to Enhance Regional Transmission Organization Governance.

The OPP’s work should support the development of solutions to critical deficiencies in governance, transparency, and consumer representation in Regional Transmission Organization

² Available at: <https://www.oregon.gov/energy/facilities-safety/facilities/Documents/Fact-Sheets/EFSC-Public-Guide.pdf>.

³ See <https://newenglandenergyvision.com/equity-and-environmental-justice/>.

and Independent System Operator (“RTO/ISO”) decisionmaking. Because many Commission actions originate in proceedings before RTOs/ISOs, any robust public engagement effort must also include strategies to increase participation in and access to RTO/ISO proceedings and decisionmaking processes. Otherwise, public engagement before the Commission may be too late in the decisionmaking process to meaningfully influence outcomes. The OPP should include staff dedicated to each RTO/ISO who generally oversee all proceedings and report back to the Commission regarding any transparency, public access, or governance issues that warrant further investigation or process changes.

D. Increasing the Public Accessibility of Commission Proceedings and Processes Should Be a Key Focus of the OPP.

The Commission should empower the OPP with a broad mandate to improve the accessibility of the Commission and its proceedings. Accessibility initiatives could include, *e.g.*:

- Appointing public liaisons for proceedings that have potential to significantly affect local communities, landowners, and/or consumers, with a mandate to welcome and facilitate public participation.
- Reviewing the Commission’s utilization of its Tribal liaison and evaluating the Commission’s responsibility to engage in government-to-government consultation with Tribes (*see* 18 C.F.R. § 2.1c).
- Establishing hotlines to provide live help to the public.
- Improving access to Commission proceedings, online materials and tools, and other resources for both English and non-English language speakers.
- Ensuring OPP staff have a physical presence in each RTO/ISO region, and in each Western Electricity Coordinating Council (“WECC”) or North American Electric Reliability Corporation (“NERC”) sub-region for regions not organized with an

RTO/ISO, so the Commission can effectively engage in-person with affected communities in all locations across the country.

- Hosting “open house” events for stakeholders to meet OPP staff, learn about the Commission, and ask questions.
- Examining “FERC Online” and all other public touchpoints of the Commission to identify opportunities to improve user experience and accessibility.
- Building on experience gained by government agencies during the COVID-19 pandemic, investing in technologies and technical support personnel to enable the Commission to remotely engage with stakeholders who are unable to attend in-person meetings.
- Developing and disseminating, at the beginning of each new proceeding, a brief reference guide that summarizes in easy-to-understand terms the subject matter under review, the potential impacts of the Commission’s decision, the steps of the proceeding, and any questions on which input from stakeholders would be particularly valuable to the Commission.
- Considering innovative ways to solicit public input, outside of the Commission’s typical processes, that are accessible to all stakeholders affected by the Commission’s decisions, including stakeholders who lack internet access or computer proficiency.

E. The OPP Should Support and Collaborate with State Consumer Advocates.

With their knowledge of local stakeholders, trusted relationships, and regional experience and expertise, statutorily designated state consumer advocates can be a valuable resource for the OPP. The OPP should designate a staff liaison for each state consumer advocate to facilitate information exchange and build relationships. The Commission should also consider opportunities to assist state consumer advocates in participating before RTOs/ISOs and the

Commission. Like other public interest advocates, many state consumer advocates also lack sufficient funds to participate actively and effectively in RTO/ISO and Commission proceedings. For example, providing funding for state consumer advocates to hire expert witnesses would greatly increase consumers' representation and result in more robust records for Commission decisionmaking.

II. CONCLUSION

The States appreciate the Commission's solicitation of public input on the OPP. We respectfully urge the Commission to consider the above comments and recommendations as it develops its forthcoming report to Congress and its plans for establishment of the OPP.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with 18 C.F.R. § 385.2010, I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Plymouth, Vermont this 23rd day of April, 2021.

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