

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

The Office of Public Participation)

Docket No. AD21-9-000

COMMENTS OF THE NATURAL GAS SUPPLY ASSOCIATION

Pursuant to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Notice of Virtual Listening Sessions and a Public Comment Period (“Notice”) in the referenced proceeding,¹ the Natural Gas Supply Association (“NGSA”) respectfully submits the following comments. In its Notice, the Commission is seeking input on how the Commission should establish and operate the Office of Public Participation (“Office”) pursuant to Section 319 of the Federal Power Act (“FPA”). As discussed in more detail below, NGSA supports the establishment of this Office as an informational resource to assist impacted stakeholders with understanding and navigating FERC proceedings and provides recommendations for consideration on the Office’s functions.

I. Interest of NGSA

Founded in 1965, NGSA represents integrated and independent energy companies that produce, transport and market domestic natural gas and is the only national trade association that solely focuses on producer-marketer issues related to the downstream natural gas industry. NGSA’s members trade, transact and invest in the U.S. natural gas market in a range of different manners. NGSA members transport and/or supply billions of cubic feet of natural gas per day on interstate pipelines and could be greatly impacted by the outcome of this proceeding.

¹ See Notice of Virtual Listening Sessions and a Public Comment Period, *The Office of Public Participation*, Docket No. AD21-9-000 (March 5, 2021)

NGSA encourages the use of natural gas within a balanced national energy policy and supports the benefits of competitive markets. NGSA has consistently advocated for well-functioning natural gas markets, policies that support market transparency, efficient nomination and scheduling protocols, just and reasonable transportation rates, non-preferential terms and conditions of transportation services and the removal of barriers to developing needed natural gas infrastructure. NGSA has a long-established commitment to ensuring a public policy environment that fosters a growing, competitive market for natural gas. NGSA also supports a balanced energy future; one which ensures a level playing field for all market participants and eliminates inappropriate regulatory barriers to supply.

II. Comments

Congress directed the Commission in Section 319 of the FPA to establish the Office to “coordinate assistance to the public with respect to authorities exercised by the Commission,” including assistance to those seeking to intervene in Commission proceedings.² Subsequently, in the FY2021 ‘Omnibus and COVID Relief and Response Act,’ under the joint House-Senate Appropriations Committee Report (Division D -- Energy & Water), Congress directed FERC to submit a report by June 25, 2021 on how it will establish and operate the Office. As a result, FERC has initiated several efforts, including public listening sessions, a request for comments and a workshop to seek input on the Office’s functions, scope and intervenor compensation. NGSA supports establishing this Office as a resource to help impacted stakeholders better engage in Commission proceedings and believes it will be a valuable addition to the Commission. As discussed in more detail below, NGSA encourages the Commission to consider

² (16 U.S.C. § 825q-1)

adopting several recommendations to ensure the Office functions as an effective, efficient, and neutral resource for stakeholders that require assistance.

i. The Office of Public Participation should function as an informational resource to assist stakeholders in engaging at FERC.

NGSA believes this Office will best serve the public as an informational resource with dedicated staff that can help impacted stakeholders meaningfully participate in Commission proceedings. The Office's main function should be to assist stakeholders in understanding FERC's processes and procedures and help navigate the opportunities available for engaging in Commission proceedings. While FERC has recently gone to great lengths to update its website, develop FAQs, and utilize social media to better connect with the public, stakeholders often are not familiar with the Commission and may find it difficult to navigate the process for having their concerns voiced. With the addition of this Office, it will now have a more accessible, centralized and educational resource for stakeholders to reach out to with questions and requests for help so that they can overcome any technical obstacles to engaging in a proceeding.

The Office should strive for simplicity and accessibility. One proactive measure the Office should undertake is to manage FERC's website content to ensure it is as user-friendly as possible. From a cursory review of the website, there is significant improvement on the information available about how to get involved, but gaps remain. Some of the improvements that would be helpful for consumers include how to: 1) create a FERC account; 2) locate specific proceedings and docket numbers; 3) explain the various types of filings and their purpose; and 4) clearly identifying the deadlines for becoming an intervenor and filing comments. FERC should also create a catalogue with links to all rulemakings and policy statements by topic so stakeholders can quickly reference major decisions. A website chat function could also improve stakeholders' ability to navigate the website, which can be difficult to use for even the most tech

savvy. Given that there is no cost to engage in a docket as an intervenor, being unable to navigate the website or understand how to participate should not be the barrier to entry.

For new stakeholders, filing comments with a federal agency can be a daunting task. FERC should consider creating templates or forms with a suggested framework for laying out stakeholder arguments. Since FERC can receive thousands of comments in a single docket, this will also help FERC process information more easily and efficiently.

If a stakeholder needs more assistance than what can be found on the website, FERC could consider a dedicated hotline with access to staff in the Office. FERC should ensure the Office is adequately staffed with people with longstanding knowledge of FERC's regulatory areas, namely the electric and natural gas industries. As process and subject matter experts, staff should be able to communicate complex energy policies and provisions in layman's terms and assist in making regulations easier to understand. For example, the Office should be able to provide help with understanding FERC's statutory and regulatory authority, its permitting processes (and its role versus other federal agencies and states) and how to timely and appropriately engage in Commission proceedings.

ii. FERC should adopt safeguards to ensure the Office remains neutral in Commission proceedings.

FERC under the Natural Gas Act and the FPA has a duty to make decisions that are in the public interest, which is a much broader concept than assisting public citizens in navigating the often-complex regulatory arena in a proceeding. As FERC takes steps to establish and operate the Office, it must ensure the Office is helpful and responsive to the public, while also remaining neutral in proceedings and observing the Commission's *ex parte* policy. FERC should strongly consider opening the Office in a separate building from FERC commissioners and Office of Energy Projects. This is not a new approach; other FERC offices, such as the Office of

Administrative Litigation, are located in a separate building offsite from FERC headquarters. Given that staff in the Office of Public Participation may field questions/concerns related to specific projects and will be privy to information from stakeholders directly impacted by a FERC proceeding, it would be inappropriate for that same staff to be in close proximity to decisional staff that is handling those proceedings. Opening the new Office in a separate physical location will help prevent such interactions to ensure there is no undue influence or access to staff directly involved in proceedings.

Further, if staff is working with stakeholders to provide information on a specific project, FERC must ensure there is no preferential access or treatment for that stakeholder versus any other intervenor. All intervenors, whether they are participating to support or oppose a FERC action, must have the same opportunities to engage with FERC. The purpose of reaching out to the Office should be for information on *how to effectively engage with FERC*; not to provide special status in proceedings to those who utilize this new Office.

iii. The actions of the new Office should work in tandem with established FERC stakeholder efforts and should not result in additional hurdles or delays to FERC's processes.

FERC should be mindful of not creating any new regulatory barriers for either stakeholders or project sponsors as it develops the Office's role and functions. It is important that the Office does not duplicate ongoing outreach efforts led by other FERC offices or create more steps to completing the already extensive and robust permitting process, which would add an unnecessary layer of bureaucracy. FERC's permitting process provides significant opportunities for engagement, including in-person scoping meetings and multiple options for submitting written comments, which are all considered by FERC in the record. Offices such as the Office of External Affairs and the Office of Energy Projects are currently tasked with developing public outreach on matters and projects before the Commission and FERC should

clearly delineate how the existing and new processes will complement each other. Further, the Commission has implemented outreach tools such as a landowner helpline to facilitate communication between landowners and natural gas companies on issues such as construction-related concerns, land access disputes and noise complaints, which we assume will be moved into the new Office. Given the significant opportunities and tools FERC has made available to stakeholders to engage in its processes, we urge FERC to be judicious and cautious on any recommendations to undertake new functions that would delay its activities and mission. Instead, FERC should focus its efforts on establishing the Office to better educate stakeholders on how to utilize the vast opportunities already available for engaging with FERC.

iv. FERC should establish a reasonableness standard for considering reimbursements with clearly defined criteria.

Under Section 319 of the FPA, FERC may provide compensation for reasonable attorney fees and other expenses to intervenors and participants whose intervention or participation substantially contributed to the approval, in whole or in part, of a position advocated by such person. Such compensation may be paid only if the Commission has determined that: (A) the proceeding is significant, and (B) such person's intervention or participation in such proceeding without receipt of compensation constitutes a significant financial hardship to him,³ or her. As part of the Commission's determination, we strongly encourage FERC to establish a reasonableness standard with clearly defined terms and criteria for considering reimbursement requests. The standard should articulate what it means to 'substantially contribute' and what it deems a 'significant proceeding' and a 'financial hardship.' This will ensure a transparent and

³ (16 U.S.C. § 825q-1(b)(2))

efficient process so that applicants who meet the standard receive their reimbursement in a timely manner. We offer the following suggested criteria.

For an individual stakeholder to have ‘substantially contributed’ to a proceeding, the merits of their position and/or comments must be unique and meaningful and have contributed to the Commission’s reasoned decision-making in the proceeding. Additionally, the stakeholder’s position and/or perspective would not have been represented unless they participated in the proceeding. This is similar to how the Commission determines whether it should grant a late intervention. Under Rule 214 of the Commission’s Rules of Practice and Procedure governing late interventions, it states “[t]he decisional authority may consider whether: (iii) The movant’s interest is not adequately represented by other parties in the proceeding.”⁴ We believe similar criteria should be established in this standard.

The criteria for ‘significant proceeding’ should state that it is a formal proceeding before the Commission, such as an application, complaint, investigation or rulemaking. At a minimum, any applicant should have intervened in the proceeding first. FERC could also encourage applicants to include a statement as to why the specific proceeding is of significance.

Next, an applicant must demonstrate that without compensation, participating in the proceeding would constitute a financial hardship because they cannot afford the costs of participating otherwise. To assess financial hardship, the Commission should require applicants to file supporting materials, which can be made non-public for privacy purposes. For example, the Commission could require statements on the applicant’s gross and net monthly income, detailed list of assets and equity, and recurring monthly expenses. Utilizing their discretion, the

⁴ CFR §385.214 Intervention (Rule 214), *see* [here](#).

Commission can assess the applicant's financial situation and determine whether participation would constitute financial hardship.

Once an applicant has met these criteria, the Commission should apply other subjective considerations to its standard. FERC should factor in whether the compensation request is for an individual or small organization (versus a large organization), geographical proximity to the project, and if they have been active in previous FERC proceedings. Greater scrutiny may be applied to groups that are normally active in FERC proceedings or at other regulatory agencies, including denial or penalties for groups who try to disguise participation to gain access to funds. To help support the legitimacy of the program, FERC could consider audits, either at random and/or if it receives reports of suspicious activity, to verify compensation eligibility. FERC should also apply hard caps based on duration and complexity of proceedings; it must be mindful of the overall program budget. The Office can help stakeholders navigate the process, including by screening filings as early as possible to find areas of position overlap to set expectations regarding the likelihood of compensation.

To ensure full transparency and impartiality, we believe FERC's Administrative Law Judges (ALJ) are best equipped to make determinations for reimbursement of intervenor compensation requests. When an individual or party files a compensation request with the Commission, the Commission should issue a Notice (similar to the Commission's process for other filings and petitions) and stakeholders should be able to intervene in support or opposition prior to the time the ALJ makes a determination. FERC should also establish a deadline for acting on requests. These are necessary steps to ensure that all market participants gain trust in this process and realize that FERC has not given any groups favored party status.

While we believe most stakeholders submitting these requests are doing so with the right intentions, we are concerned requests for intervenor compensation could be orchestrated by organizations to advance their own agenda instead of being used to help directly impacted landowners and stakeholders. FERC should put safeguards in place to ensure this is not used as a mechanism to unnecessarily finance litigation against its own Commission orders. All stakeholders deserve full transparency as to how FERC will proceed with this new role and how it will ensure it serves directly impacted stakeholders.

III. Conclusion

For the reasons discussed above, NGSAs supports FERC establishing the Office of Public Participation as an informational resource to increase transparency of FERC's activities and policies, and to assist impacted stakeholders to better engage in proceedings before the Commission. NGSAs encourages the Commission to consider the recommendations made in the sections above, which will help the Office operate more efficiently and ensure FERC balances the new Office's actions with that of the Commission to ensure it can meaningfully carry out its duties of protecting the public interest.

Respectfully submitted,

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