



April 23, 2021

Secretary Kimberly D. Bose  
Federal Energy Regulatory Commission  
888 First Street NE, Room 1A  
Washington, DC 20426

**Comments of the National Hydropower Association re: AD21-9 – FERC’s Office of Public Participation**

Dear Secretary Bose,

NHA believes the Office of Public Participation (OPP) should focus its efforts on assisting the public on procedural rather than substantive grounds. OPP should assist landowners and historically underrepresented stakeholders to navigate the FERC process in order to ensure that landowner and community concerns are adequately reflected in NEPA (National Environmental Policy Act) documents. FERC arrives at more reasoned and balanced decisions when all stakeholders have had an opportunity to weigh in. More engagement generally leads to a more robust record on which Commissioners make their determinations.

If OPP were to engage in substantive (rather than procedural) assistance to underrepresented stakeholders, this could confuse the Commission’s role in contested proceedings. For instance, Commission staff providing strategic, legal or substantive advice on contested matters could lead to *ex parte* concerns if that staff is not legally walled off from the rest of the Commission. OPP staff may gain knowledge and information on contested matters that, if shared with a stakeholder, could provide an advantage over other parties in the proceeding. Additionally, underrepresented stakeholders may misunderstand the role of OPP staff versus other staff and Commissioners at the agency.

As a neutral adjudicator, the Commission’s role ought to be on ensuring that historically underrepresented stakeholders have an *opportunity* to provide input rather than *shaping* that input. OPP’s mission should be consistent with the Commission’s longstanding goals regarding public participation. One of FERC’s stated objectives is to “ensure that interested stakeholders *have the opportunity* to provide their views and that the Commission’s ultimate decisions are adequately supported by the public record<sup>1</sup>.” Procedural assistance to the public should include (but not limited to) the following:

- Answering questions about various forms of participation in FERC proceedings;
- Assistance with navigating the process including notifying interested stakeholders of key dates, times and explanation of rules for how to weigh in;
- Help explaining terms and conditions of notices sent by FERC or the applicant;

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<sup>1</sup> [FY2020 Congressional Performance Budget Request](#) – Objective 1.1 – at 2.



- Provide periodic updates regarding substantial events in the proceeding;
- Assist the Commission in developing all public facing communications including but limited to:
  - FERC’s website, commission pamphlets, social media efforts, etc.
- Provide help to applicants in identifying Environmental Justice communities to ensure adequate notice and participation.

With regards to hydropower specifically, the Commission’s processes include opportunities for public engagement and require the Commission to consider public comment, whether the proceeding is for an original license, relicense, license amendment, or exemption. These proceedings also require the applicant conduct public outreach, such as public meetings with advance notice posted in media outlets. The wide range of other federal and state agencies and tribes involved in the licensing process also helps ensure public participation and representation, such as National Park Service, Fish and Wildlife Service, National Marine Fisheries Service, Forest Service, State Historic Preservation Offices, state clean water agencies, and more.

Furthermore, the Commission’s hydropower offices have created primers and handbooks that assist the public with participation, such as the *Hydropower Primer – Chapter 7: Public Resources and Outreach*, or the Commission’s *Hydropower Licensing – How to Get Involved, A Guide for the Public*, and several other similar publications. Since the expiration of hydropower licenses is known typically 40 years in advance, the Commission has the opportunity to work with the public well in advance of procedural deadlines to identify and address any barriers to participation.

NHA supports the Commission’s effort to simplify Commission processes and provide procedural assistance, including improved communication and outreach. We look forward to working with OPP to identify improvements to existing procedures to ensure robust public participation in hydropower related proceedings. NHA supports procedural assistance to traditionally underrepresented parties, but does not support the OPP office staff engaging in advocacy.

Sincerely,

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