

April 23, 2021

Re: Docket Number AD21-9-000: Federal Energy Regulatory Commission, Creation of the Office of Public Participation

### Comments of the Competitive Enterprise Institute

The Competitive Enterprise Institute (CEI) is a non-profit public interest organization committed to advancing the principles of free markets and limited government. CEI has a longstanding interest in applying these principles to energy markets, and has frequently commented on issues before the Federal Energy Regulatory Commission (FERC). We are pleased to provide comments on FERC's efforts to set up an Office of Public Participation (OPP), including its upcoming report outlining how this new office will operate.

Among FERC's most important duties is the certification of new natural gas transportation facilities to determine whether a proposed natural gas project is or will be required by the public convenience or necessity, as that standard is established in section 7 of the Natural Gas Act. It is critical that this process be as fair and inclusive as possible and to assiduously avoid skewing the record towards a favored or even pre-determined result. For that reason, it is essential that the OPP solicit and include public input from all perspectives on a proposed project.

Residents of the communities through which a proposed pipeline will traverse and/or serve often have a stake in the matter greater than those remote from the project. And while some local landowners and other citizens may oppose a proposed project based on concerns

about adverse impacts on the environment or public health, others may support it because of the jobs, tax revenues, economic development, and affordable energy it would deliver. An OPP that favors input from the former over the latter would be doing a disservice to the goal of wider community participation for which the office was created.

There has been considerable focus on the inclusion of tribal perspectives on proposed projects. Once again, it is vital that all sides be heard. As noted by a native American who testified before Congress in 2020 on energy issues, many if not most proposed energy projects that affect tribal lands have both detractors and supporters within those communities.<sup>i</sup> The latter not only includes the many tribes that directly participate in the energy industry, but also those who anticipate favorable impacts on tribal communities from energy projects. Tribal input from only one side of the debate would greatly undercut the open and deliberative process that the Federal Power Act has entrusted with FERC.

The Biden Administration has placed great emphasis on environmental justice concerns, and they are highly relevant here as well. Unfortunately, the approach taken towards environmental justice appears to be one-sided – to be used exclusively to justify blocking energy projects and particularly fossil energy projects, but never as a reason in favor of them. Notwithstanding claims of disproportionate harm, disadvantaged communities may in reality enjoy disproportionate benefits from the jobs, tax revenues, and economic development created by such projects.<sup>ii</sup> Further, such communities may gain the most from lower energy prices likely to result from more robust energy infrastructure. The U.S. Energy Information Administration finds that nearly one in three households struggle to pay their energy bills, that one in five report incidences of having to forego necessities in order to stay current on their energy bills, and that these problems are substantially more severe among Black and Hispanic

communities.<sup>iii</sup> It would be derelict of OPP to not solicit input from those in disadvantaged communities making the case in favor of proposed energy projects.

Lastly, it is important to recognize that, since OPP will have authority to provide monetary assistance to public participants of its own choosing, the process for doing so must free of even the appearance of any improprieties or conflicts of interest. Procedures must be included to prevent FERC employees with pre-existing relationships with potential recipients to be involved in the disbursement decisions. More importantly, in order to prevent FERC from primarily funding those public participants that agree with it, procedures should be in place to ensure that disbursements do not favor one side of any pending deliberations under the Natural Gas Act.

Ben Lieberman  
Senior Fellow  
Competitive Enterprise Institute  
1310 L Street, NW 7<sup>th</sup> Floor  
Washington, DC 20005  
(202)331-1010

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<sup>i</sup> Testimony of Sarah Obed, Doyon Limited, Before the House Committee on Natural Resources, Subcommittee on Energy and Mineral Resources, July 14, 2020, at <https://naturalresources.house.gov/imo/media/doc/Testimony%20-%20Ms.%20Sarah%20Obed%20-%20Doyon%20Limited%20-%20EMR%20Ov%20Hrg%2007.14.20.pdf>.

<sup>ii</sup> Donna Jackson, Project 21, “Black vs. Green: Black Americans Fight Climate Measures That Increase Energy Costs, June 16, 2020, at <https://nationalcenter.org/project21/2020/06/16/black-vs-green-black-americans-fight-climate-measures-that-increase-energy-costs-by-donna-jackson/>.

<sup>iii</sup> U.S. Energy Information Administration, Residential Energy Consumption Survey, at <https://www.eia.gov/consumption/residential/reports/2015/energybills/>.