

ONE HUNDRED EIGHTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
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March 3, 2023

The Honorable Willie L. Phillips
Acting Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

The Honorable James Danly
Commissioner
Federal Energy Regulatory Commission

The Honorable Mark C. Christie
Commissioner
Federal Energy Regulatory Commission

The Honorable Allison Clements
Commissioner
Federal Energy Regulatory Commission

Dear Acting Chairman Phillips and Commissioners,

In February of last year, the Federal Energy Regulatory Commission (“FERC” or “Commission”) issued two policy statements concerning the greenhouse gas (GHG) emissions of natural gas projects under the Commission’s jurisdiction. According to the Commission, the policy statements were intended to clarify how it addressed GHG emissions when considering the issuance of certificates for natural gas pipelines and liquified natural gas (LNG) facilities and to “provide an updated, legally durable framework”¹ to the Commission’s decisions.

At the time, we expressed concerns that the policy statements would make it more difficult to build our much-needed energy infrastructure to deliver abundant, reliable, and affordable energy for Americans, which is the Commission’s core mission. Thankfully, FERC abandoned these politically motivated policies by changing their status to draft shortly after they were issued.

¹ Written testimony of Chairman Glick before the Senate Committee on Energy and Natural Resources, March 3, 2022, at 3.

On December 15, 2022, the Commission issued a Notice of Proposed Rulemaking (NOPR) entitled *Applications for Permits to Site Interstate Electric Transmission Facilities*. The NOPR, in part, was issued in response to the passage of the Infrastructure Investment and Jobs Act (IIJA; Pub. L. 117-58), which amended the Commission's authority to issue permits to applicants for the construction of electric transmission facilities under Section 216 of the Federal Power Act (FPA). This NOPR, similar to the natural gas policy statements referenced above, appears to broadly interpret the Commission's statutory authority.

The NOPR appears to impose on applicants vague requirements on environmental justice and air quality. It is unclear where FERC was granted such authority to impose these requirements on applicants under the FPA and the IIJA. For example, this NOPR proposes to require an "Environmental Justice Public Engagement Plan" as part of a developer's application for an electric transmission project. It also amends the Commission's regulations to require of applicants a "resource report" on environmental justice.² The NOPR also proposes to define the term "environmental justice community," seemingly to help applicants comply with requirements set forth in the Environmental Justice Public Engagement Plan. Finally, the Commission proposes to require of applicants a "Resource Report on Air Quality and Environmental Noise."³ This resource report would "require the applicant to estimate emissions from the proposed project...."⁴

These requirements set forth in the NOPR seem contrary to the intent of Congress in amending the Commission's authority under Section 216 of the FPA. We are concerned the Commission's actions reach well beyond its statutory authority, which is primarily as an energy economic regulator, not a climate regulator.

As such, we request that you answer the below questions no later than March 17, 2023.

1. What specific statutory authorities is the Commission relying upon in requiring an "Environmental Justice Public Engagement Plan" for project applicants under Section 216 of the FPA?
2. What specific statutory authorities is the Commission relying upon in requiring project developers to estimate emissions of electric transmission facilities under Section 216 of the FPA?
3. Does the Commission plan to issue specific guidelines for the "Environmental Justice Public Engagement Plan" required for project applicants? If so, when?
4. The NOPR proposes that project applicants must engage with environmental justice communities in the pre-filing process. Such communities include those that have been "overburdened by pollution."⁵ Has the Commission defined this term with specific parameters for project developers in order to facilitate the timely issuance of permits?

² Federal Energy Regulatory Commission, Docket No. RM22-7-000, December 15, 2022, at 87.

³ Federal Energy Regulatory Commission, Docket No. RM22-7-000, December 15, 2022, at 38.

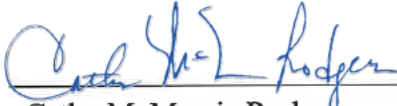
⁴ *Ibid.*

⁵ Federal Energy Regulatory Commission, Docket No. RM22-7-000, December 15, 2022, at 17.

5. Is it your opinion that these requirements will help facilitate the timely issuance of permits under Section 216 of the FPA? Please explain.

Thank you for your attention to this matter and for ensuring the Commission adheres to its authorizing statutes. If you have any questions regarding this matter, please contact Mary Martin or Jacob McCurdy with Majority Committee staff at (202) 225-3641.

Sincerely,



Cathy McMorris Rodgers
Chair
Committee on Energy and
Commerce



Jeff Duncan
Chair
Subcommittee on Energy, Climate, and
Grid Security