



April 23, 2021

Comments on Proposed Office of Public Participation
Federal Energy Regulatory Commission
Docket #AD21-9-000

The National Whistleblower Center (NWC) is pleased to offer its strong support for the creation of a well-funded Office of Public Participation (OPP) at the Federal Energy Regulatory Commission (FERC). Creation of this office will enable the agency to transform itself from one accessible to just a small handful of technical experts to one that truly honors the information and views of the numerous and diverse people and communities affected by its decision making. FERC's decisions have enormous implications for the climate, consumer fairness as well as the fate of communities adversely affected by proposed fossil gas pipelines, LNG terminals and other energy infrastructure. These decisions will be greatly strengthened by information and perspectives offered by those in frontline communities and other historically underrepresented individuals and organizations.

NWC would like to ensure that one critical demographic group is not overlooked as the OPP is designed: potential whistleblowers. Given the long history of retaliation against those who expose crime and corruption by powerful interests, individuals with evidence of fraud, market manipulation and other legal violations by FERC-regulated entities have strong incentives to remain silent. To ensure that the OPP hears from *all* members of the public, including those with information implicating entities regulated by FERC in significant violations of law, FERC must take steps to encourage whistleblowing.

FERC currently has a two-pronged approach to whistleblowing. For those who work for the federal government as employees or contractors, it posts a [notice](#) on its website about how to report violations of relevant law protecting whistleblowers from retaliation. For those outside the federal workforce, i.e., those who are most likely to have knowledge of crime or corruption by entities regulated by FERC, FERC maintains a [hotline](#) for anonymous and confidential disclosures. NWC's comments focus on this second category, except to note that strengthened whistleblower protections for the entire federal workforce is a [critical need](#).

FERC deserves praise for recognizing that individuals with evidence of crime and corruption need an anonymous and confidential disclosure channel to feel comfortable reporting such evidence. However, an anonymous and confidential disclosure channel, by itself, will not create the necessary ingredients for fully leveraging the power of whistleblowing in FERC's law enforcement program. Two additional steps are needed.

First, an Office of the Whistleblower must be established within the OPP with a mandate of ensuring that credible disclosures are investigated and whistleblowers are guided through the disclosure process and notified about the status of their disclosures. The Office of the Whistleblower should also be charged with educating FERC staff on protecting whistleblowers from retaliation and documenting the contributions of whistleblowers to FERC's enforcement and compliance successes. Perhaps most importantly, the Office must educate potential whistleblowers, through social media and other affirmative outreach, about FERC's commitment to investigating credible disclosures and ensuring against retaliation. Only through such affirmative outreach will those in possession of evidence of crime and corruption learn that there is a safe place to bring their evidence and believe that there are reasonable prospects that the injustice they have witnessed will be addressed.

Second, FERC should request that Congress authorize it to offer financial rewards to whistleblowers as a percentage of the monetary sanctions the whistleblowers help to secure. Given the history of retaliation against whistleblowers, anonymous and confidential disclosure channels *and* the prospect of a reward (along with strong prohibitions against retaliation in the event the whistleblower's identity is exposed) are essential to persuading individuals, especially those working for major corporations, to risk losing their livelihoods as a result of blowing the whistle.

The Dodd-Frank Act and of the whistleblower offices at the Securities and Exchange Commission (SEC) and Commodity Futures Trading Commission (CFTC) provide the success model that FERC should follow. Once the Dodd-Frank Act was enacted in 2010 and these offices began offering anonymous and confidential disclosure channels and financial rewards pursuant to the Act, monetary sanctions recovered by the SEC and CFTC from enforcement of laws regulating securities and commodities fraud, bribery, and market manipulation increased dramatically. Since the Dodd-Frank Act was passed, [the SEC and CFTC have recovered over \\$3.7 billion and more than \\$840 million has been awarded to whistleblowers.](#)

Even in the absence of statutory authority to issue rewards, FERC can help encourage potential whistleblowers to step forward by informing them that it will consider referring relevant disclosures to the SEC, CFTC and other agencies with reward authority. The CFTC whistleblower office [specifically highlights FERC](#) as among the agencies from which it receives referrals and makes rewards pursuant to its "related action" authority.

As FERC establishes its OPP, it recognize effective enforcement of its statutory authorities is a greater priority than perhaps ever before. Companies that are ill-prepared for the energy transition have [enormous incentives to commit fraud](#). To deter fraud and otherwise ensure effective enforcement of its legal mandates, FERC must fully leverage the power of whistleblowers. This requires applying fundamental concepts of whistleblower law and practice in designing the OPP.

Thank you for the opportunity to comment on this important initiative.

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