



November 7, 2023

The Honorable Kimberly Bose  
Secretary  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, D.C. 20426

**Re: Pensacola Hydroelectric Project, FERC Project No. P-1494-461, LEAD Agency's Request for Community Participation Plan**

Dear Secretary Bose:

This submission provides the facts and policy that necessitate a comprehensive and robust Community Participation Plan in the Pensacola Hydroelectric Project relicensing process. If the Federal Energy Regulatory Commission (“FERC”) determines that Grand River Dam Authority’s (“GRDA”) Final License Application meets all requirements, it must issue a Notice of Ready for Environmental Analysis that will solicit comments and recommendations. In conjunction with this Notice, Local Environmental Action Demanded Agency, Inc. (“LEAD Agency”) requests that FERC establish a Community Participation Plan for the National Environmental Policy Act (“NEPA”) process. LEAD Agency is a non-profit 501(c)(3) Environmental Justice (“EJ”) organization. LEAD Agency strives to secure the health and safety of the communities most impacted by environmental degradation in Miami, Oklahoma, and the surrounding areas. As a result of the decades-long upstream impacts of the Pensacola Dam (“the Dam”), LEAD Agency has been an active stakeholder in the relicensing process. This submission sets forth the rationale and proposed process for the Community Participation Plan.

As explained below, to comply with NEPA and to achieve its stated EJ goals, FERC must establish a meaningful or multifaceted Community Participation Plan. This plan should include:

- tailored engagement with tribes and EJ communities through public meetings scheduled for a variety of times, community listening sessions with FERC representatives and the Office of Public Participation, inclusion of independent facilitators, a focus on translating and deciphering FERC documents to plain understandable language (or any language upon request), and ensuring that all public meetings are available via multiple accessible means including livestream technology and transcribable recordings;
- significantly extended comment periods with heightened ability to contact FERC through open phone lines, and providing connections to legal and technical professionals who give general advice about issues relevant to the relicensing process and assist with meaningful understanding of FERC filings; and
- transparent agency and government coordination with meaningful public access to information and communications.

Establishing and implementing such a plan would secure FERC’s compliance with the requirement to provide for “meaningful” participation, executive policy, FERC’s own Equity Action Plan, and FERC’s comments made during its Roundtable on Environmental Justice and Equity in Infrastructure Permitting that ensured hydropower licensing would be consistent with EJ principles. Anything less than an inclusive and collaborative plan in this matter violates NEPA and perpetuates discriminatory harm.<sup>1</sup> Federal agencies must work for the public interest when making consequential decisions. The way to do this here is by empowering the communities affected by the Dam through a Community Participation Plan.

#### **I. THE NEARBY SUPERFUND SITE, THE LOCATION OF EJ COMMUNITIES AND TRIBES, AND THE HISTORY OF DEGRADATION BY THE DAM DEMONSTRATE THE NEED FOR A COMMUNITY PARTICIPATION PLAN.**

The Tar Creek Superfund site is one of the most disastrous sites in the nation. The Environmental Protection Agency (“EPA”) declared Tar Creek a Superfund site in 1983.<sup>2</sup> Tar

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<sup>1</sup> 42 U.S.C § 4321 (declaring NEPA’s purpose of “promot[ing] efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man”); *see also* 40 C.F.R. § 1506.6 (requiring that agencies “make diligent efforts to involve the public in preparing and implementing their NEPA procedures”); *id.* § 1503.1(a) (requiring agencies to obtain comments from Federal agencies with special expertise and affirmatively request comments from the public); *Sierra Club v. U. S. Army Corps of Eng’rs*, 803 F.3d 31, 33 (D.C. Cir. 2015) (noting that public input is an essential part of NEPA review).

<sup>2</sup> *Superfund Sites in Reuse in Oklahoma*, U.S. EPA, <https://www.epa.gov/superfund-redevelopment/superfund-sites-reuse-oklahoma> (last updated June 23, 2023).

Creek has been considered one of the most endangered rivers in the country.<sup>3</sup> The unremediated impacts of mining operations, beginning over 120 years ago, left the nearby residents poisoned by heavy metal contamination. Today, the toxic effects continue, and the FERC-licensed Pensacola Dam is contributing to backwater flooding and recontamination of upstream areas. The Dam subjects over 31,000 residents to daily burdens. The frequent flooding of the Dam deposits lead and zinc into the yards of residents. Children and families are continuously poisoned. The flooding devastates communities, including the City of Miami, the residents living within and near the Tar Creek Superfund site, and local tribes.<sup>4</sup> All of these groups have faced years of health problems and diminished quality of life due to the GRDA's continual operation of the Dam.

The Tar Creek Superfund site exemplifies this country's dark history of exploitation and disregard for marginalized communities. Mayes County, which is the location of the Pensacola Dam, as well as Ottawa County and Delaware County, where the upstream effects of the Dam occur, are all below both the Oklahoma and national averages for families with a total income of over \$75,000, median family income, and per capita income.<sup>5</sup> These three counties also have a greater percentage of individuals living below the federal poverty level than both the state and

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<sup>3</sup> See *American Rivers Announces America's Most Endangered Rivers of 2022*, AM. RIVERS (Apr. 19, 2022), <https://www.americanrivers.org/media-item/american-rivers-announces-americas-most-endangered-rivers-of-2022/>; Tom Kiernan, *2021 Most Endangered Rivers List Highlights Need for Environmental Justice*, AM. RIVERS (Apr. 13, 2021), <https://www.americanrivers.org/2021/04/2021-most-endangered-rivers-list-highlights-need-for-environmental-justice/>.

<sup>4</sup> Tribes that have been identified as potentially affected by this project include: Alabama-Quassarte Tribal Town; Apache Tribe of Oklahoma; Caddo Nation of Oklahoma; Cherokee Nation; Delaware Nation; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Iowa Tribe of Oklahoma; Kiowa Tribe of Oklahoma; Little Traverse Bay Bands of Odawa Indians; Miami Tribe of Oklahoma; Modoc Tribe of Oklahoma; Muscogee (Creek) Nation; Osage Nation; Otoe-Missouria Tribe of Indians; Ottawa Tribe of Oklahoma; Peoria Tribe of Oklahoma; Quapaw Tribe of Oklahoma; Sac and Fox Nation of Oklahoma; Seneca-Cayuga Nation; Shawnee Tribe of Oklahoma; Tonkawa Tribe of Oklahoma; United Keetoowah Band of Cherokees; Wichita and Affiliated Tribes; and Wyandotte Tribe of Oklahoma. See GRDA, Final License Application and Request for Privileged Treatment of Non-Public Information, Docket No. P-1494-438, Accession No. 20230530-5192 (May 30, 2023) [hereinafter, GRDA, FLA].

<sup>5</sup> City of Miami, Oklahoma, Comments on GRDA's Proposed Study Plan Pensacola Hydroelectric Project, Project No. 1494-438, Accession No. 20180726-5102 (July 26, 2018) (Attachment 2).

federal percentages.<sup>6</sup> According to the Census, nearly a quarter of the residents of each of these three counties are Native American.<sup>7</sup> Mayes, Ottawa, and Delaware Counties all have a substantially greater population share of Native American people than in Oklahoma overall and the United States, which are 9.5% and 1.3%, respectively.<sup>8</sup>

The presence of EJ communities that already face substantial environmental and health burdens exemplifies the need for significant community involvement. Yet, the GRDA has not garnered the necessary community engagement so far in the Integrated Licensing Process. GRDA has been dismissive of legitimate, repeated public concerns regarding the Pensacola Dam's devastating impacts on underserved communities and the environment.<sup>9</sup> It has ignored concerns by the Quapaw Nation, the Cherokee Nation, and the Bureau of Indian Affairs regarding impacts on historic and cultural resources.<sup>10</sup> GRDA refused to undertake requested studies to examine the effects of transported contaminated sediment from the Dam.<sup>11</sup> Through evading sufficient public participation and relevant studies, GRDA is avoiding responsibility for the Dam's upstream harm. GRDA's cavalier disregard in this matter reveals the heightened need for comprehensive community participation in order to comply with NEPA.

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<sup>6</sup> *Id.*

<sup>7</sup> *Quick Facts: Mayes County, Oklahoma*, U.S. CENSUS BUREAU (July 1, 2022), <https://www.census.gov/quickfacts/mayescountyoklahoma>; *Quick Facts: Ottawa County, Oklahoma*, U.S. CENSUS BUREAU (July 1, 2022), <https://www.census.gov/quickfacts/ottawacountyoklahoma>; *Quick Facts: Delaware County, Oklahoma*, U.S. CENSUS BUREAU (July 1, 2022), <https://www.census.gov/quickfacts/delawarecountyoklahoma>.

<sup>8</sup> *Quick Facts: Oklahoma*, U.S. CENSUS BUREAU (July 1, 2022), <https://www.census.gov/quickfacts/fact/table/OK>; *Quick Facts: United States*, U.S. CENSUS BUREAU (July 1, 2022), <https://www.census.gov/quickfacts/>.

<sup>9</sup> *See, e.g.*, GRDA, Additional Information and Analyses Requested by Commission Staff and Response to Request for Contaminated Sediment Transport Study, Docket No. P-1494-438, Accession No. 20230724-5120 (July 24, 2023) (dismissing repeated requests to undertake studies intended to determine the impact of Dam operations on underserved communities).

<sup>10</sup> *See, e.g.*, GRDA, Documentation of Consultation and Concurrence Regarding the Area of Potential Effect, Docket No. P-1494-438, Accession No. 20230221-5388, at 7 (Feb. 21, 2023) (dismissing Quapaw Nation's "repeatedly identified issues with the APE" and claims that "adequate identification efforts" did not take place).

<sup>11</sup> *See, e.g.*, GRDA, Additional Information and Analyses Requested by Commission Staff and Response to Request for Contaminated Sediment Transport Study, *supra* note 9 (urging FERC to reject a proposed Contaminated Sediment Transportation Study); *see also* GRDA, Response to Comments on Relicensing Study Plan, Including Requested Contaminated Sediment Transport Study, Docket No. 1494-461, Accession No. 20230905-5139 (Sept. 5, 2023) (arguing that FERC should reject the proposed Contaminated Sediment Transport Study).

The need to correct GRDA's faulty process through concerted public involvement is heightened here by the fact that FERC dam relicensing is rare. Of the more than 1,000 FERC-licensed hydropower projects, only a handful come up for relicensing each year.<sup>12</sup> The impacts of these relicensing proceedings can be detrimental if the disproportionately impacted community members are not substantially involved. Such detrimental impacts will last for many generations. FERC licenses last for decades. The GRDA is requesting a license for 50 years. To address a license that lasts for this long without having conducted substantial community outreach would be an egregious abuse of power.

The residents most impacted are those who have historically been excluded from federal decision-making structures because of environmental racism. GRDA follows this pattern by continuously excluding the affected communities. In doing so, GRDA—an agency of the State of Oklahoma—has unaccountably and grossly ignored and abdicated its responsibilities to the residents of the state it supposedly serves. FERC's job is to provide safeguards for a situation like this one where the applicant cannot be trusted to substantially include the community in making decisions. Furthermore, the Federal government can only begin to address the grave burdens faced by these communities through a robust, intentional Community Participation Plan. Creating an effective Community Participation Plan is imperative to involve communities that have already been pushed aside and left behind. An extensive plan is especially important to help inform such a consequential decision that will impact generations to come.

## **II. FERC MUST ESTABLISH A COMMUNITY PARTICIPATION PLAN FOR THE NEPA PROCESS THAT ENSURES ROBUST PUBLIC INVOLVEMENT.**

NEPA's text and governing regulations set out minimum requirements for public participation in agency decision-making but provide substantial authority for agencies like FERC

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<sup>12</sup> *Licensing*, FERC, <https://www.ferc.gov/licensing> (last updated Oct. 16, 2023).

to go above and beyond those requirements. The reason for such discretion, as indicated through federal guidance, is to allow flexibility for circumstances, as here, that call out for additional public involvement measures. In a situation where a Superfund site plagues a community whose waters are filled with heavy metal contaminants, whose land is loaded with toxic materials, and thus whose people face oppressive health risks, clear and extensive community participation is obligatory to meet the statutory purposes of NEPA. The circumstances of the FERC-licensed Pensacola Dam require FERC to go beyond what it usually does in including community participation in order to meet its obligation of “meaningful” engagement.<sup>13</sup> For engagement to rise to this “meaningful” standard, the Community Participation Plan must include components such as tailored engagement with local tribes and EJ communities; extended comment periods; and transparent cooperation with other federal agencies.

#### **A. Tailored Engagement with Tribes and EJ Communities**

When the relicensing matter is complex and controversial, FERC must engage with the communities that are the most impacted by the Dam and that have historically been excluded from the decision-making processes. Frequent transparent discussions with these groups are necessary for FERC to make an informed decision. Past executive guidance encourages a variety of public participation methods for the scoping process, many of which may be useful here.<sup>14</sup>

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<sup>13</sup> See National Environmental Policy Act Implementing Regulations Revisions Phase 2, 88 Fed. Reg. 49,924 (proposed July 31, 2023) (engaging in a rulemaking process to ensure that NEPA implementing regulations “enable[] meaningful public participation”); see also Exec. Order No. 14,096, 88 Fed. Reg. 25,251 (Apr. 21, 2023) (stating that “objectives integral to advancing environmental justice can successfully occur only through meaningful engagement and collaboration with underserved and overburdened communities”); see also 40 C.F.R. § 1501.9(d) (stating that NEPA review of a project must allow for “meaningful public comment”).

<sup>14</sup> This includes alternative design workshops. The Guidance refers to this as a “route design workshop” due to the project being a railroad and the workshop being used to allow members of the public to brainstorm alternative routes for project placement. Council on Env’t Quality, Memorandum for General Counsels, NEPA Liaisons and Participants in Scoping (Apr. 30, 1981), <https://www.energy.gov/nepa/articles/scoping-guidance-memorandum-general-counsels-nepa-liaisons-and-participants-scoping>. Here, a similar approach could be used to allow community members to participate in a workshop about potential impacts and plan for future remedial measures. The stated methods also include a hotline for calls from the public to go to a staff member, and review committees representing all interested parties that are tasked with overseeing the process. *Id.*

LEAD Agency believes tailored engagement in the present matter should include at a minimum, public meetings scheduled for a variety of times, community listening sessions with FERC representatives and the Office of Public Participation, inclusion of independent facilitators, a focus on translating and deciphering FERC documents to plain understandable language (or any language upon request), and ensuring that all public meetings are available via multiple accessible means including livestream technology and transcribable recordings. This tailored engagement can happen throughout multiple stages of the NEPA process.

After FERC issues a Notice of Application Ready for Environmental Analysis, FERC must begin the Environmental Impact Statement (“EIS”) process due to the likelihood of significant effects.<sup>15</sup> FERC must publish notice of intent to prepare an EIS.<sup>16</sup> In this notice, FERC must include a description of the public involvement in the scoping process.<sup>17</sup> As part of the scoping procedure, an agency must invite the participation of affected Federal, State, Tribal, and local governments.<sup>18</sup> Additionally, FERC has substantial authority to schedule additional meetings and outreach to those who will likely be impacted.<sup>19</sup> This provides FERC with broad discretion to use a wide variety of means for specific engagement with affected communities and agencies. FERC needs to exercise this authority here. Due to the wide-reaching impact of the Pensacola Dam, FERC should use the scoping process to host extensive public meetings with tribes and marginalized community members that will be severely impacted by the relicensing of the project.

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<sup>15</sup> 40 C.F.R. § 1501.3(a)(3). LEAD Agency previously explained why the Dam’s relicensing requires an EIS. *See* LEAD Agency, Comments in Response to Draft License Application, Docket No. 1494-438, Accession No. 20230403-5069 (Apr. 3, 2023).

<sup>16</sup> 40 C.F.R. § 1501.9(d).

<sup>17</sup> *Id.* § 1501.9(d)(6).

<sup>18</sup> *Id.* § 1501.9(b).

<sup>19</sup> *Id.* § 1501.9(c).

## B. Extended Comment Periods

Comment periods that are longer than typical public comment opportunities make FERC proceedings more accessible and are a requisite part of “meaningful” engagement. Removing barriers to commenting is essential to ensuring fully-informed and credible decision-making. FERC should use all the available tools to incorporate community feedback into the decision-making process.

FERC is an agency with many resources and highly technical information. FERC decisionmakers spend their entire careers working on these types of proceedings. Community members who have to live with the effects of the actions of these FERC decisionmakers do not have the same experience, time, or resources as FERC to understand and respond to the hefty amount of information. Community members need sufficient time to dive into the complex information that FERC puts forth. In this context, the standard of 30 days for commenting violates FERC’s duty to provide for “meaningful” engagement. To have a credible decision, comments must be well-informed which only happens when communities are provided with expansive time periods to digest all the new information they receive.<sup>20</sup> In addition to these extended comment periods, FERC should ensure that community members have the requisite resources to understand the information in front of them. This may include having open phone lines and connecting people with legal and technical professionals providing general advice about issues relevant to the relicensing process.

Another tool is that FERC may request comments on each iteration of its EIS, including its final EIS in the interim prior to making a final decision,<sup>21</sup> and it should do so in its

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<sup>20</sup> The standard of 30 days for a comment period is not close to providing communities with enough time. This timeline must be doubled or tripled at a minimum to allow for meaningful opportunity to provide comments, especially given the complexity and significance of the issues presented by the Dam relicensing.

<sup>21</sup> 40 C.F.R. § 1503.1(b).



consideration of the Pensacola Dam license. This additional comment period is imperative to affirm that the communities who are most impacted by the license are able to send additional comments after seeing the environmental impacts highlighted in the EIS. This would advance “meaningful” engagement due to the ability for impacted communities to provide comments and ideas for remedial measures to incorporate in the license prior to FERC’s decision.

### **C. Transparent Cooperation With Other Federal Agencies and Local Governments**

Recognizing FERC’s recent agreement with the EPA as cooperating agencies pursuant to NEPA, FERC ought to notify other relevant agencies such as the U.S. Fish and Wildlife Service (“FWS”) and the U.S. Army Corps of Engineers (“USACE”), as well as the City of Miami to coordinate transparent collaboration. These agencies and governments have stakes in the matter by virtue of the nearby Superfund site, the presence of endangered species, and flood control responsibilities. As part of the EIS procedure, FERC must obtain comments from a Federal agency with special expertise relevant to any environmental impact in the matter,<sup>22</sup> such as the EPA, FWS, and USACE in this case. Here, the upstream Superfund site is impacted by the sediment that is moved by the Dam water; thus, the EPA has special expertise due to its jurisdiction pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).<sup>23</sup> FERC’s recent Letter of Understanding appears to be a strong step in recognizing the EPA’s relevant stake, however, LEAD Agency is concerned about the secrecy and lack of transparency in creating the NEPA documents. To address this deficiency in the apparent interagency communication plans, FERC must provide for the greatest possible public involvement in the process.

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<sup>22</sup> *Id.* § 1503.1(a)(1).

<sup>23</sup> *See* 42 U.S.C. §§ 9601–9675.

Based on the potential presence of impacted endangered species, NEPA requires FERC to obtain comments from the FWS which has special expertise due to its authority under the Endangered Species Act.<sup>24</sup> In addition to the expert agencies that FERC needs to include, it must also request comments from State, Tribal, or local governments that may be affected, as well as the public.<sup>25</sup> To ensure that this meets the “meaningful” engagement standard set out by NEPA, FERC must specifically solicit collaboration from the identified stakeholder Tribal Organizations,<sup>26</sup> the City of Miami, and the surrounding community members.

Tailored engagement with tribes and EJ communities, extended public comment periods and methods, and transparent agency cooperation throughout the NEPA process are obligatory to meet the “meaningful” engagement standard. Through developing the Office of Public Participation, FERC has indicated that it wants and needs public involvement in its proceedings. This office, however, was supposed to be established in 1978,<sup>27</sup> yet FERC never acted until directed to do so in 2021.<sup>28</sup> Creating this office over 40 years later shows that equitable and empowering public participation has not historically been a priority at FERC. While FERC can’t change the past harm, designing a Community Participation Plan for this proceeding is way to prioritize marginalized communities going forward.

### **III. A COMMUNITY PARTICIPATION PLAN IS NECESSARY FOR FERC TO REMAIN CONSISTENT WITH FEDERAL POLICY AND GUIDANCE, AS WELL AS FERC’S OWN EJ STATEMENTS AND EQUITY ACTION PLAN.**

Engaging with EJ communities through a vigorous Community Participation Plan is necessary to abide by federal policy, such as President Biden’s Executive Order 14096. This

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<sup>24</sup> See 16 U.S.C. §§ 1531-1544.

<sup>25</sup> 40 C.F.R. § 1503.1(a)(2)(ii), (v).

<sup>26</sup> See GRDA, FLA, *supra* note 4, at IS-6–9.

<sup>27</sup> Public Utilities Regulatory Policies Act of 1978, Pub. L. No. 95-617, 92 Stat 3117, 3148 (codified at 16 U.S.C. § 825q-1).

<sup>28</sup> 166 Cong. Rec. H8378 (daily ed. Dec. 21, 2020); *see also* FERC Report on the Office of Public Participation, FERC (June 24, 2021), <https://www.ferc.gov/media/ferc-report-office-public-participation>.

orders agencies to take an “ambitious approach to environmental justice that is informed by scientific research, high-quality data, and meaningful Federal engagement with communities with environmental justice concerns and that uses the tools available to the Federal Government, including enforcement of civil rights and environmental laws.”<sup>29</sup> In striving for this goal, Executive Order 14096 directs agencies to provide “opportunities for the meaningful engagement of persons and communities with environmental justice concerns who are potentially affected by Federal activities.”

In the Executive Order, the Federal government recognized the public health disparities faced by tribes and EJ communities that have faced cumulative environmental burdens.<sup>30</sup> Such cumulative burdens may include a community like Miami and nearby towns who have faced years of environmental degradation due to the Superfund site and the frequent flooding of the Dam. The focusing of the Dam’s negative impacts in an area with EJ communities and tribes is a type of discriminatory land use pattern that Executive Order 14096 notes as damaging to the “[n]ation’s promises of justice, liberty, and equality.”<sup>31</sup> Executive Order 14096 comes a little over two years after Executive Order 13985 that ordered agencies “to increase coordination, communication, and engagement with community-based organizations and civil rights organizations.”<sup>32</sup> Executive Order 13985, similarly to Executive Order 14096, acknowledged the need for a comprehensive and systemic approach to having a fair decision-making process.<sup>33</sup> Clearly, a robust Community Participation Plan is consistently supported by federal policy.

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<sup>29</sup> Exec. Order No. 14,096, 88 Fed. Reg. 25,251 (Apr. 21, 2023).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Exec. Order No. 13,985, 86 Fed. Reg. 7,009 (Jan. 20, 2021).

<sup>33</sup> *Id.*

The evidence of the Dam's impact was recognized by a federal circuit court that stated that the evidence of the Dam-caused flooding in Miami is powerful.<sup>34</sup> An Oklahoma state court has also held that there was sufficient evidence to show that the Dam caused flooding for nearby residents.<sup>35</sup> Thus, the impacts of the Dam are evident from the evidence recognized by both the State and Federal judiciaries. This recognition reveals the need for extraordinary planning by FERC to remediate past injustices to these Oklahoma communities.

Engaging with marginalized communities through a comprehensive Community Participation Plan also is crucial for FERC to adhere to its own declarations in both its Equity Action Plan and its Roundtable on Environmental Justice and Equity in Infrastructure Permitting. FERC's Equity Action Plan, as encouraged by Executive Order 13985, established three actions that support building a Community Participation Plan in the present matter. These include (1) assembling the Office of Public Participation to facilitate and assist underserved communities in participating in FERC proceedings; (2) creating meaningful engagement and consultation with Tribal governments; and (3) ensuring the hydropower licensing process is consistent with EJ principles.<sup>36</sup>

To remain consistent with the Equity Action Plan, FERC must provide engagement opportunities and resources to marginalized communities. It can do so by implementing the public participation mechanisms discussed earlier in this submission. FERC acknowledged that "meaningful consultation" does not have a standard definition;<sup>37</sup> thus, the term may mean

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<sup>34</sup> City of Miami, Oklahoma v. Federal Energy Regulatory Commission, 22 F. 4th 1039, 1043 (D.C. Cir. 2022).

<sup>35</sup> Perry v. Grand River Dam Authority, 344 P.3d 1, 7 (Okla. Civ. App. 2013).

<sup>36</sup> *Equity Action Plan*, FERC (Apr. 15, 2022), <https://ferc.gov/equity>. The Equity Action plan also established the goals of ensuring natural gas infrastructure policy is consistent with EJ and fostering FERC staff equity education.

*Id.*

<sup>37</sup> *Id.*

different plans are required to comply with the term “meaningful” depending on the various situations.

In the present relicensing, anything short of extensive community outreach and participation does not rise to this “meaningful” standard. The frequent and continuous impacts of the Pensacola Dam further entrench marginalized communities into a hazardous and unsafe environment. The goal of the Equity Action Plan is to remove barriers that underserved communities face in becoming involved in FERC operations.<sup>38</sup> In a situation where an underserved community has faced flooding, toxic exposure, environmental contamination, and is in the midst of a severe public health crisis that is exacerbated by a FERC-licensed dam, the only way to meet these objectives set out in the Equity Action Plan is to establish and implement a Community Participation Plan with at least the elements described above.

FERC’s own Roundtable on Environmental Justice and Equity in Infrastructure Permitting indicates that there is much more work to do to incorporate marginalized communities in FERC processes. Chairman Phillips declared that federal agencies have a responsibility to ensure fairness and equity in proceedings.<sup>39</sup> Ms. Baker, Director of the Office of Economic Impact and Diversity at the Department of Energy, pointed out that “[e]nergy justice is also about procedural justice which is a meaningful seat at the table at the right time, at the right place.”<sup>40</sup> The location of the Pensacola Dam and its far-reaching impacts in EJ communities is the right time to provide historically ignored groups with a “meaningful seat at the table” to collaborate on this hydropower relicensing matter.

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<sup>38</sup> *Id.*

<sup>39</sup> *Roundtable on Environmental Justice and Equity in Infrastructure Permitting*, 88 Fed. Reg. 7424 (Mar. 29, 2023), <https://www.ferc.gov/news-events/events/roundtable-environmental-justice-and-equity-infrastructure-permitting>.

<sup>40</sup> *Id.*

LEAD Agency appreciates FERC Office of Public Participation's presence at the recent Tar Creek Conference on October 10, 2023, through its representative, Amanda Bradshaw. The information presented about FERC's authority and process was welcome but is merely a first step in ensuring effective community participation. To push for equitable change at FERC, which Ms. Bradshaw stated is the role of the Office of Public Participation, requires a specifically designed Community Participation Plan.

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Our agencies are supposed to work for us. Our federal government is supposed to listen to us. Anything less does not rise to the standard of "meaningful" engagement that NEPA and good government require. The facts in this matter are particularly horrendous. This FERC-licensed project has had severe impacts on the community in the past. FERC must use its resources and prior commitments to environmental justice to establish an inclusive and comprehensive Community Participation Plan as it considers allowing this project to continue operating. Failure to implement such a plan leaves FERC in violation of its duties under NEPA and perpetuating a legacy of environmental degradation in the marginalized communities affected by this project.

Respectfully,

**LEAD Agency, Inc.**

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