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National Association of Regulatory Utility Commissioners

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

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NARUC President Kavulla Reacts to High Court's Ruling in Landmark Demand-Response Case

WASHINGTON—In a 6-2 opinion this morning, the United States Supreme Court upheld the Federal Energy Regulatory Commission's Order 745, a controversial rule that pays demand response the same locational marginal price that generators are paid in the settlement of organized wholesale markets.

The Court's order is a reversal of the U.S. Court of Appeals for the District of Columbia, which had ruled that demand response is fundamentally a retail transaction exclusively subject to the jurisdiction of state regulators.

NARUC's President Travis Kavulla of Montana released the following statement:

"The Supreme Court's decision reiterates that retail rate regulation of electricity is the exclusive province of states. Yet it also allows a federal regulator to establish compensation for retail consumers who offer demand reductions as a substitute for generators' production in the wholesale electricity markets.

"The Court's decision appears to stand for the proposition that energy conservation measures can be valued in both a retail context and, in different circumstances, a wholesale context. Personally, I believe that to be true, although as a legal precedent it may serve to blur the already fuzzy line between State and federal jurisdiction.

"Demand response is only one example of a growing number of situations where consumers are behaving not only as passive recipients of a utility's energy retail service, but as producers of elements of that service. Making sure that law and regulation keep up with these facts is an essential undertaking.

"As the court observes, the respective province of FERC and State utility commissions 'generates a steady flow of jurisdictional disputes because—in point of fact if not of law—the wholesale and retail markets in electricity are inextricably linked.'

"Such a situation leads me to reiterate what NARUC, as an association, declared in a 2010 resolution, which observed the jurisdictional overlap and declared: 'The coordination of federal and State initiatives offers the best way to assure the full benefits of Demand Response are delivered to customers.'"

FERC Chairman Norman Bay will be a featured speaker at NARUC's annual [Winter Committee Meetings](#) in Washington, D.C., where questions on demand response and related topics will be discussed.

NARUC is a non-profit organization founded in 1889 whose members include the governmental agencies that are engaged in the regulation of utilities and carriers in the fifty States, the District of Columbia, Puerto Rico and the Virgin Islands. NARUC's member agencies regulate telecommunications, energy, and water utilities. NARUC represents the interests of State public utility commissions before the three branches of the Federal government.

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