

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Climate Change, Extreme Weather, and Electric System Reliability) **Docket No.** **AD21-13-000**
)

**MOTION TO INTERVENE AND COMMENTS OF THE NATIONAL ASSOCIATION
OF REGULATORY UTILITY COMMISSIONERS**

The National Association of Regulatory Utility Commissioners (“NARUC”) appreciates the opportunity to provide comments to the Federal Energy Regulatory Commission (“FERC” or “Commission”) in response to the March 15, 2021 Supplemental Notice of Technical Conference Inviting Comments¹ (“Supplemental Notice”). The Supplemental Notice invites comments regarding the issues raised in its appendix. NARUC takes this opportunity to address the issue of state and federal collaboration presented in Question 17 in the appendix.

I. COMMUNICATIONS

All pleadings, correspondence, and other communications related to this proceeding should be addressed to the following person:

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¹ Supplemental Notice, *Climate Change, Extreme Weather, and Electric System Reliability*, 86 Fed. Reg. 14895 (March 19, 2021).

II. MOTION TO INTERVENE

NARUC is the national organization of the state commissions responsible for economic and safety regulation of the retail operations of utilities. NARUC's members have the obligation under state law to ensure the establishment and maintenance of such energy utility services as may be required by the public convenience and necessity, as well as ensuring that those services are provided at just and reasonable rates. NARUC's members include the government agencies in the fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the rates, terms, and conditions of service associated with the intrastate operations of electric, natural gas, water, and telephone utilities. Both Congress² and the federal courts³ have long recognized NARUC as the proper party to represent the collective interests of state regulatory commissions.

This proceeding will have an impact on NARUC's member state commissions. The Supplemental Notice seeks comment on whether the Commission should consider conferring with the states where climate change and extreme weather events may implicate both federal and state issues. The technical conference concerns the impact of climate change and extreme weather events on electric system reliability, for which state regulatory commissions also have responsibility. Regardless of whether the Commission chooses to confer with the states under

² See 47 U.S.C. § 410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Boards to consider issues of concern to both the Federal Communications Commission and State regulators with respect to universal service, separations, and related concerns); Cf., 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). Cf. *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir. 1994) (where the Court explains “[c]arriers, to get the cards, applied to . . . [NARUC], an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the ‘bingo card’ system”).

³ See *United States v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), *aff'd* 672 F.2d 469 (5th Cir. 1982), *aff'd en banc on reh'g*, 702 F.2d 532 (5th Cir. 1983), *rev'd on other grounds*, 471 U.S. 48 (1985).

section 209(b) of the Federal Power Act or through an alternative mechanism, any action the Commission takes in this proceeding necessarily will either influence or impact NARUC member commissions.

III. COMMENTS

NARUC commends the Commission for holding a technical conference on the pressing issues of the impact of climate change and extreme weather events on electric system reliability and starting a dialogue about ways we can be better prepared to maintain reliable electric service that, as the Commission points out, is vital to the nation's economy, national security, and public health and safety.⁴ It is particularly important to engage states in this dialogue because states have a long history of leading the way on addressing climate change and the issues surrounding extreme weather events. Furthermore, not only do reliability challenges vary by region,⁵ but they can vary from state to state. The type of climate and extreme weather events, mitigation of such events, the level of preparedness, and the funding available for response and recovery are directly dependent on the characteristics of the state, such as its geography, economy, and demographics, and its experiences with these types of challenges.

The Commission most certainly should confer with the states, whether as permitted under section 209(b) of the Federal Power Act⁶ or through an alternative mechanism, where climate change and extreme weather events may implicate both federal and state issues. In a regulatory scheme that splits jurisdiction between state and federal governments, Congress specifically enacted this section of the Federal Power Act that promotes cooperative federalism by allowing

⁴ Notice of Technical Conference, *Climate Change, Extreme Weather, and Electric System Reliability*, 86 Fed. Reg. 13892 (March 11, 2021).

⁵ *Id.*

⁶ 16 U.S.C. § 824h(b).

the Commission to bridge that divide to confer with the states. There may not be a better example of issues that should be addressed by a multijurisdictional, multi-prong, collaborative approach than those relating to climate change and extreme weather events that have a direct and significant impact on local and regional electric systems, communities and economies, but for which there is a national role for preparation, planning, mitigation, response, and recovery. Meeting the challenges of climate change and extreme weather events to electric system reliability will require all of our collective resources and best ideas; conferring with the states will increase the number of resources focused on solving these issues and uncover more fertile ground from which ideas can sprout.

There are several options available for conferring and discussing topics of interest to states and the Commission. Under section 209(b) of the Federal Power Act, identified in Question 17 of the Supplemental Notice, the Commission may confer with state commissions by holding joint hearings “in connection with any matter with respect to which the Commission is authorized to act.”⁷ Specifically, this provision focuses the Commission’s authority to confer on issues “regarding the relationship between rate structures, costs, accounts, charges, practices, classification, and regulations of public utilities subject to the jurisdiction of such State commission and of the Commission.”⁸ Joint hearings may be held simply to gather facts and information, or following such a hearing, to allow both the Commission and the participating states to act jointly or separately in the form of an order or recommendation for further process.

In addition to the authority provided to the Commission under section 209(b), another mechanism that would allow the Commission and the states to collaborate directly includes

⁷ *Id.*

⁸ *Id.*

establishment of federal-state joint boards, as envisioned in section 209(a) of the Federal Power Act.⁹ The Commission has broad authority under this provision to “refer any matter arising in the administration of this subchapter,” which includes the electric reliability of the bulk power system under section 215 of the Federal Power Act, 16 U.S.C. § 824o. In addition, the Commission has significant flexibility under section 209(a) to guide and determine the focus, process, and possible outcomes in convening a federal-state joint board.¹⁰ For example, a joint board could allow discussion on specific topics, with the purpose stated as discussion only, or develop joint recommendations on a particular issue, and does not require a formal order or binding decision at the conclusion.

When considering the formation of a joint hearing or joint board on the issues of climate change and extreme weather events to address electric system reliability, among other issues, the Commission should consider appointing state commissioners from each NARUC region, or regions represented by regional entities under 16 U.S.C. § 824o(e)(4), or regional advisory bodies established under 16 U.S.C. § 824o(j), and, if necessary, including at-large members to ensure appropriate diversity of representation. This would allow participation by states representing regions impacted by different climate and extreme weather events, such as heat and hurricanes in the Southeast, heat and wildfires in the West, tornados in the South Central region, and winter weather, including snow and ice, in the Northern states. It has been said that each “state may . . . serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”¹¹ Broad and varied state representation on a joint board would allow

⁹ 16 U.S.C. § 824h(a)

¹⁰ “The action of such board shall have such force and effect and its proceedings shall be conducted in such manner as the Commission shall by regulation prescribe.” *Id.*

¹¹ *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311, 52 S. Ct. 371, 386–87, 76 L. Ed. 747 (1932) (Brandeis, J., dissenting).

the Commission to hear and benefit from considering the various innovative efforts states are making to address the impacts of climate change and extreme weather events.

IV. CONCLUSION

NARUC thanks the Commission for considering its comments on this timely and important question of how the Commission and states may collaborate on issues affecting us all. We look forward to working with you to address these pressing challenges.

Respectfully submitted,

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