

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

New England Ratepayers Association

)

Docket No. EL20-42-000

**MOTION TO INTERVENE AND FOR EXTENSION OF TIME TO SUBMIT
COMMENTS OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY
COMMISSIONERS**

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure¹ of the Federal Energy Regulatory Commission (“FERC” or “Commission”), the National Association of Regulatory Utility Commissioners (“NARUC”) requests leave to intervene in the above-captioned proceeding. NARUC also moves for an extension of the time to file comments in response to the Petition for Declaratory Order of the New England Ratepayers Association (“NERA”) to **August 12, 2020**. Additionally, NARUC respectfully requests expedited action on this motion and that the Commission issue an order granting the requested 90-day extension by **May 4, 2020**.

I. COMMUNICATIONS

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

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¹ 18 C.F.R. §§ 385.212 and 385.214 (2019).

II. BACKGROUND

On April 14, 2020, pursuant to Rule 207 of the Commission’s Rules of Practice and Procedure², NERA filed a Petition for Declaratory Order requesting that the Commission (1) “declare that there is exclusive federal jurisdiction over wholesale energy sales from generation sources located on the customer side of the retail meter, and (2) order that the rates for such sales be priced in accordance with the Public Utility Regulatory Policies Act of 1978 (“PURPA”) or the Federal Power Act (“FPA”), as applicable.”³ Currently, states that have Full Net Metering (“FNM”) programs treat the entire output of electric energy from an electricity consumer’s generation source that is located on the same side of the retail meter as the consumer’s load (typically rooftop solar) as being subject to state jurisdiction.⁴ NERA argues that this exercise of state jurisdiction is contrary to federal law and that the Commission must “reject state net metering laws which assert jurisdiction over such wholesale sales and establish a price in excess of what PURPA or the FPA allows for wholesale sales subject to this Commission’s exclusive jurisdiction.”⁵

III. INTERVENTION

NARUC is the national organization of state commissions responsible for economic and safety regulation of utilities. Our members in the fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands 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

² 18 C.F.R. § 385.207 (2019).

³ Petition for Declaratory Order of New England Ratepayers Association, Docket No. EL20-42-000 (April 14, 2020) (“Petition”) at 1.

⁴ Petition at 2-3.

⁵ Petition at 44-45.

necessity, as well as ensuring such services are provided at just and reasonable rates. Both Congress and the federal courts⁶ have long recognized NARUC as the proper party to represent the collective interests of state regulatory commissions.

NERA's petition seeks to eliminate state jurisdiction over critical aspects of net energy metering programs. The Petition notes that "41 States have in place mandatory net energy metering programs."⁷ Granting this petition may infringe on the vast majority of state commissions' proper exercise of their jurisdiction over retail rates. That, in turn, could undermine those states' ability to balance the jurisdictional costs and benefits of net metering programs.

NARUC has a direct and substantial interest in the Commission's decision in this proceeding. No other party can adequately represent NARUC's and the state commissions' interests, collectively. Accordingly, it is in the public interest to permit this intervention.

NARUC respectfully requests it be permitted to intervene with all the rights that attend to such status.

⁶ 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 a joint board). Cf. *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains "Carriers, 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"). See also, *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).

⁷ Petition at 3.

IV. EXTENSION OF TIME REQUEST

In this unprecedented time of national crisis, NARUC believes that comity and due process considerations justify an extension from the current May 14, 2020 comment deadline. State commissions are under tremendous burdens to continue operations while subject to state Stay-at-Home Orders that directly affect their ability to conduct business. Utilities under state and Commission jurisdiction are facing similar obstacles.

The Petition appears to impinge directly on state jurisdiction and net energy metering programs that, in most cases, are creations of state law. As the Petition identifies, the vast majority of state commissions have net energy metering programs and this Petition obviously raises issues of importance to all states. State commissions need adequate time to consider the issues raised in the Petition and understand the wide-reaching implications of the changes sought.

NARUC has not yet taken a formal position on this petition; however, many NARUC members have expressed serious concerns with the petition's timing, scope, jurisdictional implications, and implementation challenges. NARUC and its members need time to discuss these issues and consider a proper response. The proliferation of COVID-19 related issues on top of their routine obligations and the procedures required to approve responses are all competing for state commission resources during this crisis. States and NARUC need additional time to navigate through conflicting schedules and competing interests to respond appropriately.

Moreover, the additional time will not prejudice any interested party and will maximize the opportunity for all stakeholders to help create a better record for the Commission's decision. A 90-day extension will allow NARUC and its members enough time to consider the issues

raised and move comments through both state- (and NARUC-) mandated comment approval procedures, while simultaneously attending to other challenges raised by the pandemic.

NARUC is still planning to hold its Summer Policy Summit this July, even if it has to do so virtually. We expect this Petition to be a focus of those deliberations and that they will result in a NARUC position on the appropriate response to the Petition. As participants at NARUC meetings, the Commission has seen and experienced firsthand the value of these discussions. A comment deadline of August 12, 2020, will allow our members to address the issues in the Petition at the Summit, after which NARUC can finalize its comments.

Finally, NERA itself concedes in its Petition that “the Commission may wish to provide interested parties with some additional time to respond to this Petition in light of the current situation concerning COVID-19.”⁸ The Commission understands the disruptions caused by the pandemic on the work of the state commissions because it has laudably reached out to help keep state commissions informed and equipped to respond to the present challenges. A 90-day extension would be quite reasonable given the current unprecedented circumstances.

⁸ Petition at n.3.

V. CONCLUSION

In conclusion, NARUC respectfully requests that the Commission grant its intervention and its request for an extension of time, until **Wednesday, August 12, 2020**, to submit comments in this proceeding. NARUC also respectfully requests that the Commission issue an order granting the requested 90-day extension by **May 4, 2020**.

Respectfully submitted,

/s/ Jennifer M. Murphy

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Dated: April 28, 2020

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary of this proceeding.

Dated: April 28, 2020

Respectfully submitted:

/s/ Jennifer M. Murphy