

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 24-1650 and No.24-1758

APPALACHIAN VOICES;
ENERGY ALABAMA;
NORTH CAROLINA SUSTAINABLE ENERGY ASSOCIATION;
SOUTHERN ALLIANCE FOR CLEAN ENERGY; AND
SOUTH CAROLINA COASTAL CONSERVATION LEAGUE,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

and

STATE OF TEXAS
Petitioner

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

**NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
MOTION FOR LEAVE TO INTERVENE IN SUPPORT OF PETITIONERS**

Pursuant to 28 U.S.C. § 2348 and Rule 15(d) of the Federal Rules of Appellate Procedure, the National Association of Regulatory Utility Commissioners (“NARUC”) moves for leave to intervene in support of Petitioners.

NARUC is a quasi-governmental nonprofit District of Columbia corporation founded in 1889. For the last 135 years, NARUC has represented the interests of public utility commissioners from agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. NARUC's members are charged with regulating the rates and terms and conditions associated with the intrastate operations of electric, natural gas, water, and telephone utilities.

NARUC is recognized by Congress in several statutes¹ and consistently by the Courts² as well as a host of federal agencies,³ as the proper entity to represent

¹ See 47 U.S.C. §410(c) (1971) (Congress designated NARUC to nominate members of the Federal Communication Commission's Federal-State Joint Board to consider issues of common concern); See also 47 U.S.C. §254 (1996); See also *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir. 1994) (where this 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).

² See, e.g., *U.S. 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) (where the Supreme Court notes: "The District Court permitted (NARUC) to intervene as a defendant. Throughout this litigation, the NARUC has represented the interests of the Public Service Commissions." 471 U.S. 52, n. 10. See also, *Indianapolis Power and Light Co. v. ICC*, 687 F.2d 1098 (7th Cir. 1982); *Washington Utilities and Transportation Commission v. FCC*, 513 F.2d 1142 (9th Cir. 1976); Compare, *NARUC v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007); *NARUC v. DOE*, 851 F.2d 1424, 1425 (D.C. Cir. 1988); *NARUC v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

³ Compare, *NRC Atomic Safety and Licensing Board Memorandum and Order* (Granting Intervention to Petitioners and Denying Withdrawal Motion), LBP-10-11, *In the Matter of U.S. Department of Energy (High Level Waste Repository)* Docket No. 63-001-HLW; ASLBP No. 09-892-HLW-CABO4, mimeo at 31 (June 29, 2010) ("We agree with NARUC that, because state utility commissioners are responsible for protecting ratepayers' interests . . . these economic harms constitute its members' injury-in-fact.")

the collective interests of State utility commissions. NARUC cannot be adequately represented by any other party to this proceeding.

The above-captioned case involves the petition for review of the following rulemaking order of the Federal Energy Regulatory Commission (“FERC”): *Building for the Future Through Electronic Regional Transmission Planning and Cost Allocation*, Order No. 1920, Final Rule, Docket No. RM21-17-000, 187 FERC ¶ 61,068 (May 13, 2024) (*Order No. 1920*). *Order No. 1920* adopts regulations revising existing regional and local transmission planning and cost allocation requirements for public utilities owning or operating transmission facilities used for the transmission of electric energy in interstate commerce.

Rule 15(d) provides that motions or other notice of intervention authorized by statute-must be filed within 30 days after the petition for review is filed and must contain a concise statement of interest of the moving party and the grounds for intervention.

NARUC was a party to, and actively participated in, the underlying agency proceeding. *Order No. 1920* was accurate in acknowledging, in paragraph 272, that “that Long-Term Regional Transmission Planning will affect matters that are within the states’ jurisdiction.” The impact of this order on state jurisdiction with respect to siting proceedings, and indirectly on in-state planning and policy “is inevitable.” *Id.* The order creates a process that integrates individual state energy policies and

goals into transmission planning, creates extensive procedures for “consultation” with states (on cost allocation and other issues), and acknowledges how state input will facilitate the planning process. But then the order establishes conditions that permit the Transmission Providers to completely ignore and not even report upon state input. NARUC fully litigated its positions and exhausted its administrative remedies by filing a timely request for rehearing, which FERC denied by operation of law, pursuant to 16 U.S.C. §8251(a); 18 C.F.R. § 385.713(2023).⁴ The FERC Order on review will directly affect both the services provided, as well as the actual rates for electricity. NARUC’s member commissions are charged with regulating the rates, terms, siting, and other conditions of service of intrastate electricity service. NARUC’s members’ ability to protect both ratepayers and the public interest will be impacted by the outcome of this appeal. NARUC has a direct and substantial interest in this case that cannot be adequately represented by any other party to the proceeding.

As a “party in interest in the proceeding before the agency whose interests will be affected” by this review proceeding, NARUC is entitled to intervene “as [a matter] of right.” 28 U.S.C. § 2348.

⁴ See Notice of Denial of Rehearing by Operation of Law and Providing for further Consideration, 188 FERC ¶62,025, Docket No. 21-17-001 (July 15, 2024); *In re Building for the Future through Electric Regional Transmission and Generator Interconnection*, Docket No. RM21-17-000, Request for Rehearing of the National Association of Regulatory Commissioners, filed July 12, 2024.

Pursuant to Local Rule 27(a) all parties represented by counsel have been informed of the intended filing of the motion. Counsel for the Respondent, the Federal Energy Regulatory Commissioner and Petitioners Appalachian Voices, Energy Alabama, North Carolina Sustainable Energy Association, Southern Alliance for Clean Energy, and South Carolina Coastal Conservation League consent to the motion, while Petitioner, the State of Texas takes no position on the motion.

For the foregoing reasons, NARUC respectfully requests intervention in these proceedings.

Respectfully submitted,

s/ Robert C. Cain, II

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DATED: August 13, 2024

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the type-face requirements of Fed. R. App. P. 32(a)(5) and the type-volume limitations of Fed. R. App. P. 27(d)(2)(A). This motion contains 910 words, excluding the parts of the motion excluded by Fed. R.App. P. 27(d)(2) and 32(f).

Respectfully submitted,

s/ Robert C. Cain, II

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CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2024, I electronically filed the foregoing motion with the Clerk of Court using the CM/ECF System which will automatically send e-mail notification of such filing to all counsel of record.

Respectfully submitted,

s/ Robert C. Cain, II

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