



NARUC
National Association of Regulatory
Utility Commissioners

For Immediate Release:

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NARUC Files Protest Opposing NERA Net Metering Petition

WASHINGTON (June 15, 2020) —The National Association of Regulatory Utility Commissioners today filed a protest opposing the New England Ratepayers Association net energy metering petition, currently before the Federal Energy Regulatory Commission. NERA has asserted that there is exclusive federal jurisdiction over the wholesale energy sales from generation sources located on the customer side of the retail meter, and that the rates for such sales be priced in accordance with federal law.

As NARUC stated in its request for an extension to respond to the petition, NERA's position is absolutely contrary to the current policy, which places these programs under state authority. In the protest filed today, NARUC contends that NERA has disregarded the potential for disruption to the system and the detrimental effect on retail customers and state and federal policy makers, who have relied for decades on FERC's determination that net energy metering falls within state retail ratemaking jurisdiction.

"This entity, known as NERA, has not provided any specific examples from any state on which it has based its petition, yet wants to falsely assert that net metering programs, rates and regulations in nearly every state are unlawful, placing them under a rigid federal regime," said Mississippi Commissioner and NARUC President Brandon Presley.

NARUC argues four core reasons in the protest why FERC should not grant the petition, the first of which notes that the current practice falls outside the wholesale scope: "...the outflow of energy from a retail customer to its local utility is not a wholesale sale, and netting those outflows against inflows when measuring the retail service provided during a billing cycle does not set a wholesale rate."

A second rationale speaks to federal jurisdiction. NERA cites two cases, *MidAmerican* and *Sun Edison*, to support its assertion. However, in both of those cases, D.C. Circuit ruled that FERC does not have jurisdiction to "...displace the state's netting rules for measuring whether retail sales had occurred."

FERC is further precluded from asserting jurisdiction because a homeowner or business does not engage "in interstate commerce" when energy flows out from the home or business to the local utility's distribution system; therefore, under the Federal Power Act, FERC has no jurisdiction to regulate the local outflow from these net metered facilities.

The fourth argument states that FERC cannot overlook that the actions of state and federal legislatures, state regulatory commissions, utilities and millions of retail customers have relied on the established rule of law, along with precedent established by FERC.

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“We have made an outstanding case to support the established policies for net energy metering, as NERA has provided absolutely no credible reasons to upend a system that rightfully falls under the jurisdiction of states,” said Presley. “We have the support of not only our member states and industry stakeholders, but homeowners across the country also support our position.”

The protest includes expert engineering and economic testimony, which includes professional perspectives from the National Regulatory Research Institute, NARUC’s nonprofit research arm.

NARUC and its members are optimistic that FERC will rule in its favor. The filing is located at bit.ly/2MZUdcT.

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About NARUC

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.