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June 12, 2020

The Honorable Neil Chatterjee, Chairman
The Honorable Richard Glick, Commissioner
The Honorable Bernard L. McNamee, Commissioner
The Honorable James Danly, Commissioner
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

RE: Request to Deny Petition for Docket No. EL20-42-000

Dear Commissioners,

The Conservative Energy Network (CEN) respectfully files these comments in opposition to the Petition filed by the New England Ratepayers Association (“NERA”). CEN is a 501(c)(3) non-profit coalition of 21 state-based conservative clean energy organizations. CEN supports and promotes the work performed by its state teams to educate policymakers and the public on the benefits of a clean energy transition.

As a matter of principle we believe that where regulation is warranted, it should be done so at the most local level possible to ensure that unique local information and sentiment are considered. Such a localized regulatory approach also ensures that accountability is most likely.

On April 14, 2020 a petition was filed (Docket No. EL20-42-000) with your Commission by NERA seeking to have jurisdiction over net metering policies stripped from state regulators and lawmakers and instead governed by the FERC. We respectfully oppose this request and ask that you deny this Petition.

In the Petition NERA asks the Commission to declare that it has “jurisdiction over energy sales from rooftop solar facilities and other distributed generation located on the

customer side of the retail meter (i) whenever the output of such generators exceeds the customer's demand or (ii) where the energy from such generators is designed to bypass the customer's load and therefore is not used to serve demand behind the customer's meter."

NERA claims that:

"The Federal Power Act (FPA) draws a bright line between state and federal jurisdiction over energy sales. Sales of energy at wholesale are subject to the exclusive jurisdiction of this Commission. Sales of energy at retail are subject to the jurisdiction of the states. The sales at issue in this Petition are wholesale sales because the energy is being sold to the utility for resale to the utility's retail load, or for resale by an ISO/RTO, and therefore the Commission is required to exercise its rate jurisdiction over them."

While it is true that the FPA gives FERC jurisdiction over interstate wholesale transactions, the statute also makes it clear that this jurisdiction does not extend to "any other sale of electric energy"¹ and "shall be limited only to those matters which are not subject to regulation by the states."²

Granting this Petition would drastically expand federal jurisdiction at the expense of state regulatory bodies. Each state has its own unique characteristics as it relates to electricity generation, consumption, and policy. To date, 45 states have enacted some form of compensation policy for net metering transactions which take into account these unique local considerations.³ It is our belief that abandoning a federalist approach allowing states to act in the interest of their citizens in favor of a one-size-fits-all national policy would harm the economy, the environment, and consumer choice while only serving to protect monopoly utilities and their shareholder interests.

The argument of NERA is that "behind the meter transactions" like those of net metering customers sending excess electric generation to the grid, should be regulated as wholesale transactions subject to value caps equal to the utility's avoided cost as outlined in the Public Utility Regulatory Policies Act (PURPA). In essence, this would treat an average homeowner with solar panels on their roof who periodically exports extra electricity to the grid, the same as a large commercial power generator.

¹ 16 U.S.C., 824(b)

² 16 U.S.C., 824(a)

³ <https://www.solarpowerworldonline.com/2020/03/which-states-offer-net-metering/>

However, in the Energy Policy Act of 2005, Congress amended PURPA to specifically include net metering on a list of 18 retail policies that states were directed to consider for implementation.⁴ If it were the intent of Congress to have these net metering transactions regulated on a national level by FERC, there would have been no good reason to ask states to consider net metering when crafting individual state policies.

FERC itself has refused to regulate net metering in the past recognizing that a customer's exporting of excess power to the grid does not necessarily constitute a wholesale transaction. For instance, in a decision regarding MidAmerican Energy Company, FERC found that “no sale occurs” when a retail customer “installs generation and accounts for its dealings with the utility through the practice of” net metering. Instead, they objected to the idea “that every flow of power from a homeowner or farmer to MidAmerican must be priced consistent with the requirements” of federal law.⁵

While the MidAmerican ruling applied to customer owned electric generation systems, a decision involving SunEdison came to a similar decision evaluating systems where third parties are selling to customers who participate in net metering. Specifically, FERC decided that “where the net metering participant . . . does not, in turn, make a net sale to a utility, the sale of electric energy by SunEdison to the end-use customer is not a sale for resale, and our jurisdiction under the FPA is not implicated.”⁶

What NERA then is seeking with this Petition is an overturning of precedent held by this Commission. We believe that NERA’s assertions on the FPA and PURPA are incorrect and that legal history lends no footing for this Commission to change course now as it relates to regulation of net metering.

Granting this Petition would be an attack on states’ rights. As it is now, state regulators, legislatures, utilities, electric cooperatives, and municipalities have all made the voluntary decision to implement net metering in the way that they feel will best serve the local public interest.

From a practical standpoint granting this Petition would only serve to harm the over two million American residential customers and countless small business and property owners who participate in state net metering programs by introducing added costs and uncertainty into the marketplace. The potential damage to a growing clean energy economy would be significant as such policies would jeopardize tens of thousands of

⁴ Section 1251, Energy Policy Act of 2005

⁵ MidAmerican Energy Company, 94 FERC 61,340 at 62,263 (2001)

⁶ SunEdison, LLC, 129 FERC 61,146 at P 19 (2009)

jobs and billions of dollars in investment while also hindering states' abilities to meet their desired clean energy targets.

We at CEN believe that states themselves should have the ability to craft energy policies that meet the unique needs of their individuals, families, and businesses. To date, nearly every state in the country has taken voluntary action to implement their preferred method for regulating net metering. This is not an obscure issue being overlooked at the state level necessitating the need for federal oversight. No, this is simply the request of a self-interested minority seeking the implementation of protectionist policies to suppress competition and safeguard corporate profits at the expense of families and small businesses across the nation.

We therefore respectfully ask that you reject this Petition and continue to defer to state authorities in regulating net metering policies.

Thank you for your consideration on this important issue.

Sincerely,



Mark Pischea
President & CEO
Conservative Energy Network