



utility commissions. The state energy offices also work to develop and implement laws and policies in addition to certain regulatory functions. These roles are separate from and generally complementary with the purely regulatory work of the independent public utility commissions.

While the states have differing policies, programs, regulations and laws governing net metering, the state energy offices recognize the importance and primacy of state jurisdiction in specific areas, including, but not limited to, net metering. If granted, the NERA Petition would eliminate state jurisdiction over net metering programs. Action by FERC to grant the NERA Petition would clearly, and improperly, infringe on state policy directives, state legislation and state public utility commission authority over retail rates. It is the exclusive authority of the states to address state policies regarding consumer costs and interests, specifically including consumer-side solar and other distributed generation. The Federal Power Act (“FPA”) and the Public Utilities Regulatory Policies Act (“PURPA”) did not authorize FERC to infringe on state authority in these areas. FERC action herein could also have significant negative implications on investor-owned utilities and their customers as well as consumer-owned utilities and their customers. It is up to the states to address the issues that the NERA Petition raises. If the Commission intends merely to give “lip service” to the decades of interpretation of the FPA and PURPA, and to reject federalism principles, then (sadly) the states will know where they stand with FERC.

These comments should not (and are not intended) be interpreted to take a position on net metering structures as conceived by the individual states. The states will take the factors that they deem appropriate into account when devising or modifying such policies, programs, regulations and/or state laws. Congress has been careful to define federal authority, as expressed in Part I of the FPA in 1935 and PURPA in 1978. When Congress wanted states to “consider”

policies, they so stated.<sup>1</sup> States have always had authority over retail electricity issues and nothing has changed by statute that has modified these basic precepts.

In EPACT 2005, Congress amended Section 111(d) of PURPA to require states to “consider” adopting net metering programs. Congress did not order a specific program, policy or outcome. On information and belief, forty-eight states have modified or updated net metering policies without additional federal legislation.

FERC’s precedent in this area has been expressed in 2001<sup>2</sup> and 2009<sup>3</sup>, in which the Commission affirmed that situations similar to that suggested in the NERA Petition did not create new federal authority. The Commission’s energy storage orders<sup>4</sup> did not change these policies. There is no Commission precedent, statutory or constitutional basis, for FERC to grant, or even hear, the NERA Petition. State policies, programs, statutes and regulations differ, but it is not within FERC’s authority to replace state judgments with its own views. Local distribution networks and state policies are not within federal purview.

---

<sup>1</sup> See Energy Policy Act of 1992, Pub. L. No. 102-483 (1992); Energy Policy Act of 2005, Pub. L. No. 109-58 (2005) (“EPACT 2005”); and Energy Independence and Security Act of 2007, Pub. L. No. 110-140 (2007).

<sup>2</sup> See *MidAmerican Energy Co.*, 94 FERC ¶ 61340 (2001).

<sup>3</sup> See *Sun Edison, LLC*, 129 FERC ¶ 61146 (2009), reh’g granted 131 FERC ¶ 61,213 (2010).

<sup>4</sup> See *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order 841, 162 FERC ¶ 61,127 (2018); appeal filed *Nat’l Ass’n of Regulatory Utility Commissioners v. FERC*, Petition for Review, U.S. Ct. of Appeals for the District of Columbia, Case No. 19-1142 (July 11, 2019).

## II. CONCLUSION AND PRAYER FOR RELIEF

In conclusion, NASEO respectfully requests that the Commission summarily reject the NERA Petition and grant intervention to NASEO to participate in all respects in this proceeding.

Respectfully submitted,

/s/ Jeffrey C. Genzer

Jeffrey C. Genzer

Duncan, Weinberg, Genzer

& Pembroke, P.C.

1667 K Street, NW, Suite 700

Washington, DC 20006

jcg@dwgp.com

*Counsel for the National Association of State  
Energy Officials*

Dated: June 15, 2020

## CERTIFICATE OF SERVICE

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

Dated at Washington, D.C. this 15th day of June, 2020.

*/s/ Theju Prasad* \_\_\_\_\_

Theju Prasad  
Duncan, Weinberg, Genzer  
& Pembroke, P.C.  
1667 K Street, N.W., Suite 700  
Washington, D.C. 20006  
tp@dwgp.com