

II. BACKGROUND

On April 14, 2020, NERA filed a Petition for Declaratory Order asserting that the Commission has “exclusive federal jurisdiction over wholesale energy sales from generation sources located on the customer side of the retail meter” and that rates for the sales be priced consistent with both PURPA or the Federal Power Act. *See* NERA Petition, at 1. As a general matter, the states that have full net metering programs treat the output of energy from the consumer’s generation source on the consumer side of the retail meter as the consumer’s load and completely subject to state jurisdiction. The NERA Petition is intended to address not only rooftop solar but any consumer-side distributed generation. The NERA Petition, if adopted by FERC, would be a dramatic shift of authority from the state governments to the federal government. The NERC Petition asserts that FERC should claim jurisdiction over these sales and prevent states from establishing a price above the PURPA and FPA wholesale sales price, as appropriate. *See* NERC Petition at 44-45.

III. INTERVENTION

NASEO is composed of the 56 state, territorial and District of Columbia energy officials, whose directors are generally appointed by their governors and are tasked with developing and implementing state energy policies, energy emergency preparedness and response programs, renewable energy, energy efficiency, fossil energy, climate change and energy and economic development programs and policies. In addition to working with their governors, legislators and the private sector (including all components of the utility sector), the NASEO members work with NARUC members (the state public utility commissions) in their respective states. State energy offices also work on laws and policies, as distinct from the regulatory decisions of the public utility commissions. These state energy policies include different views on net metering.

However, state energy policies and programs recognize the importance and primacy of state jurisdiction in specifically defined areas, such as net metering.

The NERA Petition is attempting to eliminate state jurisdiction over net metering programs. If FERC were to grant the NERA Petition, it would clearly infringe on state policy directives, state legislation and state public service commission authority over retail rates. It is the exclusive authority of the states to address state policies over consumer costs and interests, as well as consumer-side solar and other distributed generation. We are also concerned about negative impacts by any FERC action herein on consumer-owned utilities and their customers, as well as negative consequences on investor-owned utilities and their customers. There are also potential negative ramifications regarding state policies toward large commercial customers that have rooftop solar and other distributed generation. While the states have differing programs and policies regarding net metering, it is not an appropriate role for FERC to assert jurisdiction and mandate changes that are not within the Commission's authority. Nothing in the FPA or PURPA gives FERC that authority.

NASEO has a direct and substantial interest in FERC's ultimate decision in this docket. No other party can adequately represent NASEO's and the state energy officials' views. It is in the public interest to grant this intervention.

NASEO requests that it be permitted to intervene in this proceeding for all purposes.

IV. EXTENSION OF TIME REQUEST/PRELIMINARY COMMENTS

NASEO supports NARUC's request for an extension of time to submit more complete comments until August 12, 2020. NASEO members are focused on responding to the COVID-19 pandemic, including energy emergency preparedness and response. These responsibilities include a focus on Energy Support Function ("ESF") – 12. Our members' priority is ensuring

that the energy system within the states remains robust, not only the electric and gas systems, but oil delivery, gasoline distribution, supplies for first responders, etc. The NERA Petition should be a far lower priority to FERC and to the states, than ensuring the public is protected. With remote work the order of the day and severe state and local budget cuts looming, the daily responsibilities to protect the public are even more important.

The net metering programs that are being attacked by the NERA Petition are creatures of state law, state policy and state PUC jurisdiction. Most of the states have net metering programs in place, and they certainly vary in scope, magnitude and pricing policies. However, those differences are reflective of state decision making. As NASEO does with all major actions, we are seeking the views of all the states, as we formulate responses to any federal action. This NERA Petition is no different.

NASEO opposes the NERA Petition. It is an intrusion on state authority. However, we want an opportunity to seek more input from our members in order to provide a more complete response. Face-to-face meetings have been canceled. Our face-to-face regional meetings, which normally occur in the April – June period, have been postponed. While we are holding regular conference calls and meetings, we are clearly focused on the response to the pandemic and providing continuing services to the public.

The extension request will not prejudice any party and will provide an opportunity for a more complete record.

V. CONCLUSION

In conclusion, NASEO respectfully requests that the Commission grant its intervention in this proceeding. In the event that FERC does not summarily reject the NERA Petition, which NASEO would support, we request an extension of time to file more complete comments until

August 12, 2020. This extension request is consistent with the request made by our sister organization, NARUC. We also recommend that the Commission issue an order granting the requested extension as soon as possible, so that the state parties can focus on the more important pandemic response activities, which are critical to the public health and welfare.

Respectfully submitted,

/s/ Jeffrey C. Genzer

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Dated: May 4, 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 4th day of May, 2020.

/s/ Theju Prasad _____

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