

**Congress of the United States**  
Washington, DC 20510

May 26, 2020

The Honorable Neil Chatterjee  
Chairman  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Dear Chairman Chatterjee,

We write to urge the Federal Energy Regulatory Commission (FERC) to reject the petition by the New England Ratepayers Association (NERA) calling on FERC to assert jurisdiction over 45 individual state net metering programs.<sup>1</sup>

We strongly support net metering, a mechanism used by utilities, small businesses, farmers, and residential energy customers nationwide to reduce consumer costs, enhance reliability and increase clean energy supplies. On average with these systems, about 20 to 40 percent of a customer's energy is fed back onto the distribution grid, helping create a more resilient, responsive and flexible power grid.<sup>2</sup>

States have engaged in deliberate, thoughtful processes to develop and implement net metering laws, which has led to the development of a renewable energy industry employing more than 800,000 workers nationwide.

**Preserving State Authority**

States have always determined the rules and value of credits for their net metering programs. NERA's petition challenges FERC's longstanding policy, first set out in *MidAmerican Energy Company*, 94 FERC ¶ 61,340 (2001), that FERC does not have jurisdiction over sales from ratepayers to utilities if consumption is larger than production over a certain period. NERA's petition asks that FERC upend this long-held position.<sup>3</sup>

As the Supreme Court has noted, Congress wrote the Federal Power Act "to be a complement to and in no sense a usurpation of State regulatory authority."<sup>4</sup> If FERC granted NERA's petition, it would overturn long-held precedent and give the federal government decision-making power that

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<sup>1</sup> <https://crsreports.congress.gov/product/pdf/R/R46010>

<sup>2</sup> <https://www.seia.org/initiatives/net-metering>

<sup>3</sup> <https://www.crowell.com/NewsEvents/AlertsNewsletters/all/Net-Metering-Policies-Challenged-At-FERC>

<sup>4</sup> *Conn. Light & Power Co. v. Fed. Power Comm'n*, 324 U.S. 515, 526 (1945).

has long belonged to the states, including the authority to set rates, terms, and conditions for programs. These decisions are best left to state regulators.

Energy transfers from a ratepayer to a local utility are retail-level transactions. Customers are not installing systems to become large electricity producers, they are simply seeking to lower their power bills by investing in cost-saving and clean technology. Customers installed net-metered systems based on the promise – enshrined in the laws and policies of the respective states – that they would receive the credit approved by their commission or legislature on their electricity bills.

Sections 111(d) and 112(b) of the Public Utility Regulatory Policies Act (PURPA) (16 USC 2621 and 2622) directs state regulators to consider adopting net metering:

SEC. 111(d)(11) NET METERING.—Each electric utility shall make available upon request net metering service to any electric consumer that the electric utility serves. For purposes of this paragraph, the term ‘net metering service’ means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

SEC. 112(b) [...] Not later than 3 years after the date of the enactment of this paragraph, each State regulatory authority (with respect to each electric utility for which it has ratemaking authority), and each nonregulated electric utility, shall complete the consideration, and shall make the determination, referred to in section 111 with respect to each standard established by paragraphs (11) [...]

This statute makes clear that Congress intended for net metering programs to fall under state jurisdiction, not FERC’s. If Congress intended for net metering to be priced pursuant to federal law, it would have so specified.

### **The Petitioner**

NERA formed in 2013 and is a tax-exempt 501(c)(4) non-profit organization that, according its webpage, advocates for rate payers across New England – specifically focused on energy and telecommunication issues. Their webpage says:

“NERA will advocate on behalf of ratepayers across a wide range of issues in every state in New England. From electricity costs in Massachusetts and Maine, water rates in New Hampshire, telecommunications issues in Vermont and Connecticut, natural gas costs in Rhode Island, and a host of other concerns that impact the region, NERA will be a voice for the ratepayers of New England.”<sup>5</sup>

According to documents obtained by Public Citizen and public testimony submitted by NERA, the group represents the interests of only 12 undisclosed entities that contributed \$245,000 in

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<sup>5</sup> <http://www.neratepayers.org/>

dues in 2018.<sup>6</sup> It appears that NERA operates more like a trade association, representing the interests of a select number of industry or utility players, rather than a grassroots ratepayer group that represent the public interest. It is also unclear based on public information whether this group actually represents any New England interests – consumer or corporate – and if it does, it is unclear why a group that advocates for ratepayers in New England is asking FERC for a sweeping order preempting net metering nationwide.

NERA refuses to disclose the identities of the 12 entities that fund it, making it impossible to determine who is backing its petition. NERA should disclose its membership to FERC, so parties can understand who is asking for these important changes that will affect the 45 states with net metering laws in place. Disclosure will also help explain why NERA is making this request and whether this group will directly benefit from this policy change.

### **Closing**

In prior decisions, FERC clearly determined that state regulators have authority over retail transactions. At a time when states need to ensure low-cost and reliable energy transactions for consumers, FERC should not upend 45 existing state policies – and certainly not at the behest of a group funded by twelve anonymous donors whose interests are unknown to FERC or the public, and which may be antithetical to the goals of the Federal Power Act. FERC should reject NERA’s petition to overturn nearly twenty years of FERC precedent and affirm that states have authority over net metering.

Thank you for your attention to this important matter, we look forward to your prompt response.

Sincerely,

Senator Margaret Wood Hassan  
Senator Martin Heinrich  
Senator Sheldon Whitehouse  
Senator Michael F. Bennet  
Senator Richard Blumenthal  
Senator Cory A. Booker  
Senator Benjamin L. Cardin  
Senator Thomas R. Carper  
Senator Christopher A. Coons  
Senator Angus S. King, Jr.  
Senator Patrick Leahy  
Senator Edward J. Markey  
Senator Jeffrey A. Merkley  
Senator Jack Reed  
Senator Bernard Sanders

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<sup>6</sup> [https://elibrary.ferc.gov/idmws/file\\_list.asp?accession\\_num=20190718-5047](https://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20190718-5047)

Senator Jeanne Shaheen  
Senator Tina Smith  
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