

United States Senate

May 26, 2020

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

Re: Docket No. EL20-42

Dear Chairman Chatterjee:

We write regarding the petition filed by the New England Ratepayers Association (NERA) on April 14, 2020, which requests that the Federal Energy Regulatory Commission (FERC) assert exclusive jurisdiction over net metering programs designed and implemented by individual states. We have concerns over the legal merits of this petition, FERC's short initial deadline for interventions, as well as the lack of transparency regarding the membership and financial backing behind the petitioning group. We urge FERC to reject this petition.

Although a ruling on the petition would have national ramifications, we write to provide additional context concerning Massachusetts' long-standing use of net metering policies. NERA's petition challenges the stability of these policies, could upend the years of strong and steady growth in Massachusetts' renewable power sector, and might result in substantial negative impacts on ratepayers.

Massachusetts' use of net metering dates back to 1982, with a major expansion of the practice in 2008.¹ Several types of generation are eligible for the net metering program, including solar, wind, anaerobic digestion, and small hydroelectric facilities. The state net metering program has been modified over the years, but the stability of this incentive has helped grow zero-emission generation and establish Massachusetts as a leader in clean energy employment, ranking fourth among all states in solar jobs in 2019.² Home owners, businesses, and municipalities have made substantial investments in renewable energy generation systems, based upon the premise that they will receive the credits to which they are legally entitled through policies established by the state legislature and the Department of Public Utilities. Long-standing FERC policy³ and statutes enacted by Congress⁴ have reaffirmed the ability of state regulators to adopt and set the terms of net metering policies.

¹ DSIRE, *Net Metering: Program Overview*, NC Clean Energy Technology Center, (Nov. 21, 2019), <https://programs.dsireusa.org/system/program/detail/281>.

² Solar Energy Industries Association, *State Solar Spotlight: Massachusetts*, (Mar. 17, 2020), <https://www.seia.org/sites/default/files/2020-03/Massachusetts.pdf>.

³ 94 FERC ¶ 61,340 (2001).

⁴ 16 U.S.C. § 2621, § 2622.

FERC initially set a May 14, 2020 deadline for interventions and protests for this petition — only 30 days after the petition was filed—although this has since been extended for an additional 30 days. We strongly support the call made by Massachusetts Attorney General Maura Healey and other state entities for a 90-day extension for the filing deadline, in order to provide additional time to analyze the negative effects of the NERA request and to articulate those effects to the Commission.⁵ This request is particularly justified in light of the ongoing COVID-19 pandemic, which has stretched state resources and created additional challenges for potential intervenors.

Additionally, we urge FERC to require that NERA provide additional disclosures about its membership as part of its petition. NERA is a section 501(c)(4) organization that presents itself as a voice for ratepayers, but reportedly represents only around a dozen member companies, each of which pay an average of more than \$20,000 in annual dues.⁶ More transparency will help clarify whether NERA actually represents the interests of ratepayers in Massachusetts and whether its members will directly benefit from the petition, as it argues for a nationwide change in a longstanding policy.

The petition has the potential to adversely affect ratepayers, businesses, and municipalities across Massachusetts by disrupting the state-designed net metering policy, which has been in place in various forms for decades. We urge FERC to grant additional time to intervenors, require additional disclosures on behalf of the petitioner, and to reject this petition on its merits. This is an issue of great importance to Massachusetts, and we appreciate your attention to our request.

Sincerely,

Edward J. Markey
United States Senator

Elizabeth Warren
United States Senator

⁵ Maura Healey et al., “State Entities Joint Motion for Extension of Time to Seek Intervention and Submit Protests,” (Apr. 29, 2020), Accession No. 20200429-5395

https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14856227

⁶ Tyson Slocum, Robert Backus, and Benny Cushing, “Motion to Intervene Out-of-Time, and Comment of Public Citizen, Inc., Chairman Robert Backus, and Chairman Renny Cushing,” (Jul. 18, 2010), Accession No. 20190718-5047 https://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20190718-5047