

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

New England Ratepayers Association

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Docket No. EL20-42-000

**FLORIDA PUBLIC SERVICE COMMISSION'S COMMENTS ON
NEW ENGLAND RATEPAYERS ASSOCIATION'S PETITION FOR
DECLARATORY ORDER**

Pursuant to notice issued in the above-referenced docket on May 4, 2020, by the Duty Secretary of the Federal Energy Regulatory Commission ("FERC"), the Florida Public Service Commission ("Florida Commission") submits these comments on the New England Ratepayers Association's (NERA) Petition for Declaratory Order filed on April 14, 2020. By its petition, NERA is requesting that FERC find that FERC, not state commissions, has exclusive jurisdiction over net metering.

The Florida Commission respectfully urges FERC to deny NERA's petition. As illustrated below, state jurisdiction in this area is firmly rooted in law and history. FERC should decline NERA's invitation to recede from its long-established precedent and infringe on state jurisdiction over net metering.

Net Metering Falls Within the Purview of State Jurisdiction

The Federal Power Act addresses FERC jurisdiction versus state jurisdiction:

It is declared that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest, and that the Federal regulation of matters relating to the generation to the extent provided in this subchapter and subchapter III of this chapter and of that part of such business which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is necessary in the public interest, *such Federal regulation, however, to extend only to those matters which are not subject to regulation by the States.*

16 U.S.C. § 824(a) (emphasis added). While NERA argues net metering is “wholesale sales,” FERC established many years ago that net metering transactions are a retail service – a billing mechanism – within the exclusive jurisdiction of states and state commissions. FERC’s long-established precedent rests on the premise that the mere flow of power from a customer to the distribution grid does not provide a basis for FERC to assert federal jurisdiction over net metering.

In *MidAmerican Energy Company*, 94 FERC ¶ 61340 (2001), FERC found that no sale occurs under the Federal Power Act when an individual homeowner or similar business entity installs generation and accounts for its dealings with the utility through net metering. FERC stated that in implementing the Public Utility Regulatory Policies Act (PURPA), it also recognized that net billing arrangements like those at issue in *MidAmerican Energy Company* could be appropriate in some situations and left the decision to state regulatory authorities. *Id.*

In *Sun Edison LLC*, 129 FERC ¶ 61146 (2009), FERC also addressed net metering¹ and upheld its decision in *MidAmerican Energy Company*. FERC found:

[FERC] does not assert jurisdiction when the end-use customer that is also the owner of the generator receives a credit against its retail power purchases from the selling utility. Only if the end-use customer participating in the net metering program produces more energy than it needs over the applicable billing period, and thus is considered to have made a net sale of energy to a utility over the applicable billing period, has [FERC] asserted jurisdiction.

Southern Cal. Edison Co. v. Federal Energy Regulatory Commission, 603 F.3d 996 (D.C. Cir. 2010), and *Calpine Corporation v. Federal Energy Regulatory Commission*, 702 F.3d 41

¹In the order, FERC described net metering as: “Net metering allows a retail electric customer to produce and sell power in the Transmission System without being subject to [FERC] jurisdiction. A participant in a net metering program must be a net consumer of electricity – but for portions of the day or portions of the billing cycle, it may produce more electricity than it can use itself. This electricity is sent back into the Transmission System to be consumed by other end-users. Since the program participant is still a net consumer of electricity, it receives an electric bill at the end of the billing cycle that is reduced by the amount of energy it sold back to the utility. Essentially, the electric meter “runs backwards” during the portion of the billing cycle when the load produces more power than it needs, and runs normally when the load takes electricity off the system.” *Id.*

(D.C. Cir. 2012), do not change FERC's holdings in *MidAmerican Energy Company* and *Sun Edison LLC*. Net metering transactions are considered retail services, and the law is clear that jurisdiction over retail services rests exclusively with states and state commissions.

Florida Activity Regulates Net Metering

The Florida Legislature exercised its authority over retail matters. For example, it has established numerous policies to encourage the development of renewable energy and to promote energy conservation in Florida. Among them, Section 366.91(5) and (6), Florida Statutes, enacted in 2008, require Florida electric utilities to develop a standardized interconnection agreement and net metering program for customer-owned renewable generation.

Section 366.91(2)(c), Florida Statutes, and Rule 25-6.065, Florida Administrative Code, define net metering as “a metering and billing methodology whereby customer-owned renewable generation is allowed to offset the customer's electricity consumption onsite.” Customer-owned renewable generation is defined in statute and rule as “an electric generating system located on a customer's premises that is primarily intended to offset part or all of the customer's electricity requirements with renewable energy.” These definitions make clear that customer-owned renewable generation primarily acts as a conservation measure that reduces a customer's load that must be served by the electric utility.

The rule, which is applicable to investor-owned utilities, establishes a billing mechanism that allows customers to offset their usage through the self-generation of energy, with any excess energy delivered to the grid being applied as a kilowatt-hour credit to the customer's monthly energy usage. At the end of the calendar year, the investor-owned utility pays for any remaining unused energy credits at its as-available energy rate.

As of year-end 2019, 59,508 customers in Florida have installed renewable generation systems and interconnected to their utility in order to net meter. Ninety percent of these customer-owned renewable facilities are 10 kW or smaller and are largely comprised of systems installed by residential homeowners. For all its discussion of law and policy, the practical impact of NERA's petition would be for FERC to insert itself into the relationship between a homeowner and their utility, which is well-established as a retail relationship under the jurisdiction of the states.

Granting NERA's petition would erase the long standing, bright line between the regulatory paradigms governing qualifying facilities and small power producers under federal authority, and behind-the-meter, customer facilities that are part of the state regulated retail service relationship. Facilities purposefully built to function as PURPA qualifying facilities, small power producers or other Federal Power Act jurisdictional wholesale generators, provide an alternative source of energy for Florida's vertically integrated electric utilities to use to serve retail load. These facilities provide wholesale energy to electric utilities under a federal regulatory paradigm. In contrast, behind-the-meter facilities installed by retail customers primarily act to reduce the customer's load to be served by the incumbent utility. These facilities primarily impact the customer's retail service requirement that is traditionally regulated by the states. NERA would have FERC improperly insert itself in the retail service arrangement between electric utilities and their customers, which is within the exclusive purview of the states.

As the entities charged with regulating the retail relationship between electric utilities and their customers, the Florida Legislature and the Florida Commission are in the best position to regulate net metering in Florida and determine the net metering policy for our State.

Conclusion

The Florida Commission respectfully urges FERC to deny NERA's petition.

Respectfully submitted,

/s/ Adria E. Harper

Adria E. Harper
Office of the General Counsel

FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850
(850) 413-6082
aharper@psc.state.fl.us

DATED: June 15, 2020

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this day served the foregoing document upon the parties identified on the Commission's official service list compiled by the Secretary in this proceeding.

Dated at Tallahassee, Florida, this 15th day of June 2020.

/s/ Adria E. Harper

Adria E. Harper

Office of the General Counsel

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2540 Shumard Oak Boulevard

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aharper@psc.state.fl.us