

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

**New England Ratepayers Association                            )             Docket No. EL20-42-000**

**Comments and Protest of the  
National Association of State Utility Consumer Advocates**

Pursuant to Rule 211 of the Federal Energy Regulatory Commission’s (FERC or Commission) Rules of Practice and Procedure, and the Commission’s May 4, 2020 Notice of Extension of Time, the National Association of State Utility Consumer Advocates (NASUCA)<sup>1</sup> files the following Comments and Protest against the Petition for Declaratory Order (Petition) filed on April 14, 2020 by the New England Ratepayers (Petitioner). NASUCA respectfully requests that the Commission deny the Petition and respect the state jurisdiction to regulate retail sales of electricity and related billing practices, as set forth under the Federal Power Act (FPA), 16 U.S.C. § 791 *et seq.*

**I. COMMENTS AND PROTEST**

NASUCA is a voluntary association of 58 state utility consumer advocate offices. NASUCA members represent the interests of utility consumers in 43 states, the District of Columbia, Puerto Rico, Barbados and Jamaica. NASUCA’s full members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal utility regulators and in the courts. NASUCA’s associate and affiliate members are recognized utility consumer advocates in their respective jurisdictions.

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<sup>1</sup> NASUCA filed a doc-less motion to intervene in this proceeding on June 5, 2020.

NASUCA appreciates the opportunity to be heard on this important issue. At this time, NASUCA limits its comments to two discrete issues. It reserves the right to address additional issues that may arise over the course of the proceeding.

**A. By Hiding the Identity of Its Constituents, Petitioner Fails to Demonstrate that the Petition is Ripe for Action under Rule 207(a)(2).**

Rule 207(a)(2) permits, but does not require, the Commission to issue declaratory orders “to terminate a controversy or remove uncertainty.” As explained below, Petitioner fails to identify any concrete controversy or uncertainty that warrant a declaratory order under Rule 207(a)(2).

Petitioner has offered no evidence that it in fact represents any identifiable “Ratepayers.” It has offered no evidence of where it receives its funding, a question from which the Commission could establish whether Petitioner is a legitimate “Ratepayer” representative. It has offered no evidence of what process its “members” used to determine that its interpretation of net metering law and policy should stand in replacement of legitimate state authority. It has identified no specific state-governed program that negatively impacts its members’ interests. Further, given that Petitioner is asking the Commission to override well recognized state jurisdictional authority and to substitute its judgement for the policy determinations made by state policy makers, granting the Petition would create controversy and uncertainty, not resolve it. These threshold deficiencies support an order dismissing the Petition.

Unlike the Petitioner, the list of NASUCA members is available to the public<sup>2</sup>. NASUCA members are directly answerable to the utility consumers each is designated by

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<sup>2</sup> [www.NASUCA.org/members](http://www.NASUCA.org/members).

law to represent. In most cases NASUCA members are also answerable to, and work in conjunction with other state policy-makers, whether the governor, legislature, state agencies or public utility commissions. It would be bad public policy to exalt the purported interests of a private, anonymous group over the interests of groups that are committed to public participation and transparent regulation.

**B. Should the Commission Reach the Merits, It Should Consider NASUCA’s Policy Resolutions on Net Metering.**

NASUCA will not focus on the legal arguments raised by Petitioner. A number of NASUCA members have intervened in this proceeding and will demonstrate the flaws in the legal arguments raised in the Petition. Numerous other parties will do so also. However, NASUCA does want to supply the record in this case with NASUCA Policy Resolution 2017-03, “*Updating NASUCA Resolution 1998-05 Regarding Small-Scale Renewable Generation and Net Energy Metering.*”<sup>3</sup> This policy resolution represents the collective consensus statement of NASUCA’s diverse membership and should be considered by the Commission in any evaluation of changes to longstanding net metering policy.

NASUCA Resolution 2017-03 reiterates that “*NASUCA believes that small-scale renewable generation policy and net energy metering policy should be decided at the state level, as state policy makers are in the best position to determine what is in the best interests of a state and its citizens, to understand the nuances of each local utility’s system, to effectively coordinate the various public policies that affect small-scale*

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<sup>3</sup> <https://www.nasuca.org/2017-03-nasuca-net-metering-updating-1998-resolution/>.

*renewable generation, to gather the appropriate evidence, and to hear and understand local concerns.”*

Further, and pertinent to the proceeding at hand, NASUCA specifically concludes that *“Congress and the FERC should refrain from acting specifically on small-scale renewable generation and net energy metering policy, or otherwise acting in a manner that would have the effect of, overriding state authority to make policy decisions for small-scale renewable generation and net energy metering.”*

NASUCA Resolution 2017-03 is attached to this pleading as Attachment A. NASUCA asks the Commission to consider this policy resolution should it reach the Petition’s merits.

## **II. CONCLUSION**

NASUCA appreciates the opportunity to add these comments and expression of policy on behalf of the NASUCA membership to the record in this proceeding. NASUCA respectfully requests that the Commission deny Petitioner’s request in this case and give due deference to the long established federal-state jurisdictional relationship set forth in the FPA and supported by the NASUCA membership.

Respectfully submitted,

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Counsel to the National Association  
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Dated: June 12, 2020

# **Attachment A**

## NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

### Resolution 2017-03

#### Updating NASUCA Resolution 1998-05 Regarding Small-Scale Renewable Generation and Net Energy Metering

**WHEREAS**, on June 10, 1999 NASUCA approved Resolution 1998-05, “Regarding Net Energy Metering for Small-Scale Renewable Generating Facilities”; and

**WHEREAS**, in support of Resolution 1998-05 NASUCA noted:

- NASUCA supports the development and increased use of renewable resources and has promoted regulatory strategies to effectively encourage the development of renewable resources; and
- renewable energy production has steadily improved in cost-effectiveness and performance and promises continued improvement; and
- net energy metering, an accounting mechanism whereby customers are billed only for their net energy consumption over a given billing period, provides a direct, inexpensive, and easily-administered mechanism for encouraging the demand side use of small scale renewable energy facilities; and
- greater support for net energy metering could help to remove or reduce market entry barriers, reduce the administrative burden and complexity of interconnecting small-scale renewable energy generating facilities, and encourage the effective use of such facilities; and

**WHEREAS**, in Resolution 1998-05 NASUCA Resolved to:

- urge(s) states to consider measures to make net energy metering available to small-scale renewable generating facilities, and *further request Congress and the FERC to identify and remove any barriers to state implementation of net energy metering*; and,
- support(s) further exploration of issues relating to implementation of net energy metering including such issues as: the eligibility for net metering of different customer classes; generating technologies and generator sizes; the appropriate metering and interconnection requirements for net energy metering facilities; state and federal barriers to implementation; and such issues as funding mechanisms to address any revenue impacts associated with the implementation of net energy metering; and

**WHEREAS**, in the nineteen years since NASUCA passed Resolution 1998-05, the cost-effectiveness and performance of small-scale renewable generation has continued to improve for customers, new third-party small-scale renewable generation financing models have been introduced, and policies like net energy metering have enabled more utility customers to implement small-scale renewable generation; and

**WHEREAS**, due to the tension between the popularity of small-scale renewable generation and the resulting costs on ratepayers who do not participate in net metering, many states are currently engaged in regulatory proceedings to evaluate the costs and benefits for customers of having more small-scale renewable generation on a utility system; and

**WHEREAS**, NASUCA members have an interest in ensuring that the costs and benefits of small-scale renewable generation are accurately determined and fairly apportioned among utility customers; and

**WHEREAS**, NASUCA members advocate in the overall public interest and represent the interests of customers who choose to install distributed generation facilities as well as those who do not; and

**WHEREAS**, NASUCA members continue to have an interest in maintaining an economically efficient, adequate and reliable electric system; and

**WHEREAS**, just as the small-scale renewable generation market has evolved since Resolution 1998-05 was passed, NASUCA member consensus regarding distributed generation and net energy metering policy has also evolved, prompting NASUCA to update Resolution 1998-05;

**THEREFORE, BE IT RESOLVED**, that NASUCA hereby now revisits the issues addressed in Resolution 1998-05 as follows:

- NASUCA continues to support the availability of cost effective small-scale renewable generation options for utility customers, with due consideration of its costs and benefits for all utility customers; and
- NASUCA encourages states to continue to thoroughly evaluate the costs and benefits of net energy metering on participants and non-participants as they continue to evolve over time, taking into account the relevant ratemaking and rate design in the state; and
- NASUCA views net energy metering as one of many policies that may be considered and implemented by state policy makers to support small-scale renewable generation; and
- NASUCA believes that small-scale renewable generation policy and net energy metering policy should be decided at the state level, as state policy makers are in the best position to determine what is in the best interests of a state and its citizens, to understand the nuances of each local utility's system, to effectively coordinate the various public policies that affect small-scale renewable generation, to gather the appropriate evidence, and to hear and understand local concerns; and
- NASUCA concludes that Congress and the FERC should refrain from acting specifically on small-scale renewable generation and net energy metering policy, or otherwise acting in a manner that would have the effect of, overriding state authority to make policy decisions for small-scale renewable generation and net energy metering.

**BE IT FURTHER RESOLVED**, that NASUCA authorizes its Executive Committee to develop specific positions and to take appropriate actions consistent with the terms of this resolution. The Executive Committee shall advise the membership of any proposed action prior to acting if possible. In any event the Executive Committee shall notify the membership of any action pursuant to this resolution

**Submitted by the Electric Committee**  
**Approved by the Membership June 5, 2017**  
**Denver, Colorado**



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that one copy of the foregoing pleading has this day been served by a means permitted by Rule 2010(f) of the Federal Energy Regulatory Commission's Rules of Practice and Procedure on each person whose name appears on the Official Service List compiled by the Secretary in this proceeding.

/s/ Jason T. Gray

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Dated at Washington, DC  
This 12th day of June, 2020

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