

June 15, 2020

The Honorable Neil Chatterjee, Chairman
The Honorable Richard Glick, Commissioner
The Honorable Bernard McNamee, Commissioner
The Honorable James Danley, Commissioner
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: *New England Ratepayers Association*, Docket No. EL20-42

Dear Chairman Chatterjee and Commissioners:

The undersigned state attorneys general protest the New England Ratepayers Association's (NERA) Petition for Declaratory Order (Petition), filed on April 14, 2020 in the above-referenced proceeding before the Federal Energy Regulatory Commission (Commission).¹ We respectfully request that the Commission deny the Petition and respect the states' recognized authority to regulate retail sales of electricity and related billing practices under the Federal Power Act (FPA), 16 U.S.C. § 791a *et seq.*, including net metering.

As state attorneys generals, we are a bi-partisan group of 31 state law enforcement officers from across the nation, many of whom represent ratepayer interests in our respective states. Legislatures and public utilities commissions in all or nearly all of our states have adopted and now administer net metering for retail customers, consistent with the powers explicitly reserved to the states under the FPA, which restricts federal regulation of the electric power sector solely to the transmission and wholesale sale of electric energy in interstate commerce, and preserves all other authority for the states. 16 U.S.C. § 824(b)(1); *New York v. FERC*, 535 U.S. 1, 17 (2001). In implementing net metering, the states have carefully considered legal and policy issues associated with the retail billing practice, such as ratepayer impacts and net metering's effects on each state's generation resource mix, and should remain the sole decision-making authorities for any further consideration of state net metering policy in the future, consistent with the law.

Under state leadership, net metering is now a cornerstone retail energy policy across the country. Such programs exist in more than 40 states, from Maine to North Dakota to California.² In these states, more than two million retail customers have made substantial investments in rooftop solar and other distributed generation resources to help power their homes and lower monthly electricity bills.³ Businesses that serve net metering customers have created new jobs and additional sources of tax revenue, providing important and long-term benefits to state economies and residents.

¹ 18 C.F.R. § 385.211(a)(1).

² Ashley J. Lawson, Cong. Research Serv., R46010, *Net Metering: In Brief 2* (2019).

³ *Id.*

The NERA Petition is contrary to the law in asking the Commission to interfere in the established federal-state jurisdictional relationship under the FPA that reserves power to regulate net metering to the states alone. As the Supreme Court has recently concluded, to “specif[y] terms of sale at retail” is “a job for the States alone.” *FERC v. Elec. Power Supply Ass’n*, 136 S. Ct. 760, 776 (2016). NERA’s Petition ignores this fundamental principle and should be rejected.

We appreciate the Commission’s careful consideration of this protest, and respectfully request that the Commission deny NERA’s Petition for the reasons stated above, thereby recognizing and preserving appropriate state authority over retail electricity billing practices.

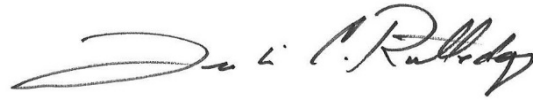
Respectfully,



MAURA HEALEY
Massachusetts Attorney General



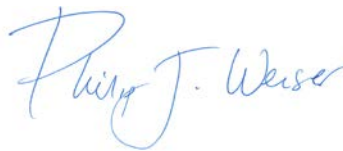
KEVIN G. CLARKSON
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XAVIER BECERRA
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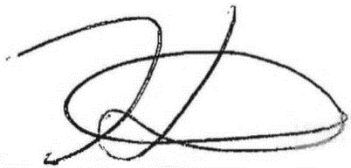
PHIL WEISER
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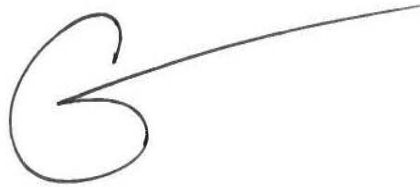
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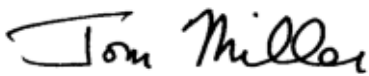
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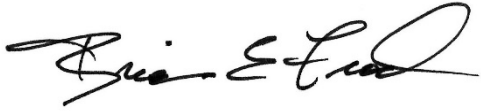
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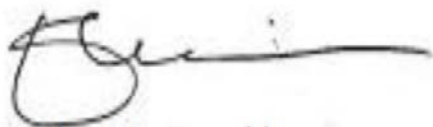
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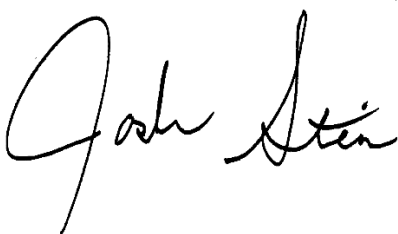
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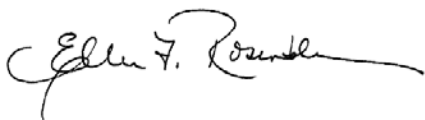
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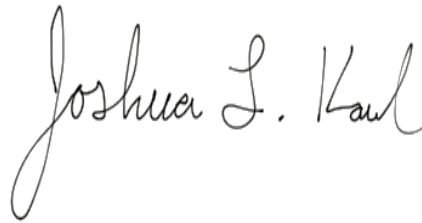
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CERTIFICATE OF SERVICE

In accordance with 18 C.F.R. § 385.2010, I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Boston, Massachusetts this 15th day of June, 2020.

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