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Groups Support FERC's Role in Enabling a Cleaner, More Efficient Energy System
Filing Highlights: Clean Energy and Consumer Impacts of FERC Order 745

WASHINGTON (February 17, 2015) -- Twelve environmental and consumer groups—including the Natural Resources Defense Council (NRDC), Environmental Defense Fund (EDF), Sierra Club, and consumer advocate offices for five states and the District of Columbia—today urged the Supreme Court to hear an appeal of a lower court ruling that invalidated a cornerstone reform for a cleaner, more reliable, and customer-friendly electric grid.

The case involves Order 745, issued by the Federal Energy Regulatory Commission (FERC), the agency tasked with regulating the nation's energy system. The Order involves demand response – paying customers for saving energy during peak demand when wholesale energy prices skyrocket – and provides grid operators with an innovative tool to help balance supply and demand. Under Order 745, compensation in the wholesale energy markets was the same for demand response as for traditional electricity generation.

“Order 745 is vital to reducing polluting fossil-fuel fired electricity generation with a cleaner and smarter strategy to meet America’s power needs,” said John Moore, senior attorney with the Sustainable FERC Project Coalition housed within NRDC. “We urge the Supreme Court to consider this critical issue.”

The U.S. Court of Appeals for the District of Columbia Circuit overturned Order 745 last year on the basis that FERC was prohibited from regulating compensation for demand response in the energy markets covered by the Order. Although demand response has been part of the electricity markets for years—providing considerable savings—and the agency has congressional authority to “police” practices that “affect” wholesale rates, the court ruled that FERC did not have the authority to issue the Order. The United States Solicitor General, on behalf of FERC, petitioned the high court last month to hear its appeal of this lower court decision invalidating Order 745.

“Demand response relies on customers and cutting-edge technology, not power plants, to meet electrical demand, and is cleaner and more cost-effective than building new generation. We hope the Supreme Court will review the lower court’s mistaken decision and help to ensure this

highly flexible resource plays a key role in our country's clean energy future," said Michael Panfil, EDF attorney.

The groups participating in the filing today are: Citizens Utility Board of Illinois; Conservation Law Foundation; Delaware Division of the Public Advocate; Division of the Public Advocate in Washington, D.C.; Environmental Defense Fund; Environmental Law and Policy Center; Maryland Office of People's Counsel; NRDC; New Jersey Pennsylvania Office of the Consumer Advocate; Sierra Club; and the West Virginia Consumer Advocate Division. In addition, three state public utility commissions, several providers of demand response services, and major market operators also have either filed petitions for *certiorari* (i.e., a request for Supreme Court review) or made supportive filings.

"We are at a critical time of transition to a low-carbon grid and the uncertainty unleashed by the D.C. Circuit's erroneous decision threatens to slow that progress unless the Supreme Court intervenes, said Casey Roberts, Sierra Club attorney.

Demand response has become a critical component of our nation's electric grid, lowering electricity prices, reducing air pollution, and improving reliability. For example, when many fossil fuel-burning generators went offline due to the extreme cold during last winter's Polar Vortex, PJM called on demand resource to avoid taking more extreme measures to avoid blackouts.

Order 745 has helped this resource grow at the regional level. Environmental and consumer groups argue that if the Supreme Court declines to hear FERC's appeal of Order 745, FERC will lose an important tool to strengthen grid reliability, save people money, and reduce pollution.

"This case is about FERC's ability to remove barriers to a vital clean energy resource participating in wholesale energy markets and to ensure just and reasonable rates. The D.C. Circuit's decision puts the many benefits that demand response provides to consumers and our environment at risk. Supreme Court review is needed," said Jill Tauber, Managing Attorney of the Clean Energy Program at Earthjustice, which is helping represent NRDC in the case.

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The Natural Resources Defense Council (NRDC) is an international nonprofit environmental organization with more than 1.4 million members and online activists. Since 1970, our lawyers, scientists, and other environmental specialists have worked to protect the world's natural resources, public health, and the environment. NRDC has offices in New York City, Washington, D.C., Los Angeles, San Francisco, Chicago, Bozeman, MT, and Beijing. Visit us at www.nrdc.org and follow us on Twitter @NRDC.

Environmental Defense Fund (edf.org), a leading international nonprofit organization, creates transformational solutions to the most serious environmental problems. EDF links science, economics, law and innovative private-sector partnerships. Connect with us on our Energy Exchange blog, Twitter, and Facebook.

The Sierra Club is America's largest and most influential grassroots environmental organization, with more than 2.4 million members and supporters. In addition to helping people from all backgrounds explore nature and our outdoor heritage, the Sierra Club works to promote clean energy, safeguard the health of our communities, protect wildlife, and preserve our remaining wild places through grassroots activism, public education, lobbying, and legal action. For more information, visit www.sierraclub.org