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196 FERC ¶ 61,228
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Laura V. Swett, Chairman;
David Rosner, Lindsay S. See,
Judy W. Chang, and David LaCerte.

NextEra Energy Marketing, LLC Docket No. RP26-855-000

ORDER DISMISSING PETITION FOR DECLARATORY ORDER

(Issued September 23, 2026)

1. On May 19, 2026, NextEra Energy Marketing, LLC (NextEra) filed a petition for declaratory order (Petition) requesting that the Commission confirm that it has exclusive jurisdiction over certain wholesale natural gas sales which are the subject of ongoing litigation in the Oklahoma state court system. As discussed below, we dismiss the Petition.

I. Petition

2. NextEra is a marketer, buying gas from producers and other marketers and selling gas to other market participants, including utilities, and is affiliated with several interstate natural gas pipelines. NextEra requests that the Commission: (1) assert jurisdiction over specific natural gas commodity sales that NextEra made during Winter Storm Uri in February 2021, which are the subject of ongoing litigation brought by the Oklahoma Attorney General against NextEra in Oklahoma state court;[1] (2) assert exclusive jurisdiction over the wholesale natural gas market and the conduct at issue in Oklahoma's litigation; (3) declare that Oklahoma's price cap law "intrudes on the Commission's exclusive jurisdiction over wholesale rates";[2] (4) convene a trial-type evidentiary hearing "to develop the underlying facts";[3] and (5) take any other action it deems necessary, including potentially issuing an order to show cause against the Oklahoma Attorney General.

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[1] *State of Okla. ex rel. Gentner Drummond v. Symmetry Energy Sols., LLC, et al.*, No. CJ-2025-06 (Dist. Ct. Osage Cnty., Okla.).

[2] Petition at 31.

[3] *Id.* at 3 n.7.

3. NextEra argues that the Oklahoma litigation conflicts with the Commission's authority to regulate the sale for resale of natural gas in interstate commerce. NextEra contends that at least some of the litigated transactions were sales for resale in interstate commerce.[4] NextEra concedes that at least some of the litigated sales "are clearly not" "within FERC's jurisdiction," and that further fact-finding is required for others.[5] NextEra asserts that some transactions "may come within the Oklahoma trial court's jurisdiction" while other transactions are "within the exclusive jurisdiction of the Commission."[6] However, NextEra argues that the Commission has exclusive jurisdiction over the relevant wholesale natural gas markets, and that "state-law claims targeted at wholesale pricing are field-preempted."[7] Therefore, NextEra requests that the Commission issue "a declaratory order confirming … the preemptive effect of federal law on state-imposed price caps."[8]

4. In the state litigation, the Oklahoma Attorney General alleges that several marketers, including NextEra, violated Oklahoma anti-trust, consumer-protection, and unjust enrichment laws. The Oklahoma Attorney General also alleges violation of an emergency price stabilization law, the Oklahoma Emergency Price Stabilization Act, which imposes a strict liability ban on any in-state sales that exceed a price cap.[9]

II. Notice of Filing and Responsive Pleadings

5. Public notice of the filing was issued on June 8, 2026. Interventions and protests were due June 24, 2026. Pursuant to Rule 214,[10] all notices of intervention and timely filed motions to intervene and any unopposed motion to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. On June 24, 2026, the Interstate Natural Gas Association of America (INGAA) and Natural Gas Supply Association (NGSA) intervened and jointly filed comments. On June 24, 2026, the State of Oklahoma (Oklahoma) intervened and filed a motion to

[4] *Id.* at 6.

[5] *Id.* at 10 n.32.

[6] *Id.* at 1.

[7] *Id.* at 5.

[8] *Id.* at 1.

[9] Oklahoma Protest at 5.

[10] 18 C.F.R. § 385.214 (2025).

dismiss or, in the alternative, protest to the Petition. On July 10, 2026, NextEra filed an answer to Oklahoma's protest and motion to dismiss.

6. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority.[11] We reject NextEra's answer because it does not provide information that has assisted us in our decision-making process.

7. In their comments, INGAA and NGSA argue that the Commission should assert "uniformity of regulation" over the market to "[c]larify and [s]afeguard" Commission jurisdiction.[12] They argue that doing so would "support long-term contracting and investment in the natural gas industry."[13]

8. Oklahoma argues that NextEra's sales generally count as state-jurisdictional first sales, and not as Commission-jurisdictional pipeline sales for resale. Oklahoma requests that the Commission dismiss the Petition because a state court is already hearing the dispute. Oklahoma states that, with the exception of one transaction subject to summary judgment, the disputed transactions are still subject to the discovery process.[14]

III. Commission Determination

9. Declaratory orders to terminate a controversy or remove uncertainty are discretionary.[15] We exercise our discretion not to issue a declaratory order here and dismiss the Petition based on the totality of the circumstances, as discussed below.

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[11] 18 C.F.R. § 385.213. Rule 213 provides that an answer to a protest is not permitted, and an answer to a motion to dismiss must be filed within 15 days, which would be July 9, 2026.

[12] INGAA and NGSA Comments at 4, 9.

[13] *Id*. at 5.

[14] Oklahoma Protest at 4-7, 19-20.

[15] 5 U.S.C. § 554(e) (stating that, under the Administrative Procedure Act, the "agency, with like effect as in the case of other orders, and in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty"); *Cont'l Oil Co. v. FPC*, 285 F.2d 527, 527 (5th Cir. 1961) (*per curiam*); *New Eng. Ratepayers Ass'n*, 172 FERC ¶ 61,042, at P 35 (2020); *Stowers Oil & Gas Co.*, 27 FERC ¶ 61,001, at 61,001 (1984) (noting that "there is ample authority for the proposition that Commission action on petitions for declaratory order is discretionary with the agency"); *accord Morgan Stanley Cap. Grp., Inc.*, 119 FERC ¶ 61,298, at P 17 (2007) (Commission "has

10. NextEra requests declarations regarding the Commission's jurisdiction in order to preempt state litigation regarding certain NextEra natural gas sales.[16] We find that the parties' dispute about whether state jurisdictional sales violated state law can be resolved via the ongoing proceedings in Oklahoma state court. To the extent any sales in the state litigation are not state jurisdictional sales, the types of preemption arguments NextEra presents are routinely presented to and resolved by courts.

11. With regard to NextEra's request for declarations asserting Commission jurisdiction over wholesale natural gas sales in interstate commerce, NextEra acknowledges that the law governing natural gas sales jurisdiction is "well-settled"[17] and we see no need to issue a restatement. Further, applying those well-settled jurisdictional boundaries to the NextEra sales at issue here would be a fact-intensive endeavor. "Under the Natural Gas Act, a separate jurisdictional analysis must be applied to each transportation and sale for resale in the flow of gas from the wellhead to the burner tip."[18] The Commission has often exercised its discretion to decline to issue declaratory orders when the facts are not sufficiently developed,[19] and here there is a pending state court

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discretion as to whether to issue a declaratory order in particular circumstances in order to terminate a controversy or remove uncertainty"); *Ark. Power & Light Co.*, 35 FERC ¶ 61,358, at 61,818 (1986) (granting of petition for declaratory order "is a matter of agency discretion").

[16] Petition at 1 (seeking declaration on "the preemptive effect of federal law on state-imposed price caps"), 19 ("The Commission should declare that the State Action infringes on the Commission's jurisdiction.").

[17] *Id.* at 3.

[18] *Delhi Gas Pipeline Corp.*, 19 FERC ¶ 61,189, at 61,365 (1982); *see also* NGPA § 602(a), 15 U.S.C. § 3432.

[19] *See Interstate Nat. Gas Ass'n of Am.*, 18 FERC ¶ 61,170, at 61,337 (1982) ("Conversely, the Commission has refused to utilize the declaratory order procedure where, as here, the uncertainty is based upon the assumption of hypothetical facts which are not actually extant and therefore, not susceptible of resolution through the issuance of a declaratory order.").

proceeding where a factual record about the relevant sales is actively being developed.[20] Based on the totality of the circumstances presented here, we dismiss the Petition.

The Commission orders:

The Petition is hereby dismissed.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.

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[20] *See Portland Gen. Elec. Co.*, 127 FERC ¶ 61,255, at P 13 (2009) (dismissing petition for declaratory order where certain issues would potentially be resolved in another ongoing proceeding).

Document Content(s)