

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

**EDF power solutions Development, Inc.  
(f/k/a EDF Renewables Development Inc.)**

**Docket No. EL25-111-000**

**MOTION TO INTERVENE AND PROTEST OF  
THE AMERICAN PUBLIC POWER ASSOCIATION, LARGE PUBLIC POWER  
COUNCIL AND NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

The American Public Power Association (“APPA”), Large Public Power Council (“LPPC”), and National Rural Electric Cooperative Association (“NRECA”) hereby move to intervene in the above-captioned proceeding and protest the August 7, 2025, petition filed by EDF power solutions Development, Inc. (“EDF”) seeking a declaratory order that the Salt River Project Agricultural Improvement and Power District (“SRP”) no longer has a valid reciprocity tariff and requesting that the Federal Energy Regulatory Commission (“Commission”) order SRP to reinstate EDF’s project to SRP’s interconnection queue.

The Commission should deny EDF’s petition because it would contradict decades of settled Commission precedent and exceed the Commission’s statutory authority.

**I. MOTION TO INTERVENE**

APPA, LPPC, and NRECA each move to intervene in the above-captioned proceeding, pursuant to Rule 214 of the Commission’s rules of practice and procedure,<sup>1</sup> because they each represent an interest that may be directly affected by the outcome of this proceeding and because their participation is in the public interest.

**A. DESCRIPTION OF APPA, LPPC, AND NRECA**

APPA is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. Public power utilities are in every state except Hawaii. They collectively

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<sup>1</sup> 18 C.F.R. § 385.214.

serve over 55 million people in 49 states and five U.S. territories, and account for 15 percent of all sales of electric energy (kilowatt-hours) to end-use consumers.

LPPC is an association of 29 of the nation's largest municipal and state-owned utilities, representing the larger, asset-owning members of the public power community and approximately 90% of the transmission assets owned by public power. Located throughout the nation, many of LPPC's members are transmission-owning members of independent system operators (“ISOs”) and regional transmission organizations (“RTOs”), while others are considering membership in regions of the nation in which ISOs/RTOs and other organized markets are yet being developed.

NRECA is the national trade association representing nearly 900 local electric cooperatives and other rural electric utilities. America’s electric cooperatives are built by and owned by the people that they serve and comprise a unique sector of the electric industry. Electric cooperatives operate at cost and without a profit incentive. From growing regions to remote farming communities, electric cooperatives serve 42 million people (one of every eight electric consumers), powering 22 million businesses, homes, schools and farms in 48 states and across 56 percent of the nation’s landmass.<sup>2</sup>

**B. APPA, LPPC, AND NRECA’S INTERESTS IN THIS PROCEEDING**

APPA, LPPC, and NRECA each have members that are non-public utilities, that is, utilities that Congress exempted from the Commission’s jurisdiction pursuant to Federal Power Act (“FPA”) section 201(f). EDF’s petition raises questions about the scope of the reciprocity condition that non-public utilities must satisfy to obtain open access transmission service from public utilities. The outcome of this proceeding will thus affect APPA, LPPC, and NRECA

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<sup>2</sup> The facts and figures in this description of NRECA member cooperatives, and their sources, are posted on the NRECA public website. See <https://www.electric.coop/electric-cooperative-fact-sheet> (visited September 5, 2025).

members and the customers they serve. APPA, LPPC, and NRECA submit that their participation in this proceeding is in the public interest and hereby move, pursuant to Rule 214 of the Commission's rules of practice and procedure, to intervene in this proceeding.

**C. COMMUNICATIONS**

All correspondence, communications, pleadings, and other documents related to this proceeding should be addressed to the following individuals:<sup>3</sup>

**American Public Power Association**

Latif M. Nurani  
AMERICAN PUBLIC POWER ASSOCIATION  
2451 Crystal Drive, Suite 1000  
Arlington, VA 22202  
(202) 467-2900  
[lnurani@publicpower.org](mailto:lnurani@publicpower.org)

**Large Public Power Council**

Jonathan D. Schneider  
John E. McCaffrey  
Stinson LLP  
1775 Pennsylvania Avenue NW  
Suite 800  
Washington, DC 20006  
(202) 785-9100  
[jonathan.schneider@stinson.com](mailto:jonathan.schneider@stinson.com)  
[John.McCaffrey@stinson.com](mailto:John.McCaffrey@stinson.com)

**National Rural Electric Cooperative Association**

Mary Ann Ralls  
Senior Director, Regulatory Affairs  
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION  
4301 Wilson Blvd.  
Arlington, VA 22203  
[maryann.ralls@nreca.coop](mailto:maryann.ralls@nreca.coop)

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<sup>3</sup> APPA, LPPC, and NRECA request that the Commission waive Rule 203(b)(3), 18 C.F.R. § 385.203(b)(3), to allow each of the individuals listed below to be placed on the official FERC service list in order to avoid delays in receipt of notices and responses to pleadings.

## II. PROTEST

This is an easy petition for the Commission to dismiss. EDF first asks the Commission to declare that SRP's reciprocity tariff is no longer valid.<sup>4</sup> But SRP does not claim to have a valid reciprocity tariff on file with the Commission; instead SRP satisfies the reciprocity condition through bilateral agreements with the jurisdictional transmission providers from which it takes service. Because there is neither controversy nor uncertainty over the validity of SRP's reciprocity tariff, EDF's petition does not satisfy the requirements of Rule 207.<sup>5</sup>

EDF next asks the Commission to exercise its remedial authority to order SRP to reinstate EDF's project to SRP's interconnection queue without loss of queue position.<sup>6</sup> The Commission lacks statutory authority to issue such an order.

### A. GRANTING EDF'S REQUEST WOULD CONTRADICT DECADES OF SETTLED COMMISSION PRECEDENT.

#### 1. Reciprocity requires a non-public transmission provider to provide comparable transmission service as a condition of taking jurisdictional transmission service.

The Commission established the reciprocity principle nearly three decades ago, not as an obligation for non-public utilities to comply with Commission orders issued pursuant to Federal Power Act sections 205 and 206, but rather as a condition that jurisdictional transmission providers may impose on non-public utilities who take open access transmission service.

Starting with first principles: Congress explicitly excluded public power utilities, most cooperative utilities, and federal power marketing agencies from the requirements of Part II of

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<sup>4</sup> EDF Petition at 1, 6.

<sup>5</sup> 18 C.F.R. § 385.207(a)(2) (A person may file a petition for declaratory order “to terminate a controversy or remove uncertainty.”).

<sup>6</sup> EDF Petition at 1, 11.

the Federal Power Act, unless a requirement specifically references such non-public utilities.<sup>7</sup>

The Commission and the courts have consistently held that the Commission may not regulate a non-public utility's rates, terms, or conditions for transmission service.<sup>8</sup>

This statutory limitation on the Commission's jurisdiction over non-public utilities played an important role in Order No. 888.<sup>9</sup> To remedy systemic undue discrimination by transmission owners, the Commission proposed to require all public utilities owning or controlling transmission facilities to file open access transmission tariffs. "Several commenters argue[d] that the open access requirement must be applied to non-jurisdictional utilities that own interstate transmission facilities."<sup>10</sup> The Commission declined to extend the requirement to non-public utilities, because "[w]e have no authority under [sections 205 and 206] to require non-public utilities to file tariffs with the Commission."<sup>11</sup>

The Commission nevertheless sought to encourage non-public utilities to provide access to their transmission systems, so it established the reciprocity condition: a public utility offering open access transmission service to a non-public utility could condition that service on an

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<sup>7</sup> 16 U.S.C. § 824(f) ("No provision in this subchapter shall apply to, or be deemed to include, the United States, a State or any political subdivision of a State, an electric cooperative that receives financing under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) or that sells less than 4,000,000 megawatt hours of electricity per year, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one or more of the foregoing, or any officer, agent, or employee of any of the foregoing acting as such in the course of his official duty, unless such provision makes specific reference thereto.")

<sup>8</sup> See, e.g., *Jacksonville Elec. Auth.*, 166 FERC ¶ 61,124 at P 26 (2019); *Bonneville Power Admin. v. FERC*, 422 F.3d 908, 911-914 (9th Cir. 2005).

<sup>9</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>10</sup> Order No. 888 at 31,690.

<sup>11</sup> *Id.* at 31,691.

agreement by the non-public utility to offer comparable transmission service in return.<sup>12</sup>

Reciprocity was not designed as an obligation for non-public utilities to file open access transmission tariffs.

Importantly, the Commission made clear that the reciprocity condition could be satisfied by a non-public utility offering comparable, not identical, service to a public utility transmission provider. Section 6 of the Commission's *pro forma* OATT specifies that the condition is for the non-public utility "to provide *comparable* transmission service *that it is capable of providing* to the Transmission Provider on *similar* terms and conditions" over the non-public utility's transmission facilities.<sup>13</sup> In a subsequent rulemaking proceeding, the Commission confirmed that the "rates, terms and conditions of the reciprocal service are not required to be identical to those offered by the public utility."<sup>14</sup>

In ruling on EDF's petition in this proceeding, the Commission should acknowledge and reaffirm these core principles of reciprocity.

**2. A non-public utility's reciprocity obligation is owed exclusively to jurisdictional transmission providers from which the non-public utility takes service.**

Another debate that arose thirty years ago was to whom a non-public utility must offer comparable service to satisfy the reciprocity condition. Some argued that non-public utilities should be required to provide reciprocal service to all utilities. The Commission soundly rejected

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<sup>12</sup> *Id.* at 31,760; *see also* Order 888-A, 62 FR 12274 at 12383 ("we are conditioning the use of open-access services by all customers, including non-public utilities, on an agreement to offer comparable transmission services in return to the public utility transmission provider.").

<sup>13</sup> Order No. 888, Appendix B, § 6 (emphasis added).

<sup>14</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 FR 49846 (Aug. 18, 2003), FERC Stats. & Regs. ¶ 31,146 at PP 775 (2003), *order on reh'g*, Order No. 2003-B, 70 FR 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 FR 37661 (Jun. 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert denied*, 552 U.S. 1230 (2008).

that approach, holding in Order No. 888 that “we intend that reciprocal service be limited to the transmission provider.”<sup>15</sup> The Commission further elaborated, in Order No. 888-A, that even if a non-public utility voluntarily files an open access tariff with the Commission, the non-public utility is permitted to restrict that filed tariff to be used only by transmission providers from which the non-public utility takes service.<sup>16</sup>

Some utilities appealed the Commission’s decision not to open reciprocity to all utilities. They argued that the limited scope might lead to discrimination and that the Commission’s rationale for the limitation—which rested in part on tax considerations that were under reconsideration by the Internal Revenue Service—was unsound. The D.C. Circuit disagreed. In its opinion largely upholding Order No. 888, the court specifically affirmed that “non-public utilities owe reciprocal open access only to the public utility from which they take open access service—not to all utilities.”<sup>17</sup> The court found that the Commission’s primary reason for limiting the scope of reciprocity was its concern that it lacked jurisdiction to apply the reciprocity provision to all utilities.<sup>18</sup>

In the instant proceeding, SRP does not take transmission service from EDF, so EDF has no right to claim reciprocal service from SRP. The Commission should therefore apply its well-established precedent to deny EDF’s petition.

**3. A non-public utility may satisfy the reciprocity condition by means of (i) a safe harbor tariff, (ii) bilateral agreements, or (iii) seeking waiver.**

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<sup>15</sup> Order No. 888 at 31,760.

<sup>16</sup> Order No. 888-A, 62 FR 12274 at 12278 (“A non-public utility may limit the use of any reciprocity tariff that it voluntarily files at the Commission to those transmission providers from whom the non-public utility obtains open access service.”).

<sup>17</sup> *TAPS*, 225 F.3d at 698.

<sup>18</sup> *Id.* In subsequent proceedings, the Commission rejected attempts to expand the reciprocity condition to additional utilities. See *American Transmission Company LLC*, 93 FERC ¶ 61,267 at 61,858-61,859 (2000).

As noted above, the Commission lacks jurisdiction under sections 205 and 206 to order a non-public utility to file a tariff. Nevertheless, in Order No. 888, the Commission established a “safe harbor” procedure by which a non-public utility could file an open access tariff and seek a declaratory order that the non-public utility had satisfied the reciprocity condition.<sup>19</sup> This safe harbor procedure was established to alleviate a concern raised by non-public utilities that “a public utility may deny service based simply on a claim that the open access tariff offered by a non-public utility is not satisfactory.” The purpose of the safe harbor tariff was “to assist these non-public utilities” but the Commission emphasized that the procedure “would be purely voluntary for non-public utilities.”<sup>20</sup> The Commission affirmed that the reciprocity condition “will not impose any burden on non-public utilities, since they need not themselves file open access tariffs.”<sup>21</sup>

The Commission offered two alternatives for non-public utilities that opt not to maintain a safe harbor tariff,<sup>22</sup> which has resulted in the now-canonical statement of the three ways to satisfy reciprocity:

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<sup>19</sup> Order No. 888 at 31,761.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 31,897 (“If non-public utilities elect not to take advantage of open access services because they do not want to meet the tariff reciprocity provision, they can still seek voluntary, bilateral transmission services from public utilities. Also, under the waiver provisions in the Open Access Final Rule, small non-public utilities may seek waiver from the reciprocity provision.”); *see also* Order No. 888-A 62 FR 12274 at 12278 (“a public utility is free to offer transmission service to a non-public utility without requiring reciprocal service in return. In other words, it may voluntarily waive the reciprocity condition.”).



A non-public transmission provider may satisfy the reciprocity condition in one of three ways:

- (1) it may provide service under a tariff that has been approved by the Commission under the voluntary “safe harbor” provision of the *pro forma* OATT;
- (2) it may provide service to a public utility transmission provider under a bilateral agreement; or
- (3) it may seek a waiver of the reciprocity condition from the transmission provider.<sup>23</sup>

Today, the majority of non-public utilities have chosen to rely on bilateral agreements with jurisdictional transmission providers rather than availing themselves of the voluntary safe harbor. Many of the non-public utilities that once filed safe harbor tariffs have continued to update their own tariffs to provide comparable service as the Commission’s requirements for the *pro forma* OATT evolved. But—to reduce administrative burden or for other reasons—they have chosen not to file those updated tariffs with the Commission as safe harbor tariffs.

SRP is a typical example of this. It once had a safe harbor tariff on file with the Commission, but it now provides comparable service under bilateral agreements. That is entirely consistent with three decades of Commission precedent.

In this proceeding, EDF seeks a declaration that SRP lacks a valid safe harbor tariff; but SRP does not claim to have one. There is no controversy to resolve. No uncertainty to be removed. EDF’s petition therefore does not comply with the Commission’s rules for seeking declaratory orders,<sup>24</sup> so it must be denied.

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<sup>23</sup> *Bldg. for the Future Through Elec. Reg’l Transmission Plan. & Cost Allocation*, Order No. 1920-A, 89 FR 97174 (Dec. 6, 2024), 189 FERC ¶ 61,126, P 924 (2024), *order on reh’g*, Order 1920-B, 191 FERC ¶ 61,026 (2025). The Commission has used nearly identical language in Order No. 890, Order No. 1000, and Order No. 2003; other major orders, such as Order No. 2023, use very similar language for the same proposition.

<sup>24</sup> 18 C.F.R. § 385.207(a)(2).

**4. Reciprocity does not confer jurisdiction to the Commission over a non-public utility or its tariff.**

EDF does not stop with its request for an unnecessary declaration. EDF goes on to request extraordinary relief: that the Commission order SRP to reinstate its Rainbow Valley project to SRP's interconnection queue. The Federal Power Act prohibits the Commission from granting EDF's request.

In Order No. 888 and in many successive orders, the Commission has explicitly stated that the reciprocity condition does *not* expand the Commission's jurisdiction over non-public utilities or their tariffs.<sup>25</sup> Even in cases where a non-public utility has a safe harbor tariff on file with the Commission, the Commission has no authority to enforce it.<sup>26</sup>

Relief here is squarely controlled by the Commission's decision in *Gladstone*.<sup>27</sup> That 2020 case involved the developer of a wind generating facility that was seeking to interconnect with the transmission system of what was then a non-public utility.<sup>28</sup> The non-public utility had filed a safe harbor reciprocity tariff two decades earlier, but had chosen not to update the safe harbor tariff. The developer complained that the non-public utility's failure to comply with the Commission's 2003 generator interconnection reforms had resulted in the wind facility's removal from the non-public utility's interconnection queue. The developer requested the same

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<sup>25</sup> Order No. 888 at 31,691.

<sup>26</sup> *E. Ky. Power Coop., Inc.*, 144 FERC ¶ 61,063, at P 19 n.17 (2013) ("Even if the reciprocity OATT remained on file, this Commission cannot enforce its provisions."); *THSI*, 185 FERC ¶ 61,032, P 54 (2023) ("Protestors are correct that the Commission may not enforce a non-public utility's tariff, including [a non-public utility's] unfilled LGIP."); *Goose Creek*, 172 FERC ¶ 61,165 at P 46 ("Because Santee Cooper is not a public utility, the Commission has no authority to review Santee Cooper's services to Goose Creek under either sections 205 or 206.").

<sup>27</sup> *Gladstone New Energy LLC v. Tri-State Generation and Transmission Association, Inc.*, 173 FERC ¶ 61,006 (2020).

<sup>28</sup> In September 2019, the transmission owner—Tri-State—became a public utility, so the Commission analyzed Gladstone's complaint in two parts—pre-September 2019 when Tri-State was a non-public and post-September 2019 when Tri-State was a public utility.

extraordinary relief that EDF requests in the instant case: restoration to the non-public utility's queue.

The Commission properly denied relief for the period when the transmission owner was a non-public utility.<sup>29</sup> The Commission acknowledged that the non-public utility had not maintained its safe harbor status, but held that “this fact does not entitle [the developer] to the relief it seeks.”<sup>30</sup> The “*sole relief* available for reciprocity infractions is a Commission order permitting the transmitting public utility prospectively to discontinue open access service to the non-reciprocating utility.”<sup>31</sup>

The same result must apply in the instant proceeding. Even acknowledging that SRP's safe harbor status has lapsed, this does not justify ordering SRP to retroactively restore EDF's project to the interconnection queue.

**5. Section 309 does not allow the Commission to supersede the Federal Power Act's explicit jurisdictional limits.**

EDF relies exclusively on the Commission's remedial authority under Federal Power Act section 309 to support its unprecedented demand that its project be reinstated to SRP's queue. But section 309 does not authorize such relief.

Section 309 is not an independent grant of authority.<sup>32</sup> It “merely provides the Commission the practical ability to carry out other substantive provisions of the” Federal Power Act.<sup>33</sup> The D.C. Circuit has placed clear limitations on the scope of the Commission's authority under section 309: it must be implemented consistently with the provisions and purposes of the

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<sup>29</sup> *Id.*, P 71.

<sup>30</sup> *Id.*, P 72.

<sup>31</sup> *Id.* (citing Order No. 888 at 31,760-62; Order No. 888-A at 30,282) (emphasis added).

<sup>32</sup> *State of California v. Powerex Corp.*, 135 FERC ¶ 61,178, P 76 (2011).

<sup>33</sup> *San Diego Gas & Elec. Co. v. Sellers of Ancillary Servs.*, 153 FERC ¶ 61,144 at P. 193 (2015).

Federal Power Act, and it may not contravene any terms of the Act.<sup>34</sup> It allows the Commission to use *means of regulation* not specifically identified, but does not allow the Commission to extend its jurisdiction over new *objects of regulation*.

Here, the Commission explicitly lacks authority under section 205 and 206 over SRP and its tariff. The Commission may not use section 309 to circumvent that jurisdictional bar.<sup>35</sup> Ordering SRP to take any action, including restoring EDF's project to the interconnection queue, would contravene section 201(f) and would be inconsistent with the purpose of the Federal Power Act.

*TNA Merchants*<sup>36</sup> does not say otherwise. That case merely stands for the proposition that the Commission can use section 309 to correct its own errors. There, the Commission had incorrectly ordered a public utility to pay refunds to a non-public utility; the Court held that the Commission retained jurisdiction over the incorrectly ordered refunds, so the Commission could lawfully use section 309 to order the non-public utility to return the money.

In contrast, here, the Commission has made no error. So, there is no basis on which the Commission can invoke its remedial authority.

### **III. CONCLUSION**

For the reasons set out above, the Commission should deny EDF's petition in full.

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<sup>34</sup> *New England Power Co. v. FPC*, 467 F.2d 425, 430 (D.C. Cir. 1972).

<sup>35</sup> *Richmond Power & Light Co. v. FERC*, 574 F.2d 610, 620 (D.C. Cir. 1978).

<sup>36</sup> *TNA Merchant Projects, Inc. v. FERC*, 857 F.3d 354, 359 (D.C. Cir. 2017).

Respectfully submitted,

**American Public Power Association**

/s/ Latif M. Nurani

Desmarie M. Waterhouse

Latif M. Nurani

AMERICAN PUBLIC POWER ASSOCIATION

2451 Crystal Drive, Suite 1000

Arlington, VA 22202

(202) 467-2900

[dwaterhouse@publicpower.org](mailto:dwaterhouse@publicpower.org)

[lnurani@publicpower.org](mailto:lnurani@publicpower.org)

**Large Public Power Council**

/s/ Jonathan D. Schneider

Jonathan D. Schneider

John E. McCaffrey

Stinson LLP

1775 Pennsylvania Avenue NW

Suite 800

Washington, DC 20006

(202) 785-9100

[jonathan.schneider@stinson.com](mailto:jonathan.schneider@stinson.com)

[John.McCaffrey@stinson.com](mailto:John.McCaffrey@stinson.com)

**National Rural Electric Cooperative Association**

/s/ Mary Ann Ralls

Mary Ann Ralls

Senior Director, Regulatory Affairs

NATIONAL RURAL ELECTRIC COOPERATIVE  
ASSOCIATION

4301 Wilson Blvd.

Arlington, VA 22203

[maryann.ralls@nreca.coop](mailto:maryann.ralls@nreca.coop)

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