Net Energy Metering and State Authority: What’s at Stake for Advanced Energy in FERC Petition

An Advanced Energy Economy Webinar
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Net Energy Metering and State Authority: What’s at Stake for Advanced Energy in FERC Petition

Panelists:
- Ted Thomas, Chairman, Arkansas Public Service Commission
- Hannah Muller, Director of Public Policy, Clearway Energy
- John McCaffrey, Senior Regulatory Counsel, American Public Power Association
- Jeff Dennis, Managing Director and General Counsel, Advanced Energy Economy
Background – What Does the New England Energy Ratepayers (NERA) Petition ask FERC to do?
Background on “Net Metering” Laws and Programs

• “Net Metering” broadly refers to a range of retail programs that compensate customers for the energy they produce from their own generating capacity
  – Generally allow a customer to net their own generation against consumption and receive a credit on their retail bill

• In sum, the practice spans 49 states, across all types of utilities
  – According to NREL, 41 states have a net metering law
  – Additional states have “related” distributed generation compensation policies
  – Municipal and cooperative utilities have adopted their own programs

• Typically associated with distributed solar, but may also include small wind, CHP, biomass, geothermal, fuel cells, storage

• Petition is focused on what it labels “Full Net Metering” (FNM)
  – Essentially, Petition defines FNM to include all net metering programs that allow a customer to net against their consumption at full retail rate or “a close proxy thereof”
# Electricity Regulation: Who is Responsible for What?

## Federal Regulation (FERC)
- Federal Power Act/PURPA
- Wholesale sales of electricity for resale in interstate commerce *(and matters “affecting or pertaining to”)*
- Transmission of electricity in interstate commerce *(and matters “affecting or pertaining to”)*
- Mergers and issuances of securities by FERC-regulated public utilities
- (Very) Limited “backstop” transmission siting authority
- Siting/Permitting of hydro plants
  - Otherwise, no generation planning or siting control
- Reliability of bulk power system

## State Regulation (PUCs)
- State Public Utility Acts or similar
- Retail sales to end users *(“any other sale”)*
- Mergers and other commercial transactions by regulated utilities
- Low-voltage distribution lines
- Siting of power plants and transmission lines
- Resource planning; *i.e.* the generation types (coal, natural gas, renewable) used by a utility to serve customers
FERC Precedent Treats Net Metering as a Retail Issue

- FERC has long considered net metering a retail practice subject to state jurisdiction
    - Held that Iowa orders requiring utility to enter in “net billing arrangements” were not preempted by PURPA or the FPA
    - States may determine an “individual homeowner’s or farmer’s purchase or sale of power . . . on a net basis” over a reasonable billing period (emphasis added)
    - Rejected argument that “every flow of power” from ”a homeowner or farmer . . . constitutes a sale . . . that must be priced consistent with the requirements of either PURPA or the FPA”
  - *Sun Edison LLC* (2009)
    - Reaffirmed *MidAmerican* in context of sales from individual customers that lease distributed generation from a third-party and participate in a net metering program
    - “[N]et metering is a method of measuring sales of electric energy. Where there is no net sale over the billing period, the Commission has not viewed its jurisdiction as being implicated”
NERA asks FERC to declare that all excess generation from a customer’s distributed energy resource is a wholesale sale subject to its jurisdiction
- Any time output exceeds consumption, or where energy bypasses the customer’s load
- Asserts that these are wholesale sales in interstate commerce
- Contends that such sales should instead be priced under PURPA (for rooftop solar/QFs) or FPA

Argues that the legal theory FERC used in *MidAmerican* and *SunEdison* was flawed when issued and has now been rejected by the courts
- Compares to FERC’s treatment of “exchange transactions” as separate wholesale sales
- Points to later *Southern Cal. Edison* and *Calpine D.C.* Circuit decisions concerning FERC’s prior use of netting to determine jurisdiction over station power

Asserts that FNM is a bad policy
- Claims that it results in inequitable costs shift among retail customers, distorts wholesale markets, and disadvantages “firm resources” need to maintain reliability
Let’s find out a little about you!
Ted Thomas
Chairman
Arkansas Public Service Commission
OPPOSING THE NERA PETITION

June 3, 2020
“To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”

--Justice Brandeis in dissent in New State Ice Co. v. Liebmann, 285 U.S. 262 (1932)
• NARUC will be represented by Suedeen Kelly of Jenner & Block

• NARUC has established a volunteer committee of commissioners and commission staff to assist counsel on the development of comments.
Relevant law: The power station cases


See also:

*State Jurisdiction over Distributed Generators*, Frank R. Lindh and Thomas W. Bone, Jr. 32 Energy Bar Journal 2.
Hannah Muller
Director of Public Policy
Clearway Energy
A Business Perspective…

- Millions of customers nationwide are saving money on their electric bills through 20-25-year net metering contracts
  - Homeowners, small businesses, large businesses, schools, local governments

- Additional uncertainty created by NERA petition during COVID-19 is not helpful to customers and businesses already struggling to maintain jobs and restart business

- State net metering policies have been well vetted through numerous legislative and regulatory venues, with robust input from all stakeholders, including ratepayers.
  - 46 states took action on net metering or distributed generation rate design during 2019

- Distributed energy technologies are rapidly evolving. States are the appropriate venue to continue to experiment with and refine the best ways to deploy these local energy technologies and compensate them in ways best suited to local circumstances.

- Integrated distribution planning by utilities and state regulators, and DER integration efforts at the ISO/RTO level are critical and should be accelerated.
John McCaffrey
Senior Regulatory Counsel
American Public Power Association
A bit about public power

- Community-owned, not-for-profit public power utilities power homes and businesses in 2,000+ communities, providing reliable, low-cost electricity to more than 49 million Americans.
- Hundreds of public power utilities use net metering for hundreds of thousands of retail customers.
- Public power utilities generally are not subject to FERC rate jurisdiction under the FPA or regulated by state regulatory commissions.
- Public power utilities are generally subject to PURPA “must purchase” and other requirements.
Public power perspective

- Support policies that allow decisions about distributed energy resources to be made at the local level to ensure safe, reliable and affordable service in a manner responsive to the policy preferences of local communities
- FERC’s well-settled policy concerning retail net metering transactions appropriately accommodates state and local authority
- Net metering policy issues are best addressed by state and local regulators
Next Steps and Q&A
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• The deadline for filing comments on the NERA Petition is June 15.

• FERC has no deadline by which it must act

• Granting a Declaratory Order is within the Commission’s sole discretion
  – In addition, a Declaratory Order would not immediately invalidate or preempt any state net metering law; it would, however, set the stage for courts to do so

Questions?
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“Raising the Bar: How Can Wholesale Markets Help Reach 100% Clean Energy Goals?”
Thursday, June 18, 2-3:30pm ET

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Thank you for attending this AEE webinar!

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