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Blog Post

Net Metering Proceeding at FERC Could Shake up Already Dynamic Policy Environment for Distributed Generation Resources

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On April 14, 2020, the New England Ratepayers Association (“NERA”) asked the Federal Energy Regulatory Commission (“FERC”) to assert federal jurisdiction over aspects of net-metering programs, which allow an electric utility customer with onsite (or sometimes community-based or virtually onsite¹) renewable generation to export to the utility any generation that exceeds the customer’s onsite needs. Net metering historically has been regulated almost entirely at the state level. [NERA’s petition](#), if granted, would result in a dramatic change in FERC policy that could reshape the evolving net-metering environment.

Net Metering Overview

Under net metering, the onsite generation exported to the electric utility is subtracted (“netted”) from the electricity the customer receives from the utility when the customer’s onsite generation is unable to meet the customer’s full demands. In a common example, a customer’s residential rooftop solar system delivers much of its output to the electric utility on a sunny day while the customer is away, and the delivered output is netted from the electricity the customer received from the electric utility at other times during the billing period (e.g., at night, when the customer’s system was not producing). Netting approaches vary: For example, in some programs, netting is akin to running the electric meter backwards, while in others, netting may offset the generation component of the customer’s electric service. Regardless of compensation level, the netting interval is typically a one-month billing period. Some jurisdictions allow customers to carry forward any excess generation to subsequent

months, while a smaller number provide a cash-out option for any surplus at year's end.

FERC has previously found that it does not have jurisdiction over net metering, because so long as there is no net sale to the electric utility during the netting period, net metering does not result in a wholesale sale of electricity over which FERC would have jurisdiction pursuant to the Federal Power Act.

NERA's Petition

In its petition, NERA asserts that FERC's net-metering precedent is no longer valid in light of intervening D.C. Circuit decisions related to charges for power consumed by large-scale generating stations, which often involve some degree of netting a station's consumption against its output. NERA also raises a variety of public-policy reasons that FERC should take action, including that net metering distorts investment decisions, results in less efficient or less cost-effective renewables implementation and inequitably shifts costs to less-wealthy customers. NERA acknowledges, however, that some net-metering programs, specifically those that provide compensation solely for unbundled, non-firm electric energy – and not for any costs of capacity, transmission, distribution or other charges, which are often bundled with the cost of electric energy in retail rates – could be “economically appropriate.”

Under NERA's legal theory, any export of electricity from a net-metering customer to the electric utility is a wholesale sale (i.e., for resale by the electric utility) that FERC must regulate under the Federal Power Act, as it does for transactions that NERA argues are similar to net metering, like exchanges or book-outs. Consequently, it asserts that rates for sales from facilities that meet applicable criteria for “qualifying small power-producing facilities” or “QFs” (including the majority of rooftop and residential solar facilities) should be subject to regulation under the Public Utility Regulatory Policies Act (“PURPA”) and priced at a utility's avoided cost. NERA asserts that rates for sales from net-metering facilities that do not qualify for QF status should be subject to rate regulation pursuant to Section 205 of the Federal Power Act (“FPA”), which would require a FERC determination that the rates they seek to charge are just and reasonable.

NERA also asserts that FERC should require shorter netting intervals of one hour or less, in order to align with FERC policies for scheduling, settling and accounting for wholesale transactions. These shorter intervals would cause the output from net-metered resources to be recognized as sales much more frequently than when netting

over a monthly period, because the ups-and-downs in a customer's generation (e.g., daily variation in solar output) and consumption are more likely to balance out over the longer period.² Taken together, NERA's arguments would cause net-metering customers in most jurisdictions to effectively receive lower levels of compensation than under current rules.

These reductions in compensation likely would affect the companies that provide behind-the-meter generation solutions like solar leasing and onsite solar power-purchase agreements. Although existing contracts may remain in force (depending on their terms), the value to existing customers – or to subsequent property owners that succeed to existing contracts – would decline in many areas, and new agreements may be less attractive for would-be providers and customers.

State-Level Developments Continue Apace

Consistent with FERC's hands-off approach to net metering to date, most efforts to reform or revise net metering have been driven by state legislatures, commissions and, occasionally, courts.³ The recent policy developments at the state level reveal an ongoing trend by states and other retail regulators to move toward, or at least consider, altering the role that net-metering programs play in the deployment of distributed renewable resources, typically by aligning net-metering prices and incentives with the value a state ascribes to distributed renewable resources. Some prominent examples of those ongoing state-level reform efforts include:

- In New York, the Public Service Commission approved a one-year delay – to January 1, 2021 – in the implementation of a net-metering successor program as part of its ongoing proceeding to address the value of distributed energy resources. The Department of Public Service staff published a white paper in December 2019 to inform the development of a successor program, in which it proposed, among other features, to assess a community benefit charge for solar net-metering customers and to implement a general, albeit gradual, movement toward more cost-based net-metering rates.
- In Louisiana, the Public Service Commission eliminated net metering for new customers, effective January 1, 2020, and replaced it with a program by which customers that request interconnection for new behind-the-meter generation pay the retail rate for all electricity consumed from the electric utility and receive the avoided-cost rate for all energy sold to the electric utility.
- In Maine, the legislature and governor enacted legislation to reinstate net metering in 2019, thereby overriding the Public Utilities Commission's "gross metering" policy,

which assessed fees to customers with behind-the-meter generation in accordance with their full energy consumption (self-generated or utility purchased).

- California's Net Energy Metering 2.0 ("NEM 2.0") program, implemented in 2016, was due for evaluation in 2019, but the process has yet to begin. Solar industry observers expect that the results may trigger more noticeable shifts than were implemented in the California Public Utilities Commission's NEM 2.0 effort, which led to interconnection fees, assessment of non-bypassable charges, and a shift to time-of-use rates for net-metering customers.

Other recent developments include increases in aggregate net-metering participation caps in Virginia (2020) and Washington (2019), as well as compromise legislation in Iowa, enacted in March 2020, that provides for net metering through 2027, but also grants utilities the option to provide so-called inflow-outflow metering and requires program participants to pay all charges applicable to non-net-metering customers.

Looking Ahead: NERA Petition, State Actions Drive Continued Distributed Renewable Energy Policy Development

As jurisdictions grapple with the effectiveness and value of renewable and distributed generation, we can expect to see continued net-metering reforms in the near term, with FERC potentially playing an unusually significant role.

There is, however, no deadline for FERC action on NERA's petition, and there is significant uncertainty about how FERC will rule. While most interveners have yet to submit substantive comments, the proceeding has already attracted an unusually large number of filings from individuals. FERC has the option to grant or deny the petition based on the comments submitted by the extended June 15 deadline, but alternatively could elect to initiate a broader proceeding in response to the issues NERA raises or to address those issues in the pending PURPA-reform rulemaking in Docket No. RM19-15-000.

If FERC were to grant NERA's petition, various states and other retail jurisdictions likely would: (1) re-evaluate and revise existing programs to accommodate or otherwise respond to FERC's determination; (2) take legal action to attempt to limit or overturn FERC's determination; or (3) pursue some combination of the two. Moreover, basic implementation issues like the availability of infrastructure needed to match revised regulatory requirements, potentially including meters that separately measure two-

way flows of electricity, would also need to be addressed. These issues would absorb scarce resources at a time when states, utilities and customers face economic uncertainty. Ultimately, a FERC order granting NERA's petition could alter states' incentives for pursuing net-metering reforms, and may either accelerate or hinder efforts to implement successor programs.

Alternatively, if FERC were to deny the NERA petition in its entirety, we would expect to see states continue to move forward with planned net-metering reforms, along with development of other policies related to renewable and other distributed resources. Regardless of FERC's determination, we expect that the distributed renewable energy policy environment will remain dynamic, leading to significant opportunities and risks in the near term.

1. NERA does not expressly target community or virtual net metering, but acknowledges that its arguments may apply with equal force to such arrangements.↔

2. While NERA argues that **all** exports of electric energy from net-metering facilities to electric utilities should be federally regulated as sales, the mechanism for doing so invariably involves the use of some time-period convention for billing purposes. In the absence of metering infrastructure that separates directional energy flows, a shorter billing period will tend to recognize more periods with sales and less within-period netting.↔

3. Here, we use "state-level" as shorthand for governmental units with authority over retail rates, which include the New Orleans City Council and the Public Service Commission of the District of Columbia.↔

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