



VOTE SOLAR

**Issue Brief: Petition to the Federal Energy Regulatory Commission for Declaratory Order on the Legality of State Net Metering Programs**

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**Background**

There are approximately 2.3 million current participants in net metering programs in the United States, spanning 49 states and including many investor-owned utilities, electric cooperatives, and municipal utilities. Net metering is a policy that has been voluntarily adopted by state legislatures, state utility commissions, municipal authorities, or electric cooperative boards. Federal law does not require states or other authorities to offer net metering.

Traditional net metering is an electric utility billing practice where the utility determines a retail customer's retail electric bill by allowing electric generation that is sent to the grid to offset or "net" the electricity imported from the grid on a unit for unit (or 1:1) basis. Net metering policies vary widely based on system and program size limits, the length of the billing period to calculate the "net" bill, and the treatment of "net excess generation," among other elements.

**Legal Framework for State Net Metering Policy**

Under the United States Constitution and the Federal Power Act ("FPA"), the Federal Energy Regulatory Commission ("FERC") holds exclusive jurisdiction over the transmission of electricity and the sale for resale of electricity in interstate commerce. Broadly speaking, any electric generator that is selling its electric output to a utility could be subject to FERC's exclusive wholesale jurisdiction and rate regulation, preempting a state's ability to set rates for that generator's output. However, the Public Utilities Regulatory Policy Act ("PURPA") gives states reasonable discretion to determine a regulated utility's "avoided cost" of producing electricity, which sets the upward limit that a utility must pay a PURPA qualifying facility ("QF") when it is forced to purchase its wholesale electric output.

Net metering is a mechanism that determines how much a customer will be billed for retail electric service, which takes into account electricity generated and consumed on the retail customer's side of the utility meter (a.k.a., "behind the meter") and any exports to the grid. In a 2001 case, *MidAmerican*, FERC held that such energy exports did not trigger its exclusive wholesale jurisdiction if the customer-generator was participating in a program to net their retail consumption of electricity from the utility against the production from their onsite generation facility. It was only if there was net excess generation (e.g., generation exceeds the usage of the retail customer over a predetermined interval, such as a billing period) that FERC would exert its jurisdiction and consider the net excess generation to be a jurisdictional wholesale transaction governed by PURPA and the FPA. Since FERC determined that retail "netting" was a retail billing practice and did not constitute a jurisdictional wholesale sale, most states have adopted a net metering policy by statute or regulation and many electric coops and municipal utilities have created voluntary programs for members.

For more information, please contact either  
Nathan Phelps ([nathan@votesolar.org](mailto:nathan@votesolar.org)) or Thad Culley ([thad@votesolar.org](mailto:thad@votesolar.org)).



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### Current Challenge to Legality of State Net Metering Policy

On April 14, 2020, an organization filed a petition asking FERC to reverse its *MidAmerican* decision and to invalidate all net metering statutes and regulations across the continental United States. The petition does not call out any specific state implementation of net metering, but asserts that FERC must assert wholesale jurisdiction over all electricity exports from net metered facilities and cap the value of exports at the utility's avoided cost. In effect, the organization is seeking to make electricity generation by individual customers—most commonly through rooftop solar panels—regulated as if they are large, commercial power plants.

#### If FERC grants the petition...

- Approximately 2.2 million homes and 100,000 other customers, across 49 states, will see increased electric bills due to the loss of net metering.
- Existing net metering customers may lose legacy rights granted by state regulators to continue net metering for some period of years into the future.
- Individuals and small enterprises with net metering systems will be exposed to new tax liabilities, forcing them to pay taxes on the energy they generate for the grid' Currently, netting of exports is not generally considered taxable (see, for example, the South Carolina Department of Revenue Ruling 10-10).
- State public utility commissions and a range of stakeholders across the country could be required to convene resource-intensive technical investigations to determine avoided costs—a major burden and distraction for state governments that are already facing an ongoing pandemic and economic crisis.
- Status quo in the state-federal jurisdictional divide for energy policy and regulation would be disrupted. State legislatures and utility commissions would lose policy flexibility to design retail distributed generation and distributed energy resource programs, potentially hampering ongoing utility grid modernization efforts and many other programs administered by states.

#### If FERC refuses to grant the petition...

- States will continue to have retail rate authority to evaluate the rate making impacts of net metering and to take all measures necessary to ensure just and reasonable rates for all.
- Customers will continue to have an avenue to invest in onsite solar and to help support the building blocks of a modern, resilient, and affordable grid of the future.

#### Next Steps

On April 15, 2020, FERC issued a procedural notice in the docket (Docket No. EL20-42-000). FERC set a deadline of May 14, 2020 for all comments and interventions.

**UPDATE:** The comment and intervention deadline has been extended to June 15, 2020.

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