

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

))
New England Ratepayers Association) Docket No. EL20-42-000
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I. INTRODUCTION

The Clean Coalition requests that the Federal Energy Regulatory Commission (“Commission”) deny the New England Ratepayers Association (“NERA”) petition without prejudice. This petition seeks to give FERC authority over Net Energy Metering (“NEM”), which would force the Commission to accept the role of regulating within the electricity distribution system. However, the jurisdiction of Commission begins when energy uses the transmission system, which does not apply to NEM energy that is generated and used on the distribution system, never touching the transmission system. Almost no NEM energy ever hits the transmission system and very little NEM energy ever reaches a wholesale market. Excess energy produced by residential consumers under NEM is aggregated by the utility should be considered the jurisdiction of the Commission when it is sold on the wholesale market outside of the distribution system. Therefore, accepting this petition would constitute federal overreach on a matter that should be – and is currently – decided at the state level.

In addition, forcing all excess energy into the jurisdiction of FERC would depress the true value of distributed energy resources (“DER”), especially of installations on residential and small-scale commercial properties, which are essential for local resilience. This is particularly true in a state like California, which is striving for 100% clean energy by 2045 and attempting to sectionalize the grid for resilience against the earthquakes, wildfires, strong storms, and other disasters that plague the state throughout the year. Approving this petition would effectively end NEM, forcing California to focus on large remote power plants, which would not be sufficient to achieve the renewable energy

goals set forth by the State legislature, nor would it provide the essential added layer of resilience. The petition would have a similar adverse effect in other states due to the end of NEM and new questions related to jurisdiction that the petition raises. If the Commission is able to regulate right up to the customer meter, what then is the regulatory jurisdiction of the states? If the Commission can monitor anything that isn't behind-the-meter ("BTM"), will all Front-of-Meter ("FOM") project within the distribution system also be under the jurisdiction of the Commission? The NERA petition creates a dangerous slippery slope that ends with the Commission regulating far beyond what is has been granted the authority to do; approving the petition would already take the Commission in a very dangerous and unprecedented direction.

DER on built environments (i.e., rooftops, parking lots, and parking structures) are necessary to make the transition to 100% clean energy. The DER market segment will become less viable if placed under the jurisdiction of FERC, especially if the Commission attempts to streamline wholesale rates across the country. Already, NEM has made California a solar leader in the United States, and states with NEM have much more DER than states without it. The regional markets are different enough that accepting this petition would be tantamount to federal overreach and would directly interfere with state goals across the United States.

The most damaging consequence of approving the NERA petition would actually be to further depress the true value of DER; California provides a good example this phenomenon. In investor-owned utility ("IOU") territories in California, Transmission Access Charges ("TAC") are currently assessed at the customer meter, meaning on all energy. However, DER, including DER subject to NEM, do not use the transmission system, so they should not be charged for that system. A more careful study of the regional markets reveals that TAC exist in other markets – also assessed at the customer meter – but for example, in ERCOT territory, TAC is bundled with distribution investment charges, which makes it tough to separate and identify a specific cost easily.¹ Thus, TAC should be assessed at transmission-distribution substations rather than at

¹ <https://electricityplans.com/texas/tdu-delivery-charges/> "Transmission Distribution Delivery Charges.

customer meters. Because the TAC issue, unlike NEM, involves the transmission system, which the Commission has jurisdiction over, the Commission should prioritize this issue and ensure that TAC are assessed correctly at transmission-distribution substations, as is now done in non-PTO service territories in California.

Finally, the NERA petition argues that Full Net Metering (“FNM”) is sold at a greater-than-market value, even when sold at the wholesale rate, which is not true in California, given that TAC currently depress the true value of DER. This is likely the case in other states as well.

II. DESCRIPTION OF PARTY

The Clean Coalition is a nonprofit organization whose mission is to accelerate the transition to renewable energy and a modern grid through technical, policy, and project development expertise. The Clean Coalition drives policy innovation to remove barriers to procurement and interconnection of distributed energy resources (“DER”) — such as local renewables, advanced inverters, demand response, and energy storage — and we establish market mechanisms that realize the full potential of integrating these solutions. The Clean Coalition also collaborates with utilities and municipalities to create near-term deployment opportunities that prove the technical and financial viability of local renewables and other DER. In this case, the Clean Coalition speaks primarily from our policy experience in California, since that is where much of our work takes place, but we also have experience across a range of other states, including Utah, Colorado, and New York.

III. COMMENTS

a. The petition’s complaints about cost shifting are non-unique.

The petitioner makes the claim that the Commission should claim jurisdiction of all wholesale energy sold by a NEM customer to a utility, in part because of the cost shifting inherent in the sale of retail energy. The Clean Coalition is not interested in debating the legitimacy of this statement, but urges the Commission to realize that this is a non-unique argument that provides no logical explanation for the Commission to change

jurisdictional lines. Individual states should be considering issues of cost shifting; that is exactly what is being done in California. In the state NEM proceeding at the California Public Utilities Commission (CPUC), R. 19-07-002, the current NEM program is being evaluated and compared with previous iterations (NEM 2.0 and NEM 1.0). It would be premature for the Commission to act on this petition without the full scope of information from each state to inform an understanding of exactly what effects such changes would have on the current system. This is especially true considering the NERA petition has been rushed, without taking the proper time to gather information compared to a normal Commission proceeding. The NERA petition is a thinly veiled attempt by the petitioner to force the Commission to take charge of the cost-shifting debate by lowering the rate at which FNM customers are compensated. Cost shifting is more of a phenomenon of the retail rate than it is of the wholesale rate.

c. Involving FERC would unnecessarily complicate the process of NEM crediting.

The petition states that FNM metering is done each month, which, while technically true, is not how customers are credited in California. In California, excess energy is considered on a monthly basis but is only credited at the end of a 12-month billing cycle. The result is that extra energy is aggregated by the utility at a single point in time, rather than 12 times each year. Were the petition to be accepted, it would require information from FERC at the end of each month where excess energy is recorded, rather than at the end of a year when a utility credits the customer and actually sells the energy on the wholesale market, where it becomes the jurisdiction of the California Independent System Operator (CAISO).

d. The NERA petition does not consider other important grid services and ancillary services that behind-the-meter (BTM) projects can provide.

Strategically placed BTM projects can provide important resilience benefits as well as increase the hosting capacity of the grid, in some cases even deferring the need for new investments in transmission infrastructure. Allowing the Commission to take

control of any excess energy would severely limit those non-standard uses for BTM energy. Moreover, in the grid of the future that is sectionalized and populated by Community Microgrids, the microgrid owner will aggregate local DER as Virtual Power Plants (VPPs) and make the best use of the energy. A VPP is an efficient method for a utility to get a high penetration of DER on the distribution grid, capable of responding to system-wide calls for frequency regulation, replacement reserves, ancillary services, load shedding, etc.



Community Microgrid representation

A Community Microgrid (acting as a VPP) provides a more cost-effective version of reliability than off-site generation such as a peaker plant, while offering an additional layer of resilience, since it is comprised of an entire distribution grid area that is served by a transmission-to-distribution substation, setting the stage for the local electric utility to act as a Distribution System Operator (DSO). This grid of the future would provide the resilience, reliability, and renewable energy needed to sustainably produce energy for all ratepayers all the time. Such a future would not be possible with the federal government regulating excess NEM energy as soon as it leaves the customer meter.

e. The petition’s request to structure new FNM contracts like PURPA contracts would be a mistake.

Contracts begun under the Public Utility Regulatory Policies Act of 1978 (PURPA) have faced an incredible number of legal challenges in recent years. For

example, contracts for 400 megawatts (MW) of energy that were forced through the court system in Michigan led to a lawsuit brought forth by Michael Boyd against the state of California, which went all the way to the United States Supreme Court before being resolved. The argument here is threefold. First, it would be irresponsible of the Commission to accept this petition without considering the proper mechanism through which challenges and considerations might be made. If approving the NERA petition were to lead to the courts being packed with FNM cases, which it undoubtedly would, it would only create more bureaucracy, creating a problem rather than a solution. The second consideration is that if NERA is requesting that contracts be structured in a similar fashion to PURPA contracts, then FERC should not approve this petition without directed legislation from the United States Congress. Third, it is worth noting that current bureaucratic divisions between the state and federal government already cause enough trouble; approving this petition would only add to those woes. For example, in California, CAISO has indicated a willingness to consider TAC reform, but CAISO argues that the issue is in the purview of the CPUC, which has led to no action being taken. An unnecessary radical change to existing FNM, as this petition is requesting, would lead to more bureaucratic gray areas like these, halting progress rather than resulting in progress being made.

f. The petition creates a slippery slope to ending state jurisdiction over state electricity systems.

The NERA petition would make any excess electricity generated through NEM the sole jurisdiction of FERC. If the petition were approved by the Commission, what would remain in state jurisdiction? The NERA petition would grant the Commission jurisdiction at the moment energy is sold to the utility, which occurs on the distribution grid. It is a very slippery slope before any front-of-meter (FOM) electricity generation also becomes subject to regulation by the Commission, even if that electricity never leaves the distribution grid. The Clean Coalition is developing one of the first merchant energy storage projects in California, at the Valencia Gardens Apartments in the heart of

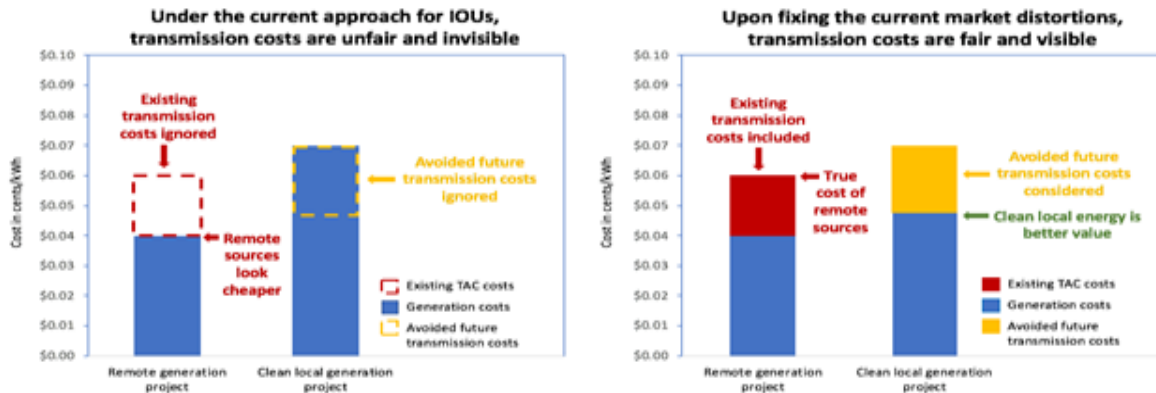
downtown San Francisco.² The energy storage is FOM, but it is paired with BTM solar panels. The FOM battery will be able to store solar energy, effectively raising the hosting capacity of the crowded feeder it is interconnected to by close to 25% and providing indefinite renewables-driven backup power in the process. In this case, since there is excess solar energy being stored in a FOM battery, would this be considered FERC's jurisdiction if the petition were approved? The Clean Coalition argues that no, it should not be considered FERC's jurisdiction until the energy goes into the transmission system and becomes part of an ISO market.

g. The Commission should focus on properly assessing Transmission Access Charges, which artificially depress the true value of DER.

The true value of DER is artificially depressed because TAC are assessed at the individual customer meter in California, which must change. The Clean Coalition notes that in California, DER within the distribution grid are being valued most accurately in non-PTO service territories, where TAC are measured at the transmission-distribution substation rather than at the customer meter.

In the 2020 updates to the Avoided Cost Calculator, the CPUC acknowledged the role that DER, Community Microgrids, and other non-wires alternatives (NWA) can play in avoiding future transmission costs, estimating a 2.5¢ per kilowatt-hour (kWh) savings on projects that avoid future transmission infrastructure. When also accounting for the 2¢/kWh that TAC steal from DER, we can see in the figure below how much the value of DER is depressed in the state.

² <https://clean-coalition.org/community-microgrids/valencia-gardens-energy-storage-project/> “Valencia Gardens Energy Storage Project”



Existing transmission costs in California, assessed as TAC and currently averaging 2¢/kWh, should be added to the cost of remote generation that requires use of the transmission grid to get energy from where it is generated to where it is used, which is almost always on the distribution grid where people live and work. Future transmission investments, currently averaging 2.5¢/kWh in the evenings, can be avoided via dispatchable local generation, and that value should reduce the evaluated cost of local generation. When correctly considering ratepayer impacts of transmission costs, dispatchable local generation provides an average of 4.5¢/kWh of better value to ratepayers than is currently assumed in the majority of instances.

It is vital that in this issue involving the transmission system, which unlike NEM falls under FERC jurisdiction, the Commission mandate an in-depth discussion and analysis of DER value streams and damages caused by California’s method of assessing TAC in IOU service territories. Part of this discussion should include what the true cost of DER would be if the Commission require utilities to assess the costs at Transmission-Distribution substations Considering TAC completely changes the discussion of compensating FNM customers at an accurate wholesale rate in California.

I. CONCLUSION

The Clean Coalition appreciates the opportunity to submit these comments in response to the Proposed Decision. We request that the Commission reject the NERA petition, which would constitute federal overreach on a matter involving the electricity distribution system, which should be decided at the state level. However, the Commission should take this opportunity to consider reforming the way Transmission Access Charges are

assessed in California, which artificially and unfairly raises the cost of DER — an issue that involves the transmission system and is therefore not only within FERC jurisdiction but requires action from FERC to be resolved.

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