

Legal Considerations Related to Distributed Energy Resources

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- FERC Exclusive Jurisdiction:
 - Transmission in interstate commerce
 - Sales at wholesale, in or affecting interstate commerce
 - Physical interconnection to transmission system, or distribution system if facility is engaged in wholesale sale or QF making wholesale sales

- State Jurisdiction
 - Distribution in intrastate commerce
 - Retail sales
 - Physical interconnection to distribution system, solely for retail sales
 - Net metering projects (however, excess output over an applicable number of billing periods are considered to be a wholesale sale)
 - Behind the Meter Generation (except if any portion of output is sold to other entity or PJM market)
 - PURPA sale (i.e. QF selling entire output pursuant to state avoidable cost rate)

Appendix

- Qualifying Facility (“QF”):
- Established by PURPA
 - **Small power production facility**: generally 80 MW or less whose primary energy source is renewable (hydro, wind or solar), biomass, waste, or geothermal resources
 - A **cogeneration facility** is a generating facility that sequentially produces electricity and another form of useful thermal energy (such as heat or steam) in a way that is more efficient than the separate production of both forms of energy
- “Behind The Meter Generation” refers to a generation unit that “delivers energy to load without using the Transmission System or any distribution facilities (unless the entity that owns or leases the distribution facilities has consented to such use of the distribution facilities and such consent has been demonstrated to the satisfaction of the Office of the Interconnection).”
- Behind The Meter Generation **does not** include
 - (i) at any time, any portion of such generating unit’s capacity that is designated as a Generation Capacity Resource; or
 - (ii) in an hour, any portion of the output of such generating unit[s] that is sold to another entity for consumption at another electrical location or into the PJM Interchange Energy Market. (Tariff, section 1.3B).
- Non-Retail Behind The Meter Generation: “Behind the Meter Generation that is used by municipal electric systems, electric cooperatives, or electric distribution companies to serve load.” (Tariff, section 1.27AA)

- Net Metering

- Energy Policy Act of 2005 (EPAAct2005) defines net metering service:
 - Service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to local distribution facilities may be used to offset electric energy provided by the electric utility to the consumer during the billing period (See EPAAct2005 at § 1251(a)).
- FERC description of net metering (See Order No. 2003-A P 744).
 - Net metering allows a retail electric customer to produce and sell power onto the Transmission System without being subject to Commission jurisdiction.
 - A participant in a net metering program must be a net consumer of electricity – but for portions of the day or portions of the billing cycle, it may produce more electricity than it can consume itself.

Virtual Net Metering- Allows entities to offset loads with generation (i.e. community solar) located at a different location. Development is beginning in some states (i.e. Maryland).

- FERC has exclusive jurisdiction over “the transmission of electric energy in interstate commerce and to the sale of electric energy at wholesale in interstate commerce.” FERC has “jurisdiction over all facilities for such transmission or sale of electric energy.” 16 USC 824(b).
- **With some specified exceptions, FERC does not have jurisdiction** “over facilities used for the generation of electric energy or over facilities used in local distribution or only for the transmission of electric energy in intrastate commerce, or over facilities for the transmission of electric energy consumed wholly by the transmitter.” 16 USC 824(b).
- PJM is responsible for FERC jurisdictional interconnection projects.
- Based on Order No. 2003, FERC has jurisdiction over an interconnection when the Interconnection Customer plans to:
 - Physically interconnect to the transmission system; or
 - Interconnect to a distribution system to engage in a sale for resale (wholesale sale) in interstate commerce.

- FERC does not assert jurisdiction over the *physical* interconnection of a generator seeking to interconnect to a non-Tariff distribution facility even though it is seeking to make wholesale sales into the PJM Interchange Energy Market, however, FERC does assert jurisdiction over any wholesale sales. See Order No. 2003-A
 - A **Wholesale Market Participation Agreement or WMPA** is used as a contractual means to address to all developers to participate in the PJM's wholesale markets. The WMPA defines the terms and conditions under which PJM wholesale power market participation will be conducted. It also contains a milestone for the generator to execute, separately, an interconnection agreement with the local electric distribution company in accordance with the respective state's own established process.

- FERC does not assert jurisdiction over a generating facility if it is:
 - A net metering project
 - However, if there is excess output at the end of the billing period (e.g. annual billing period), that excess is considered a wholesale sale subject to FERC jurisdiction;
 - A Behind the Meter generator
 - However, if any portion of the output of such generating unit(s) is sold to another entity for consumption at another electrical location or into the PJM Interchange Energy market, such output is considered a wholesale sale subject to FERC jurisdiction;
or
 - A QF selling its entire output directly to the Interconnected Transmission Owner under a state's avoidable cost rate (PURPA sale).

- Since FERC has authority to regulate wholesale sales' transactions in interstate commerce, FERC exercises jurisdiction over interconnections to the distribution system when:
 - the Interconnection Request is submitted on behalf of a QF seeking to make wholesale sales;
OR
 - the interconnection customer is not a QF; **and**
 - the interconnection customer requests to interconnect to a distribution facility included in a public utility's FERC-filed Tariff because a wholesale transaction previously occurred on the distribution facility; **and**
 - the interconnection is for the purpose of facilitating a jurisdictional wholesale sale of electric energy.
- When the interconnection is FERC jurisdictional, the PJM Tariff will apply and interconnection customer will enter into a three-party Interconnection Service Agreement or ISA. The ISA governs the physical interconnection of the generator to the distribution system which are PJM Tariff facilities.