Summary of Petition to the Federal Energy Regulatory Commission for Declaratory Order on the Legality of State Net Metering Programs

Background:

NERA attests that customers pushing energy back onto the grid through an interconnected utility are 1) crossing into FERC jurisdiction and must be regulated federally and 2) are in violation of PURPA QF avoided cost pricing. Historically, FERC has twice ruled that net metering is not in the scope of their authority, leaving it to states. Groups now will file comments and motions to intervene with FERC providing arguments for why they Commission should or should not accept NERA’s petition on customer-cited generation being considered a wholesale transaction.

Summary of petition:
NERA cites the following arguments as reasons why NEM should be regulated by FERC:
1. Energy is being delivered to the local utility for resale to the utility’s retail customers for compensation, making the transactions wholesale sales in interstate commerce since some utilities have customer across multiple states
2. Wholesale energy sales should be priced at the utility’s avoided cost of energy if the sale is being made pursuant to PURPA QF rules
3. FERC cannot avoid jurisdiction due to netting intervals as they do not determine the existence of jurisdictional wholesale sales
4. The Commission cannot avoid its jurisdiction over wholesale energy sales when they occur, and as the agency responsible for supervising wholesale markets
5. That rooftop and BTM technologies are the least effective forms of renewable generation to meet environmental benefits and are typically the costliest resource, shifting the financial burdens on the poorest constituents to subsidize net metered customers
6. NERA also claims that the proliferation of net metering has stifled innovation throughout the country despite studies suggesting that the number of net metered customers is on the decline

Next Steps:
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.