

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

**Petition for Declaratory Order of
New England Ratepayers
Association Concerning Unlawful
Pricing of Certain Wholesale Sales**

Docket No. EL20-42-000

**COMMENTS OF THE
SOUTHERN ENVIRONMENTAL LAW CENTER
ON BEHALF OF
APPALACHIAN VOICES, GEORGIA INTERFAITH POWER & LIGHT, NORTH
CAROLINA INTERFAITH POWER & LIGHT, NORTH CAROLINA SUSTAINABLE
ENERGY ASSOCIATION, SOUTH CAROLINA COASTAL CONSERVATION
LEAGUE, SOUTH CAROLINA INTERFAITH POWER & LIGHT, SOUTHERN
ALLIANCE FOR CLEAN ENERGY, AND UPSTATE FOREVER.**

IN OPPOSITION TO NERA PETITION

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Introduction

The Southern Environmental Law Center (“SELC”) respectfully submits these comments in opposition to the petition filed by the New England Ratepayers Association (“NERA”).

SELC submits these comments on behalf of Appalachian Voices, Georgia Interfaith Power & Light, North Carolina Interfaith Power & Light, North Carolina Sustainable Energy Association, South Carolina Coastal Conservation League, South Carolina Interfaith Power & Light, Southern Alliance for Clean Energy, and Upstate Forever (collectively, “Southeast Public Interest Organizations”). These organizations work extensively on issues concerning energy resources and their impact on the people, culture, environment and economy across the Southeast, including Virginia, North Carolina, South Carolina, Georgia, and Tennessee.¹ These Southeast Public Interest Organizations have members with net-metered rooftop solar. Their members have a direct and substantial interest in opposing NERA’s petition. NERA’s petition seeks to undermine state-level net-metering programs and reduce crediting rates for those programs. NERA’s petition would increase utility bills and financially harm over 40,000 net-metered solar customers across the Southeast, including members of the Southeast Public Interest Organizations.

The Southeast Public Interest Organizations urge the Commission to reject NERA’s petition. Among the many reasons for rejecting NERA’s petition, these comments focus on three: 1) Congress has authorized and required states to consider adopting net-metering policies, 2) states, utilities, ratepayers, and the renewable energy industry have significantly relied on this

¹ Southern Environmental Law Center also works in Alabama, but these comments do not focus on Alabama as there are currently no net metering customers in the state. Southern Alliance for Clean Energy also works in Florida, and although these comments do not specifically address Florida, it is worth noting that the state has more than 50,000 net-metered customers who would be negatively impacted by NERA’s petition.

Congressional directive and the Commission’s precedent in establishing net-metering policies, creating jobs and stimulating economic growth, and 3) the potential disruptions at the state level and the administrative burden of breaking with this precedent are staggering.²

Southeast Public Interest Organizations

Appalachian Voices is a nonprofit environmental organization dedicated to bringing people together to solve the environmental problems having the greatest impact on the central and southern Appalachian Mountains, including the environmental problems caused by the extraction of coal and gas to generate electricity. As part of its mission, Appalachian Voices advocates for investments in cost-effective energy efficiency programs, conservation, and renewable energy resources as alternatives to fossil-fuel generated power. Appalachian Voices currently has 1,221 dues-paying members nationally, 340 dues-paying members in Virginia, 293 dues-paying members in North Carolina, and 103 dues-paying members in Tennessee. Appalachian Voices has confirmed that over 150 members or supporters have a net-metered renewable energy facility on their property, and approximately 120 members or supporters have plans to install on-site renewable energy in the future. Thus, more than 270 of Appalachian Voices’ members or supporters would be negatively impacted by NERA’s petition. The mailing address for Appalachian Voices’ headquarters is: 589 West King Street, Boone, NC 28607.

Georgia Interfaith Power & Light (“GIPL”), North Carolina Interfaith Power & Light (“NCIPL”), and South Carolina Interfaith Power & Light (“SCIPL”) are state-wide interfaith ministries that, in response to climate change and environmental injustice, equip faith

² The Southeast Public Interest Organizations also endorse the “Protest of Public Interest Organizations” filed in this proceeding, identifying additional reasons to reject NERA’s petition.

communities across their states to care for Creation through worship, education, and the stewardship of our natural resources. These organizations were founded as part of the national Interfaith Power & Light movement. GIPL, NCIPL, and SCIPL collectively provide guidance for thousands of congregations, helping them reduce their energy consumption and costs and implement Creation care initiatives. In North Carolina, at least 30 member or affiliate faith congregations have installed rooftop solar, many or all of these participate in net metering. In Georgia, at least two of GIPL's member or affiliate faith congregations now have net-metered solar facilities on their properties and one congregation has a net-metered solar facility planned for installation this summer. In South Carolina, at least two of SCIPL's member or affiliate faith congregations now have net-metered solar power, and SCIPL and Sustaining Way's Annie's House site at 60 Baxter Street, Greenville, SC 29607 also has net-metered solar power. These organizations and their member and affiliate congregations would be negatively impacted by NERA's petition. GIPL's mailing address is: 701 S. Columbia Dr., Campus Box 326, Decatur, Georgia 30030. NCIPL's mailing address is: 27 Horne Street, Raleigh, NC 27607. SCIPL's mailing address is: 5 Stonehedge Drive, Greenville, SC 29615.

North Carolina Sustainable Energy Association (NCSEA) is the leading 501(c)(3) nonprofit organization that drives public policy and market development for clean energy in North Carolina. NCSEA's work enables clean energy jobs, economic opportunities, and affordable energy options for North Carolinians. NCSEA works with its members and partners to transform the state and region's energy system through market innovation and policy advocacy. NCSEA approaches its work in an evidence-based and collaborative manner and that focus is informed by its diverse community of energy industry leaders, utilities, customers, and innovators. For over forty years, its mission-driven business model has furthered the

transformation of North Carolina energy policy, markets, and systems that create an affordable, resilient, and secure clean energy future. NCSEA has 19 member companies that install residential rooftop solar and 12 member companies that install commercial solar, totaling 31 of NCSEA's company members that depend on North Carolina's net-metering program, in addition to NCSEA's individual members with net-metered rooftop solar. NCSEA's principal address is 4800 Six Forks Road, Suite 300, Raleigh, NC 27609.

South Carolina Coastal Conservation League ("SCCCL") is a Charleston-based 501(c)(3) nonprofit organization whose mission is to protect the resources of the South Carolina coastal plain, including its natural landscapes, wildlife, clean water, and quality of life. As an advocate for conservation and energy efficiency, the League supports development of energy policy that is in the public interest of South Carolinians. At least 92 of South Carolina Coastal Conservation League's members or supporters have a net-metered solar facility on their property. Over 500 South Carolinians signed a petition circulated by South Carolina Coastal Conservation League opposing NERA's petition. This petition and signatures are attached to these comments as Attachment A. SCCCL's principal address is: 131 Spring Street, Charleston, South Carolina 29403.

Southern Alliance for Clean Energy ("SACE") is a nonprofit organization whose mission is to promote responsible energy choices that create global warming solutions and ensure clean, safe, and healthy communities throughout the Southeast. SACE and its members are interested in promoting greater reliance on clean energy resources to meet the South's energy needs. SACE has offices in Tennessee, Georgia, North Carolina, South Carolina, and Florida, and SACE has members across these states including those with an interest in net-metered solar. The principal address of SACE is P.O. Box 1842, Knoxville, Tennessee 37901. SACE's Asheville,

North Carolina office has a solar photovoltaic system enrolled in a net-metering program.

Upstate Forever is a membership-based nonprofit conservation organization that protects critical lands, waters, and the unique character of Upstate South Carolina. Its vision is an environmentally healthy, economically prosperous Upstate that offers a high quality of life now and for future generations. To that end, it works to protect the natural assets that make the Upstate so special—farmlands, forests, natural areas, rivers, and clean air—and to ensure that Upstate communities are vibrant and retain their green spaces, outdoor heritage, and unique identities in the face of rapid development and significant sprawl. Upstate Forever’s members and supporters have at least 62 net-metered solar facilities. Among these members and supporters, several have commented directly to Upstate Forever regarding NERA’s petition, and these member responses are provided as Attachment B to these comments. Upstate Forever also has solar panels on its office building and participates in a net-metering program. Its principal address is: 507 Pettigru Street, Greenville, South Carolina 29601.

I. Congress Explicitly Authorized and Required States to Consider Adopting Net-Metering Policies

Congress explicitly authorized and required states and nonregulated utilities to consider adopting net metering in the Energy Policy Act of 2005. For this reason alone, the Commission should deny NERA’s petition.

Congress authorized net metering in two companion provisions of the Energy Policy Act of 2005.³ The Act first required state regulatory authorities and each nonregulated electric utility

³ Energy Policy Act of 2005, Pub. L. 109-58, § 1251, 119 Stat. 594, 962-63 (2005), <https://www.ferc.gov/enforcement/enforce-res/EPAct2005.pdf> (codified at 16 U.S.C. § 2621(d)(11) (2005)); *see also* ASHLEY J. LAWSON, CONG. RESEARCH SERV., R46010 NET METERING: IN BRIEF ii (2019) <https://fas.org/sgp/crs/misc/R46010.pdf> (explaining that a common method states use to compensate net-metering

to “commence the consideration referred to in section 2621 [including net metering] of this title, or set a hearing date for such consideration, with respect to each standard established by paragraphs (11) [regarding net metering] through (13) of section 2621(d) of this title[,]” within two years and to complete its consideration and determination within three years of August 8, 2005. 16 U.S.C. § 2622(3)(A) (2005). Each state regulatory authority and nonregulated electric utility was required to make a determination “concerning whether or not it is appropriate to implement such standard to carry out the purposes of this chapter.” *Id.* § 2621(a). Section 2621(d)(11), in turn reads:

Net Metering: Each electric utility shall make available upon request net metering service to any electric consumer that the electricity utility serves. For purposes of this paragraph, the term “net metering service” means service to an electric consumer under which electric energy generated by that electric consumer from an eligible on-site generating facility and delivered to the local distribution facilities may be used to offset electric energy provided by the electric utility to the electric consumer during the applicable billing period.

Id. § 2621(11). Thus, Congress directed states to consider adopting net metering.

Congress provided an exemption from this requirement for those state regulatory authorities and nonregulated utilities (1) that had already “implemented . . . the standard concerned (or a comparable standard);” (2) that had conducted a proceeding to consider implementation of such standard or comparable standard; or (3) where the “State legislature has voted on the implementation of such standard (or a comparable standard) for such utility” prior to August 8, 2005. *Id.* § 2622(d). Thus, Congress exempted states that had already considered adopting net metering.

customers “is the retail rate, under which energy from net metering capacity offsets energy consumed from the grid in a one-to-one fashion” and “[t]his method is often described as the ‘meter running backward.’”

These provisions must be read together. *Erlenbaugh v. United States*, 409 U.S. 239, 243-44 (1972) (explaining that “individual sections of a single statute should be construed together” and indicating that exception in one section may be read to resolve ambiguities in another). Reading them together, Congress made clear that existing net-metering programs or those comparable in form would meet the requirements set forth in 16 U.S.C. §§ 2621-22. The net metering description set forth in 16 U.S.C. § 2621 specifically referenced offsetting electric energy, and indeed most if not all of the net metering programs at the time involved retail-rate crediting through “spinning the meter” backwards.⁴ At the time Congress passed the Energy Policy Act of 2005, multiple states had adopted net-metering programs, including several states in our region, as discussed below.⁵ Other states around the country had done so as well.⁶

To conclude instead, as NERA suggests, that Congress directed states to consider a new and different form of net metering that only credited exports at the avoided cost rate (and only avoided energy costs) in section 2621 would require assuming that Congress irrationally intended net metering to have two different and incompatible meanings in the companion provisions of the Act. Furthermore, had Congress identified some problem with the existing net-metering programs it would have corrected the problem instead of explicitly authorizing them and directing the remaining states to consider doing the same. Accordingly, Congress sanctioned existing net-metering programs and directed states to consider adopting similar programs, and the Commission must give effect to the clear intent of Congress. *See Chevron, U.S.A., Inc. v.*

⁴ See S.C. OFFICE OF REGULATORY STAFF & S.C. ENERGY OFFICE, NET METERING IN SOUTH CAROLINA: CURRENT STATUS AND RECOMMENDATIONS 2-8 (2008), <https://www.scstatehouse.gov/Archives/ORS/NetMeteringReport.pdf> (summarizing the net metering policies of nine of the member states of the Southeastern Association of Regulatory Utility Commissioners (SEARUC); see also *Programs*, DSIRE, <https://programs.dsireusa.org/system/program> (last visited May 29, 2020) (search for “net metering”).

⁵ See S.C. OFFICE OF REGULATORY STAFF & SOUTH CAROLINA ENERGY OFFICE, *supra* note 4, at 2-8.

⁶ See *Programs*, *supra* note 4 (search for “net metering”).

Nat. Res. Def. Council, Inc., 467 U.S. 837, 842-43 (1984) (explaining that when Congress has directly spoken on question at issue, its intent must be given effect).

This was not an oversight. Congress was aware of the typical form that net metering took in these states. First, “Congress normally can be presumed to have had knowledge of the interpretation given to the incorporated law, at least insofar as it affects the new statute.” *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 382 n.66 (1982) (citation omitted); *see also Sayyed v. Wolpoff & Abramson*, 485 F.3d 226, 231 (4th Cir. 2007) (explaining that because Congress is presumed to act with awareness of judicial interpretation of statute, an amendment occurring after case indicated acceptance of interpretation). Furthermore, we may infer that “Congress affirmatively intended to preserve” net metering as it was then being implemented. *Curran*, 456 U.S. at 381-82 (holding that Congress affirmatively intended to preserve judicially implied private right of action when it amended act despite amendment being silent on remedy).

Second, legislative history clearly indicates that Congress was in fact aware of the form of net-metering programs that it authorized, including retail-rate net metering. For example, in an early hearing before the U.S. House Committee on Commerce’s Subcommittee on Energy and Air Quality, the Union of Concerned Scientists urged Congress to adopt “national net metering standards, allowing consumers who generate their own electricity with renewable energy systems to feed surplus electricity back to the grid and spin their meters backward, thus receiving retail prices for their surplus power production.”⁷ The National Association of Regulatory Utility

⁷ *The Energy Policy Act of 2005: Hearings Before the Subcomm. on Energy & Air Quality of the H. Comm. on Energy & Commerce*, 109th Cong. 493 (2005) (prepared statement of Alan Noguee, Director, Clean Energy

Commissioners (NARUC) testified that it regarded net metering as a “retail issue[] that ought to be subject to State jurisdiction” and supported leaving the decision to the states.⁸ The National Association of State Utility Consumer Advocates was not opposed to net metering and pointed out that “[a]t the retail level, traditionally not an area of federal concern, states are experimenting with a variety of net metering, ‘smart metering’ and time of use pricing methodologies for retail rates.”⁹ Of course, leaving it to the states is exactly what Congress did.

Shortly after the Energy Policy Act of 2005 became law, NARUC and other utility regulation experts published a reference manual for complying with the “PURPA Standards” in the Act, in which it explained that the definition of “net metering” in 16 U.S.C. § 2621(d)(11) “refers simply to the netting on a kWh-to-kWh basis of the flow of electricity from a site with consumer-owned generation to the utility against the flow of electricity from the utility to the customer.”¹⁰

A few years later, the U.S. Senate Committee on Energy and Natural Resources’ Subcommittee on Energy held a hearing on net metering and other policies to promote distributed generation.¹¹ The transcript of this hearing is rife with further discussion of the details of net metering. For example, Chris Cook, then Managing Director and Co-Founder of

Programs, Union of Concerned Scientists), <https://www.govinfo.gov/content/pkg/CHRG-109hrg99906/pdf/CHRG-109hrg99906.pdf>.

⁸ *Id.* at 109 (prepared statement of Hon. Marilyn Showalter, National Association of Regulatory Utility Commissioners).

⁹ *Id.* at 405 (prepared statement of Gerald A. Norlander on behalf of National Association of State Utility Consumer Advocates).

¹⁰ KENNETH ROSE & KARL MEEUSEN, REFERENCE MANUAL AND PROCEDURES FOR IMPLEMENTATION OF THE “PURPA STANDARDS” IN THE ENERGY POLICY ACT OF 2005 36 (2006), <https://puc.sd.gov/commission/dockets/electric/2006/el06-018/manual.pdf> (writing on behalf of the American Public Power Association (APPA), Edison Electric Institute (EEI), National Association of Regulatory Utility Commissioners (NARUC), and National Rural Electric Cooperative Association (NRECA)).

¹¹ *Net Metering: Hearing Before the Subcomm. on Energy of the S. Comm. on Energy and Nat. Res.*, 111th Cong. (2009), <https://www.govinfo.gov/content/pkg/CHRG-111shrg50740/html/CHRG-111shrg50740.htm>.

Sunworks, explained why it was important to have metering infrastructure that allowed spinning the meter backwards.¹² Congress evidently saw no need to revise net metering in the intervening years. To the contrary, this form of net metering continues to be Congress' interpretation.¹³

Because Congress has explicitly authorized and required states and nonregulated utilities to consider net metering, jurisdictional questions raised by NERA are largely beside the point.¹⁴ Regardless of the scope of the Federal Power Act's general statement of applicability in 16 U.S.C. § 824(b)(1), the fact is that the Energy Policy Act explicitly authorized state implementation of net metering in 2005.¹⁵ Even if the Federal Power Act once would have required federal jurisdiction over net metering—which it did not—that cannot be the case after the Energy Policy Act, whether its authorization of net metering be considered an amendment to federal jurisdiction or an exception to it. *See Erlenbaugh*, 409 U.S. at 243–44) (explaining that later act may be regarded as a legislative interpretation of an earlier act); *Curran*, 456 U.S. at 378 n.61 (quoting *Brown v. GSA*, 425 U.S. 820, 828 (1976)) (explaining that in determining legislative intent “the relevant inquiry is not whether Congress correctly perceived the then state of the law, but rather what its perception of the state of the law was”).

NERA did not address this fundamental problem with its argument. NERA acknowledges that the Energy Policy Act told states to consider adopting net metering. Pet'r Br. 35-37. Addressing only that provision of the Energy Policy Act, it urges the Commission to interpret the words, “electric energy” to mean only the “avoided cost of energy” component of

¹² *Id.* at 10-17.

¹³ *See* LAWSON, *supra* note 3, at 2.

¹⁴ Regardless, NERA's jurisdictional arguments are flawed and Southeast Public Interest Organizations refute them in these comments and further endorse the arguments in opposition presented by the “Protest of Public Interest Organizations” filed in this proceeding.

¹⁵ *See supra* note 3 and accompanying text.

electric service. *Id.* at 35 (quoting 16 U.S.C. § 2621(d)(11)). This strained reading is its only argument and it is simply wrong. Congress meant what it said when it told states to consider adopting net metering as their sister states had done. If Congress had meant states to consider *only* net metering for *only* the avoided cost of energy component of electric service, it would not have authorized states with existing net metering programs with retail-rate offsetting to continue with those programs. And if it had considered those programs to raise any sort of jurisdictional problem, it would have corrected the problem rather than endorse the states' programs.

Congress has explicitly authorized and indeed required states to consider implementing net metering through the Energy Policy Act of 2005. Thus, NERA's petition attempts to convince the Commission to issue a decision directly contrary to federal law and therefore must be denied.

II. Southeastern States Have Repeatedly Relied on the Energy Policy Act and FERC Precedent

Across the country, including the Southeast, the Energy Policy Act and the Commission's longstanding precedent established in *MidAmerican* have engendered significant reliance interests, first, among Southeast states as they developed and expanded net-metering programs, and second, among residents, utility customers, renewable energy developers, and states' clean-energy economies. When an agency's "prior policy has engendered serious reliance interests" those interests "must be taken into account" before an agency lawfully may reverse course, and "a more detailed justification" is required "than what would suffice for a new policy created on a blank slate." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (applying 5 U.S.C. § 706(2)(A)). The Commission must consider the serious reliance interests threatened by NERA's petition—which fails to acknowledge or address these interests.

As states in the Southeast have developed and expanded their net-metering programs over the past twenty years, they have repeatedly relied on two authorities. The first is the Commission's longstanding precedent leaving net metering to the states. In 2001, the Commission held that "no sale occurs when an individual homeowner or farmer (or similar entity such as a business) installs generation and accounts for its dealings with the utility through the practice of netting." *MidAmerican Energy Co.*, 94 FERC ¶ 61,340, 62,263 (2001). The other is the Energy Policy Act of 2005, discussed above. In some cases, our states have relied very explicitly on the authority granted by the Energy Policy Act and the Commission's decision in *MidAmerican*, but in no case would our net metering programs have developed without it.

As states have developed differing net-metering programs they have taken into account their particular needs and context, functioning as laboratories of democracy just as our federal system intends. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting); *see also* U.S. CONST. amend. X; The Federalist Nos. 9 (Alexander Hamilton) (explaining that Constitution leaves states "certain exclusive and very important portions of sovereign power"), 10 (James Madison) (explaining how federal system should prevent tyranny of the majority). As independent sovereigns in our federal system, states' reliance on the Commission's precedent should be afforded special weight in its decision whether to reverse course. *See Massachusetts v. E.P.A.*, 549 U.S. 497, 520 (2007) (giving "special solicitude" to state in standing analysis as sovereign); *New York v. United States*, 505 U.S. 144, 167-68 (1992) (explaining cooperative federalism). NERA's request to deny that authority at this late date runs contrary to good governance principles concerning settled law and regulatory certainty, and offends principles of federalism.

The following chronological review of Southeast states' adoption and expansion of net

metering programs demonstrates their reliance.¹⁶

A. North Carolina

To see how the Commission’s decision in *MidAmerican* affected a state’s net-metering program, North Carolina is a case in point. The state began considering net metering years before the decision. On November 18, 1998, in response to a petition by the North Carolina Sustainable Energy Association (“NCSEA”), the North Carolina Utilities Commission (“NCUC”) instituted a generic proceeding in Docket No. E-100, Sub 83 to consider net metering in North Carolina.¹⁷

The question ultimately resolved in *MidAmerican* immediately took center stage. In its initial comments, filed before the Commission’s decision in *MidAmerican*, Duke Power argued that net metering would “require FERC-jurisdictional wholesale sales under the FPA and PURPA to be made at state-set retail rates.”¹⁸ Carolina Power & Light made similar arguments.¹⁹ The Public Staff also argued that the proposed net-metering rule would be problematic, for basically the same reason, arguing that whether jurisdiction over net metering lay with states or FERC was unsettled.²⁰ Renewable energy advocates responded in comments,

¹⁶ These comments focus primarily on state and regulated utility net-metering programs, but nonregulated utilities have also undeniably relied on the Energy Policy Act of 2005 and FERC’s long-standing precedent established in *MidAmerican* in developing and tailoring net-metering programs to the needs of their member customers.

¹⁷ Order Initiating Investigation and Requesting Comments, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Nov. 18, 1998), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=bafefcff-d715-4a0a-950c-475cfbc4d529>. A basic overview of the history of net metering authority in North Carolina is available at *Net Metering*, DSIRE (Dec. 12, 2019), <https://programs.dsireusa.org/system/program/detail/1246>.

¹⁸ Duke Power’s Response to Order Initiating Investigation and Requesting Comments, N.C. Utils. Comm’n, Docket No. E-100, Sub 83, at 5 (Feb. 12, 1999), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=8a9a78c0-0d0a-47c3-9cd6-5e2d3133c9aa>.

¹⁹ Carolina Power & Light Company’s Initial Comments, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Feb. 12, 1999), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=c5cda216-8abb-4033-b82a-ed5b37d40c52>.

²⁰ Initial Comments of the Public Staff, N.C. Utils. Comm’n, Docket No. E-100, Sub 83, at 2 (Feb. 12, 1999), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=4a4aa187-ebb7-4793-8255-fa6d2edce378>.

largely focusing on the argument that net metering is a billing practice rather than a sale.²¹ The attorney general agreed.²² Ultimately, the NCUC held a two-day hearing on the proposed net-metering rule on October 5 and 6, 1999.

Before the NCUC issued a decision, however, in mid-July of 2000 the investor-owned utilities submitted proposed pilot “Rider PV” rate in lieu of the proposed net-metering rule.²³ On August 4, 2000 the NCUC approved the experimental riders for a maximum of 25 customers per utility, subject to further modification by the NCUC, and allowed comments on the riders.²⁴ The attorney general and renewable energy advocates opposed the riders because they were not equivalent to net metering.²⁵ The PV riders did not attract significant participation over the years. Duke Power never saw more than one or two customers sign up.²⁶ And it appears no

²¹ See Reply Comments of the American Solar Energy Society, the American Wind Energy Association, and the Solar Energy Industries Association, N.C. Utils. Comm’n, Docket No. E-100, Sub 83, at 3-4 (Mar. 26, 1999), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=beb78139-82b8-4ef1-a3f6-6ced6bfd4871>.

²² Attorney General’s Reply Comments on Proposed Net Metering Rule, N.C. Utils. Comm’n, Docket No. E-100, Sub 83, at 5-8 (Mar. 25, 1999), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=67d09d34-1e45-4d07-9a19-b2d7f723e509>.

²³ Duke Power, Request for Approval of Rider PV, Photovoltaic Systems Pilot, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (July 18, 2000), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=8dce5b1f-6a71-45f0-8302-0821b582e565>; Carolina Power & Light Company, Request for Approval of Photovoltaic System (Experimental) Rider PV-1, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (July 17, 2000), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=00cd2ecd-bb32-430d-84d9-938d21ddcfb2>.

²⁴ Order Allowing Rate Riders to Become Effective and Requesting Comments, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Aug. 4, 2000), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=ec3a1e0c-a5f1-48c4-acfe-4a0524f3e210>.

²⁵ See Attorney General’s Comments on Rider PV Proposals, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Sept. 15, 2000), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=f52b44c3-40d2-41a6-acd3-2ad5e3f33538>; Attorney General’s Reply Comments on Rider PV Proposals, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Sept. 29, 2000), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=48ea7ef8-5cdf-4398-af33-b9b6c31f62ce>; NCSEA Comments on Duke and CP&L Rider PV, N.C. Utils. Comm’n, Docket No. E-100, Sub 83, at 1-2 (Sept. 18, 2000), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=3f09adc2-bafe-49b3-b65d-cc3dd522759d>; Comments of American Solar Energy Society, American Wind Energy Association, and Solar Energy Industries Association on Duke and CP&L PV Riders, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Sept. 15, 2000), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=f7de2337-5345-435b-abd2-e0f512c66e5d>.

²⁶ Duke Power, Interim Report of PV Systems, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Apr. 5, 2001), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=3c61ded7-ef8d-441f-ab9d-b2564af2af42> (showing one nonresidential customer subscribed); Duke Power, Interim Report of PV Systems, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Aug. 15, 2001), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=01d88544-892d-4f6b-b87d-3f17fc9ab4d0> (same); Duke Power, Interim Report of PV Systems, N.C. Utils. Comm’n, Docket No. E-100, Sub 83

Carolina Power and Light customers ever signed up.²⁷

On March 7, 2001, the NCUC required the utilities to file annual reports on the rider and scheduled a hearing on whether the riders should be transformed into “true” net metering.²⁸ On May 2, 2001 it postponed the hearings because the North Carolina General Assembly was considering net-metering legislation.²⁹ The bill did not pass.³⁰

On March 28, 2001, the Commission issued its decision in *MidAmerican*.³¹

For a time, the parties involved in the net-metering docket in North Carolina continued to

(July 23, 2002), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=aadf9eac-f5b2-44de-9d43-5a562fb2bfe9> (showing one residential and one nonresidential); Duke Power, Interim Report of PV Systems, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (May 2, 2003), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=508d20a7-479c-4681-90fd-84c974dde26e> (showing one residential customer, and one customer removed); Duke Power, Interim Report of PV Systems, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Oct. 20, 2003), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=5e89605f-8c9c-4aef-8444-057ed13c17d8> (showing one residential customer); Duke Power, Interim Report of PV Systems, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Feb. 13, 2004), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=ce144019-982f-4747-a241-3af71a600d23> (showing one residential and one nonresidential); Duke Power, Interim Report of PV Systems, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Aug. 13, 2004), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=8c7c5bde-273e-4de1-ba52-cbf7130ffa2f> (showing one residential and one nonresidential); Duke Power, Interim Report of PV Systems, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Jan. 2, 2005), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=bacc0ce4-0a19-47a8-96e2-289263d8ff99> (showing one nonresidential customer subscribed and two customers removed); Duke Power, Interim Report of PV Systems, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Aug. 15, 2005), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=64591939-4c16-49ca-ba7b-c6c22467cf36> (showing one residential and one nonresidential); Duke Power, Interim Report of PV Systems, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Feb. 14, 2006), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=939bbba0-0734-4a30-83f9-ce99e8f4b4f1> (same).

²⁷ Carolina Power & Light, Pilot PV Program Interim Report, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Apr. 5, 2001), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=ccfd7245-fdf9-4586-a2c2-c08a34334176>. There are no other reports from CP&L in the docket. The NCUC allowed CP&L to extend its rider for one year. Order Approving Extension, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Dec. 19, 2001), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=2ca25d48-4aa6-47fd-8a08-f6f8cf8746ae>.

²⁸ Order Scheduling Further Hearings, N.C. Utils. Comm’n, Docket No. E-100, Sub 83, at 5 (Mar. 7, 2001), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=e82cbc01-f98b-48ee-9f45-c27326f0d9d8>.

²⁹ Order Postponing Further Hearings, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (May 2, 2001), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=f8f1888b-66e2-431d-95b2-2bf6e3ddd4d8>.

³⁰ See S.B. 971, 2001 Gen. Assemb. (N.C. 2001), <https://www.ncleg.gov/BillLookup/2001/s971> (last visited May 27, 2020).

³¹ Testimony of Kevin Kelly, Director of the Division of Policy Development in the Office of Energy Policy and Innovation of the Federal Energy Regulatory Commission before the Senate Committee on Energy and Natural Resources (May 7, 2009), <https://www.govinfo.gov/content/pkg/CHRG-111shrg50740/html/CHRG-111shrg50740.htm>.

negotiate and the docket remained in limbo.³² Eventually, however, they needed to address the issue resolved in *MidAmerican*. On May 18, 2005, the North Carolina Sustainable Energy Association requested that the NCUC reopen the net metering docket because all that was left to decide was “the question of allowable metering arrangements.”³³ The NCUC granted the request and ordered briefing “on the remaining legal/policy issues regarding net metering.”³⁴

The parties disputed the issue resolved in *MidAmerican*. On one side, in their joint brief on August 5, 2005, Carolina Power & Light, Duke Power, and Virginia Electric Power Company (Dominion) argued that the remaining question for the NCUC was whether net metering customers lawfully could receive a credit at a rate above the utility’s avoided cost under PURPA, and they argued that the answer was no.³⁵

On the other side of the issue, then-Attorney General Roy Cooper argued that the NCUC had authority to establish net metering “as an alternative method for measuring and billing the kilowatt hours of electricity used by retail consumers.”³⁶ The Attorney General acknowledged that if net metering were wholesale sales governed by the FPA then the customer would be subject to the wholesale rate-setting authority of the Commission, and if the customer were a

³² See Order Rescheduling Further Hearings, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (June 9, 2003), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=c5d8e58b-2e8d-4beb-9cad-364fc50b9dbf>; Order Continuing Further Hearings, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Aug. 27, 2003), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=e4d4c4ee-eade-455c-b941-3dc81beed267>; Order Continuing Hearings Pending Further Order, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Mar. 5, 2004), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=90b78914-cacf-4fce-b5ee-ee634a68cc60>.

³³ NCSEA, Request to Reopen Docket No. E-100, Sub 83, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (May 18, 2005), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=1aff62fc-23d2-48f0-8abd-e205280ca624>.

³⁴ Order Establishing Deadline for Filing of Briefs, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (June 2, 2005), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=3aa5a079-80ea-46ef-bc61-3851be40d1ac>.

³⁵ Joint Brief of Progress Energy Carolinas, Inc., Duke Power, and Dominion North Carolina Power, N.C. Utils. Comm’n, Docket No. E-100, Sub 83, at 1, 5, 8 (Aug. 5, 2005), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=e23531ba-9355-40e7-a808-8e7c1a2fabb5>.

³⁶ Attorney General’s Brief 1-2 (Aug. 5, 2005), N.C. Utils. Comm’n, Docket No. E-100, Sub 83, <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=673b14a9-d7ef-4949-b140-eb1621781b3a>.

qualifying facility then it would be entitled to be paid the utility's avoided-cost rate.³⁷ The Attorney General explained, however, that “in *MidAmerican Energy Company*, 94 FERC ¶ 64,340, 2001 FERC LEXIS 630 (2001), the Commission rejected both of these points.”³⁸ He explained that “FERC held that the [Iowa Utilities] Board's [net-metering] rule simply regulated the manner in which a retail consumer's power is measured, and did not involve a sale under PURPA or the FPA.”³⁹ He further explained that the decision “states that when the customer-generator produces more electricity than it uses during a particular period, then there is a PURPA sale if the customer-generator is a QF, or a wholesale sale under the FPA if the customer-generator is not a QF” and that the Commission had approved the board's use of a one-month billing period and had further noted that it measures compliance with the technical standards for qualifying-facility status on an annual basis.⁴⁰

Similarly, the Public Staff acknowledged that “there has been a resolution of the uncertainty as to the legality of net metering created by a 1997 ruling” of FERC.⁴¹ The Public Staff explained that in *MidAmerican*, “the FERC held that Iowa's net metering rule simply regulated the manner in which a retail consumer's power is measured and did not involve a sale under PURPA.”⁴² The Public Staff further pointed out that, *partly as a result of FERC's decision in MidAmerican*, the Energy Policy Act of 2005 (which had not been enacted at the time of filing) required state commissions “to consider whether or not to adopt new standards

³⁷ *Id.* at 2-3.

³⁸ *Id.* at 3.

³⁹ *Id.*

⁴⁰ *Id.* FERC has approved the use of a one-month billing cycle as reasonable, and has indicated that other billing periods could also be reasonable. *Sun Edison L.L.C.*, 129 FERC ¶ 61,146, 61,620 n.10 (2009) (citing to *MidAmerican, Energy Co.*, 94 FERC ¶ 61,340, at 62,262-64 (2001)), *modified on rehearing by Sun Edison L.L.C.*, 131 FERC ¶ 61213, 62080 (June 3, 2010).

⁴¹ Brief of the Public Staff, N.C. Utils. Comm'n, Docket No. E-100, Sub 83, at 4 (Aug. 5, 2005), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=4b021568-6237-4aab-b316-f8dd5922a6af>.

⁴² *Id.*

regarding net metering” and other issues, although a state would not have to comply if it had already adopted or considered a comparable provision.⁴³ The Public Staff believed that the situation concerning net metering was very different from when the NCUC first considered it: “Not only has the FERC ruled that net metering does not constitute a sale within the meaning of PURPA, Congress has now passed a law requiring state commissions to consider whether a net metering standard should be adopted.”⁴⁴

On August 8, 2005, Congress passed the Energy Policy Act of 2005.⁴⁵

On October 20th, 2005, the NCUC issued an order adopting net metering in the state.⁴⁶ In this order, the NCUC specifically stated that, “decisions by the Federal Energy Regulatory Commission (FERC) have dismissed the argument that net metering is preempted under the Public Utility Regulatory Policies Act of 1978 (PURPA).”⁴⁷ Relying in part on FERC’s decisions to disclaim jurisdiction over net metering, the NCUC approved net metering in the state, effective as of January 1st, 2006.⁴⁸ The order also closed the PV riders, effective January 1, 2006, and transferred customers using the PV riders to net metering automatically.⁴⁹

During the proceedings leading up to the order by the NCUC, NCSEA recommended that, “excess generation credits be rolled over from month-to-month for 12 months, with

⁴³ *Id.* at 5.

⁴⁴ *Id.* at 6.

⁴⁵ Energy Policy Act of 2005, Pub. L. 109-58, 119 Stat. 594-1143 (Aug. 8, 2005), <https://www.ferc.gov/enforcement/enforce-res/EPAct2005.pdf>.

⁴⁶ Order Adopting Net Metering, N.C. Utils. Comm’n, Docket No. E-100, Sub 83 (Oct. 20, 2005), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=766d7127-977d-4312-a98c-e2fc6fa09742>.

⁴⁷ *Id.* at 1.

⁴⁸ *Id.* at 3-5.

⁴⁹ *Id.* at 5. The NCUC subsequently granted Duke Power’s request to extend the riders. *See* Order Allowing Request to Cancel Rider PV and Clarifying Requirements for Interconnection, N.C. Utils. Comm’n, Docket No. E-100, Sub 83, at 5 (Dec. 19, 2008), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=1006534d-4b0c-4992-a29e-092e633811e9>.

payment at avoided-cost rates at the end of the 12-month period.”⁵⁰ In response, the NCUC declared in the order that,

“[i]f the electricity delivered to the grid by the customer-generator exceeds the electricity supplied by the utility during a monthly billing period, the customer-generator shall be billed for the applicable demand and other charges for that billing period and shall be credited for the excess kilowatt-hours generated during that billing period.”⁵¹

Furthermore, the NCUC stated that the “kilowatt-hour credit, if any, shall be applied to the following monthly billing period, but shall be reset to zero at the beginning of each summer and winter billing season as defined in the utility’s tariff.”⁵²

Since adopting net metering in light of the Energy Policy Act of 2005 and *MidAmerican*, North Carolina has continued to expand the program. In 2007, in legislation known as “Senate Bill 3”, the North Carolina General Assembly directed the NCUC to consider adopting net metering for facilities up to one megawatt (“MW”).⁵³ In its final order responding to the state law, the NCUC expanded and reformed the net-metering program. It concluded that it was in the public interest to allow customer-generators to use facilities up to and include one MW in size to net meter and it removed the aggregate limit on net metering, previously capped at 0.2% of the utility’s North Carolina-jurisdictional retail peak load for the previous year.⁵⁴ It removed the requirement that net-metering customers opt into time-of-use rates and directed the utilities to

⁵⁰ Order Adopting Net Metering, N.C. Utils. Comm’n, Docket No. E-100, Sub 83, at 2-3 (Oct. 20, 2005), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=766d7127-977d-4312-a98c-e2fc6fa09742>.

⁵¹ *Id.* at 3.

⁵² *Id.* at 3-4.

⁵³ Order Establishing Procedural Schedule, N.C. Utils. Comm’n, Docket No. E-100, Sub 83, at 1 (June 9, 2008), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=0d488c12-f5ea-476e-99b9-85c4fa934bcc> (citing Act of Aug. 20, 2007 (Senate Bill 3), 2007-397 N.C. Sess. Laws 1184, § 4(a) (codified at N.C. Gen. Stat. § 62-133.8(i)(6), https://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_62/GS_62-133.8.html)).

⁵⁴ Order Amending Net Metering Policy, N.C. Utils. Comm’n, Docket No. E-100, Sub 83, at 11-12 (Mar. 31, 2009), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=f1b29a03-4445-4930-9dfd-14682ceb368e>.

allow net metering on any rate schedule.⁵⁵ It clarified the distribution of RECs, directing that all RECs associated with a net-metering customer's generation be assigned to the utility.⁵⁶ It expanded the types of eligible generating sources to include any form of renewable generation as defined in Senate Bill 3, which excluded thermal generation.⁵⁷ Finally, the NCUC reiterated its position from 2005 that net metering is “designed for owners of small-scale renewable generation installed for the customer's own use, not for sale to the utility,” and declared that by adopting its new reforms it continued “to adopt a reasonable balance between utilities, net metering customers, and the utilities' remaining customers while recognizing the significance of changes in State policy.”⁵⁸

The NCUC's revisions to the net-metering program had the desired effect and participation increased in short order.⁵⁹ In 2014, in response to indications by Duke Energy Corporation that it planned to seek legislation altering the state's net-metering rules, NCSEA moved the NCUC to direct Duke Energy Corporation to guarantee that the existing net-metering terms and conditions would continue to be available for any customer who installed a net-metered rooftop solar system in the coming year.⁶⁰ The NCUC ultimately denied NCSEA's motion because there was no petition pending with the NCUC to alter its net-metering rules.⁶¹ The NCUC affirmed that, “[w]ere the Commission inclined to initiate such a proceeding, issues

⁵⁵ *Id.* at 12-13.

⁵⁶ *Id.* at 13.

⁵⁷ *Id.* at 15.

⁵⁸ *Id.*

⁵⁹ See Duke Energy Carolina, 2010 Consolidated Report of Interconnection Requests, N.C. Utils. Comm'n, Docket No. E-100, Sub 101A (Mar. 31, 2011), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=2234be67-7f13-4fa0-8c78-452e23116837> (showing multiple interconnection request for net metering).

⁶⁰ NCSEA, Motion for Disclosure and Equitable Relief, N.C. Utils. Comm'n, Docket No. E-100, Sub 83, at 1-2 (Feb. 24, 2014), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=35273c58-5d84-454a-a38e-43510a65ab84>.

⁶¹ Order Denying Motion, N.C. Utils. Comm'n, Docket No. E-100, Sub 83, at 3 (May 28, 2014), <https://starw1.ncuc.net/NCUC/ViewFile.aspx?Id=a31415a1-0103-4693-b9b1-9acb675d4d70>.

such as the treatment of historical net metering participants that relied on Commission policy when implementing their system would undoubtedly be an item under consideration.”⁶² As mentioned above, the Commission must likewise consider the reliance interests of thousands of North Carolinians, and millions of Americans, who have installed solar pursuant to established net-metering programs.

Finally, in 2017 the North Carolina General Assembly codified net metering in the North Carolina General Statutes and directed the NCUC to approve “revised net metering rates for electric customers that (i) own a renewable energy facility for that person’s own primary use or (ii) are customer generator lessees.”⁶³ The legislation mandated that, “rates shall be nondiscriminatory and established only after an investigation of the costs and benefits of customer-sited generation.”⁶⁴ Additionally, the legislation directed the NCUC to, “establish net metering rates under all tariff designs that ensure that the net metering retail customer pays its full fixed cost of service,” and to provide grandfathering through January 1, 2027.⁶⁵

Net metering has also garnered the attention of Governor Roy Cooper and forms an important part of the state’s Clean Energy Plan to reduce carbon emission from the electric power sector by 70% from 2005 levels by 2030 and to net zero by 2050. The plan recommends requiring utilities to offer “virtual” or group net metering in order to facilitate greater access to

⁶² *Id.* at 3-4.

⁶³ See Act of July 27, 2017, 2017-192 N.C. Sess. Laws 1340 (defining net metering as the, “use [of] electrical metering equipment to measure the difference between the electrical energy supplied to a retail electric customer by an electric power supplier and the electrical energy supplied by the retail electric customer to the electric power supplier over the applicable billing period.”).

⁶⁴ *Id.*

⁶⁵ *Id.*

community solar.⁶⁶ The Department of Environmental Quality explained that compensating subscribers under a net-metering program would improve the economics for the customer compared to using the utility’s avoided-cost rate, although it acknowledged that some states use a “value-of-solar” approach.⁶⁷ The Department is currently working with utilities to develop small community-solar pilot programs that could incorporate net metering.

As a direct result of North Carolina’s reliance on FERC precedent, the solar industry has thrived in North Carolina. There are currently over 14,000 net metering customers in North Carolina.⁶⁸ North Carolina ranks second in the nation for installed solar capacity.⁶⁹ Although most of North Carolina’s solar capacity comes from larger facilities, approximately 196 MW comes from small-scale solar.⁷⁰ The solar industry has been directly responsible for 6,617 jobs in the state.⁷¹

B. South Carolina

Over the course of two decades, South Carolina has dedicated significant effort to developing and implementing one of the most successful net-metering programs in the Southeastern United States. These efforts—and the substantial benefits they have brought to South Carolina’s ratepayers and economy—are predicated on the long-standing understanding that states, not the Federal government, have the authority to make decisions regarding net

⁶⁶ N.C. DEP’T OF ENV’T L QUALITY, NORTH CAROLINA CLEAN ENERGY PLAN 98-99 (2019), https://files.nc.gov/governor/documents/files/NC_Clean_Energy_Plan_OCT_2019_.pdf.

⁶⁷ *Id.*

⁶⁸ *Form EIA-861M (formerly EIA-826) detailed data*, U.S. ENERGY INFO. ADMIN., <https://www.eia.gov/electricity/data/eia861m/> (last updated May 28, 2020) (download spreadsheet at “XLS” link corresponding to 2020 (March 2020) under “Net Metering” heading) (Mar. 2020 preliminary update).

⁶⁹ *North Carolina Solar*, SOLAR ENERGY INDUS. ASS’N (2020), <https://www.seia.org/state-solar-policy/north-carolina-solar>.

⁷⁰ *Form EIA-861M (formerly EIA-826) detailed data*, *supra* note 68 (Mar. 2020 preliminary update for small scale PV estimate).

⁷¹ *Solar Jobs Census 2019: North Carolina*, SOLAR FOUND. (2019), <https://www.thesolarfoundation.org/national/>.

metering.

On December 1, 2005, the South Carolina Office of Regulatory Staff (“ORS”) petitioned the South Carolina Public Service Commission (“PSC”) to establish a docket to address net metering for the first time and implement the requirements of Section 1252 of the Energy Policy Act of 2005.⁷² In the petition ORS expressed its understanding that the Act required the PSC to consider implementing net-metering standards.⁷³ Indeed, as discussed above, the Act did provide a new net-metering standard and required that “[e]ach State regulatory authority . . . shall consider each standard established by subsection (d) and make a determination concerning whether or not it is appropriate to implement such standard to carry out the purposes of this chapter.” 16 U.S.C. § 2621(a). And of course net metering was one of the standards state regulatory authorities were required to consider. *Id.* § 2621(d)(11). Therefore, ORS and the PSC reasonably relied on Congress’s decision that net-metering policies are left to the state regulatory authorities. This understanding formed the bedrock of South Carolina’s nascent net-metering program and persisted as South Carolina continued to develop its net-metering programs in order to meet its citizens’ unique energy needs.

On August 30, 2007, the PSC approved a joint proposal from ORS and regulated investor-owned utilities to allow net metering for up to 0.2% of the South Carolina jurisdiction peak load for the prior year.⁷⁴ On June 24, 2008, the PSC issued an order concluding that “the time has come to approve the proposed tariffs and make net metering available to South

⁷² Petition to Establish Docket to Fulfill the State Requirements of the Energy Policy Act of 2005, Docket No. 2005-385-E (Dec. 12, 2005), <https://dms.psc.sc.gov/Attachments/Matter/202101b6-d844-61c9-70919b24f6c71f99>.

⁷³ *Id.* at 2-3.

⁷⁴ Order on Consideration of the Appropriate Standards to be Used for Net Metering and Smart Metering in South Carolina, Docket No. 2005-385-E, at 2 (Aug. 30, 2007), <https://dms.psc.sc.gov/Attachments/Order/bc448e37-d85a-23d2-424f813430b190cf>.

Carolínians” and directing utilities to make net-metering plans available to their customers no later than July 1, 2008.⁷⁵ Around the same time, the South Carolina General Assembly passed a joint resolution requiring the South Carolina Energy Office and ORS to provide a report to the General Assembly recommending a process and procedure for establishing net-metering programs at all distribution electric utilities in the state.⁷⁶ In enacting this joint resolution, the General Assembly found that:

- (1) the energy needs of South Carolina are growing at a rapid rate;
- (2) solar energy is clean and safe;
- (3) the federal Energy Policy Act provides substantial income tax benefits to homeowners and businesses using solar energy;
- (4) a major impediment to greater use of solar energy in South Carolina is the difficulty for homeowners to interconnect photovoltaic solar systems on their homes with the electricity grids of electric utilities; and
- (5) net metering programs and policies designed to facilitate use of photovoltaic solar energy are already in effect by law or regulation in thirty-nine states.⁷⁷

In other words, the General Assembly concluded that based on the unique and developing energy needs of South Carolínians, it was appropriate to revisit the structure of the State’s net-metering program. On December 30, 2008, ORS and the South Carolina Energy Office submitted the required report to the General Assembly with a list of recommendations for making net-metering programs more “user friendly” and encourage the development of net metering in South Carolina.⁷⁸ On June 19, 2009, ORS and investor-owned utilities operating in South Carolina entered in to as settlement agreement accepting that the utilities would adopt the

⁷⁵ Implementation of Net Metering Tariffs and Denial of Motion to Receive Further Testimony Regarding Fuel Diversity, Docket No. 2005-385-E, at 1-3 (June 24, 2008), <https://dms.psc.sc.gov/Attachments/Order/c0110b8d-bb46-5837-0119bb0a9b89fd40>.

⁷⁶ H.J. Res. 3395, 2007 Leg., 177th Sess. (S.C. 2007), https://www.scstatehouse.gov/sess117_2007-2008/bills/3395.htm.

⁷⁷ *Id.*

⁷⁸ Letter from C. Dukes Scott, Executive Director, ORS, and John Clark, Director, S.C. Energy Office, to Senator Glen F. McConnell and Rep. Robert W. Harrell Jr. (Dec. 30, 2008), <https://www.scstatehouse.gov/Archives/ORS/NetMeteringReport.pdf>.

recommendations made by ORS in the Net Metering Report.⁷⁹

On June 2, 2014, South Carolina Governor Nikki Haley signed the Distributed Energy Resource Program Act, also known as “Act 236”, which had passed both houses unanimously. 2014 S.C. Act 2405. Act 236 required electric utilities to make net metering available to customer-generators on a first-come, first-served basis until a total nameplate generating capacity of net-metering systems equaled two percent of the utility’s retail peak demand. *Id.* Act 236 expanded the state’s net metering cap from 0.2% of retail peak demand to 2%. *Id.* Act 236 also required the PSC to convene a new proceeding to implement the law’s net-metering requirements.⁸⁰ The parties to the Act 236-mandated PSC proceeding entered into a settlement agreement which among other things established net-metering parameters for customer-generators and a methodology for determining the value customer-generators provide to the grid.⁸¹

As of 2019, Duke Energy Progress, Inc., (“DEP”), Duke Energy Carolinas, Inc. (“DEC”), and Dominion Energy South Carolina (“DESC”) had all achieved, or come very close to achieving, the 2% net-metering cap established by Act 236.⁸²

⁷⁹ Settlement Agreement, Docket No. 2005-385-E, at 3 (June 19, 2009), <https://dms.psc.sc.gov/Attachments/Matter/fa2d82ca-fb13-57c8-53806d601ae2a9e5>.

⁸⁰ Petition to Establish Generic Proceeding Pursuant to the Distributed Energy Resource Program Act, Docket No. 2014-246-E (June 5, 2014), <https://dms.psc.sc.gov/Attachments/Matter/4852a222-155d-141f-23886ce09a939db2>.

⁸¹ Settlement Agreement, Docket No. 2014-246-E (Dec. 11, 2014), <https://dms.psc.sc.gov/Attachments/Matter/46a1fee8-155d-141f-233230a670190eb2>.

⁸² See Letter from Matthew W. Gissendanner, DESC, to Honorable Jocelyn Boy, Chief Clerk/Administrator, P.S.C., Docket No. 214-246-E (May 16, 2019), <https://dms.psc.sc.gov/Attachments/Matter/8eba3afa-050e-4856-afcb-1bd2f941d394> (noting that DESC achieved the 2.0% net energy metering threshold); Letter from Rebecca J. Dulin, Senior Counsel, DEC, to Honorable Jocelyn Boy, Chief Clerk/Administrator, P.S.C., Docket No. 2014-246-E (Jan. 15, 2019), <https://dms.psc.sc.gov/Attachments/Matter/54ac0f3c-cad1-48be-aa12-9806fcb4cda6> (noting that DEC surpassed the 1.5% threshold); Letter from Rebecca J. Dulin, Senior Counsel, DEP, to Honorable Jocelyn Boy, Chief Clerk/Administrator, P.S.C., Docket No. 214-246-E (Jan. 15, 2019),

On May 16, 2019, South Carolina Governor Henry McMaster signed into law the unanimously passed South Carolina Energy Freedom Act, also known as Act 62. South Carolina Energy Freedom Act (Act 62), 2019 S.C. Act 368. Act 62 again stressed that the PSC must consider “state-specific impacts unique to South Carolina” when considering the design and implementation of renewable energy programs, including net metering. *Id.* § 1 (codified at S.C. CODE ANN. § 58-41-05 (2019)). Act 62 eliminated the state’s 2% net-metering cap and provided that starting on June 1, 2021, the net metering tariffs would be replaced by “solar choice metering tariffs” established by the PSC based on the value provided by customer-generators. *Id.* §§ 3-6 (codified at S.C. CODE ANN. §§ 58-40-10, 58-40-20, 58-27-2610). The PSC recently opened four net-metering dockets—one for each major investor-owned utility operating in South Carolina and a generic net metering docket—where it will determine the appropriate structure and compensation level of the solar choice metering tariffs.

Over the last twelve years, South Carolina’s number of net-metering customers has soared from 12 to approximately 20,000.⁸³ In addition to benefiting thousands of ratepayers, this surge in solar generation has helped drive the creation of 3,307 solar jobs in South Carolina.⁸⁴ These jobs include rooftop installers, engineers, sales and marketing professionals, developers, and electricians. All told, the solar industry has invested over \$1.6 billion in South Carolina,

<https://dms.psc.sc.gov/Attachments/Matter/dd5011d8-146d-497e-873d-cd76681881b6> (noting that DEP surpassed the 1.0% threshold).

⁸³ See Letter from C. Dukes Scott, Executive Director, ORS, and John Clark, Director, S.C. Energy Office, to Senator Glen F. McConnell and Rep. Robert W. Harrell Jr., *supra* note 78, at 1; *Form EIA-861M (formerly EIA-826) detailed data*, U.S. ENERGY INFO. ADMIN., <https://www.eia.gov/electricity/data/eia861m/> (last updated May 28, 2020) (download spreadsheet at “XLS” link corresponding to 2020 (March 2020) under “Net Metering” heading) (Mar. 2020 preliminary update).

⁸⁴ *Solar Jobs Census 2019: South Carolina*, SOLAR FOUND (2019), <https://www.solarstates.org/#state/south-carolina/counties/solar-jobs/2019>.

including over \$528 million in 2019 alone.⁸⁵ South Carolina’s net-metering program has been so successful because it has been driven by South Carolinians’ unique and changing needs—be it making the net metering more “user friendly” or expanding net-metering caps to accommodate a booming industry. South Carolina’s decades-long understanding that decisions about net metering are reserved for states has been critical to enabling these flexible, responsive, and ultimately successful programs.

C. Georgia

Georgia established net metering in a law passed on April 28, 2001, approximately one month after the Commission’s decision in *MidAmerican*.⁸⁶ The General Assembly found that it was in the public interest to: “(1) Encourage private investment in renewable energy resources; (2) Stimulate the economic growth of Georgia; and (3) Enhance the continued diversification of the energy resources used in Georgia.”⁸⁷ It further found and declared, “that a program to provide distributed generation for eligible cogenerators is a way to encourage private investment in renewable energy resources, stimulate in-state economic growth, enhance the continued diversification of this state’s energy resource mix, and reduce interconnection and administrative costs.”⁸⁸ The law established “bidirectional metering” for the first time and required that it be made available to customers.⁸⁹

The law has not reached its full potential to date, largely as a result of the decision by

⁸⁵ *State Solar Spotlight: South Carolina*, SOLAR ENERGY INDUS. ASS’N (Mar. 17, 2020), <https://www.seia.org/sites/default/files/2020-06/South%20Carolina.pdf>.

⁸⁶ S.B. 93, 2001 Gen. Assemb., Reg. Sess. (Ga. 2001) (enacted Apr. 28, 2001), <http://www.legis.ga.gov/Legislation/en-US/display/20012002/SB/93>.

⁸⁷ *Id.*; see GA. CODE ANN. § 46-3-51(a)(2020).

⁸⁸ Ga. S.B. 93; see § 46-3-51(b).

⁸⁹ Ga. S.B. 93; see § 46-3-52(1) (defining “bidirectional metering”); *id.* § 46-3-54.

many utilities to use an instantaneous netting period.⁹⁰ For example, Georgia Power for many years only offered instantaneous netting at the avoided-cost rate for any solar exports to the grid for customers participating in its on-site solar tariff.⁹¹ As a result, although utility-scale solar has boomed in Georgia in recent years, rooftop solar has lagged. Most of the utility-scale solar in the state has been developed as a result of competitively bid solicitations issued by Georgia Power pursuant to Georgia Public Service Commission orders. The competitively bid capacity all comes in under avoided cost and saves Georgia ratepayers significant sums of money. Very little “behind-the-meter” solar has been developed in the state thus far.

However, in the 2019 Georgia Power Company Rate Case, the Georgia Public Service Commission (“GPSC”) affirmatively modified a settlement agreement between Georgia Power and several intervenors to provide that the “netting period length shall be changed from instant to monthly for the first 5000 rooftop solar ratepayer[s]” in Georgia Power’s behind-the-meter program, or “until the installed capacity reaches 32 [MW], whichever comes first.”⁹² While the program is capped at 5,000 customers, the new policy represents a 500% increase of the total number of Georgia customers with “behind-the-meter” generation.⁹³ The newly adopted monthly net-metering program has yet to be implemented. The new policy is expected to go into effect July 1, 2020 for most existing rooftop solar customers, but the policy will be retroactively

⁹⁰ See Cesar Prieto and Seth Gunning, *Utility barriers to rooftop solar in Georgia*, PV MAG. (Nov. 4, 2019), <https://pv-magazine-usa.com/2019/11/04/utility-barriers-to-rooftop-solar-in-georgia/>.

⁹¹ See *id.*

⁹² Short Order Adopting Settlement Agreement as Modified, Ga. Pub. Serv. Comm’n, Docket No. 42516, at 10-11 (Dec. 31, 2019), <https://psc.ga.gov/search/facts-document/?documentId=179339>.

⁹³ See John Weaver, *Georgia Power has 5,000 residential solar net metering contracts and it’s first come, first served*, PV MAG. (Dec. 18, 2019), <https://pv-magazine-usa.com/2019/12/18/georgia-power-has-5000-residential-solar-power-net-metering-contracts-first-come-first-serve/> (noting that, “there are currently only about 1,000 residential solar power systems in Georgia Power territory.”).

applied so that customers benefit from the change from January 1, 2020 onward.⁹⁴ The GPSC will re-evaluate the appropriate netting period in Georgia Power's next rate case.⁹⁵

Participants in Georgia Power's community solar program also benefit from monthly net metering. The monthly production from a participant's community solar allotment is deducted from their monthly electric usage.⁹⁶

The expansion of net-metering programs will help to expand an important part of Georgia's economy. According to SEIA, the solar industry is responsible for 4,798 jobs in Georgia, which makes the state 15th in terms of jobs created in the 2019 report.⁹⁷ This includes 56 solar manufacturing companies and 110 solar installer/developer companies.⁹⁸ With a substantial in-state solar industry already established, the recent change in net metering for Georgia Power customers is likely to result in impressive growth in the rooftop solar industry in the coming years.

D. Virginia

The Virginia General Assembly passed net-metering legislation in 1999 with broad bipartisan support as part of the Virginia Electric Utility Restructuring Act,⁹⁹ and implemented

⁹⁴See Ga. Power Co., Amended Version of the RNR-10 Tariff, Ga. Pub. Serv. Comm'n, Docket No. 42516 (June 10, 2020), <https://psc.ga.gov/search/facts-document/?documentId=181490>.

⁹⁵Order Adopting Settlement Agreement as Modified, Ga. Pub. Serv. Comm'n, Docket No. 42516 (Feb. 6, 2020), <https://psc.ga.gov/search/facts-document/?documentId=179856>.

⁹⁶ *Community Solar*, GA. POWER, <https://www.georgiapower.com/company/energy-industry/energy-sources/solar-energy/solar/community-solar.html> (last visited May 8, 2020).

⁹⁷ *Georgia Solar*, SOLAR ENERGY INDUS. ASS'N (2019), <https://www.seia.org/state-solar-policy/georgia-solar>.

⁹⁸ *Id.*

⁹⁹ Virginia Electric Utility Restructuring Act, ch. 411, 1999 Va. Acts 478 (enacted Mar. 1, 1999), <https://lis.virginia.gov/cgi-bin/legp604.exe?991+ful+CHAP0411&991+ful+CHAP0411>; see VA. CODE ANN. § 56-594 (2020), <https://law.lis.virginia.gov/vacode/56-594/> (net energy metering provisions).

companion regulations in 2000.¹⁰⁰ It has remained part of the Virginia Code for the last twenty years and during this time the Virginia General Assembly has consistently expanded the program to include more customers and system sizes, often with bipartisan support.

The state has implicitly relied on the Commission's decision in *MidAmerican* in the ensuing years as it has modified and expanded its net-metering program. For example, in 2015, a bipartisan effort increased the eligibility cap for nonresidential customers from 500 kW to one MW system size.¹⁰¹ Then in his 2018 Energy Plan, Governor Northam recommended raising the existing 1% net metering cap to 5% of each utility's adjusted Virginia peak-load forecast for the previous year, thus indicating that net metering is a priority for the executive branch in Virginia as well as the legislative.¹⁰² Consistent with this plan, in 2019, the General Assembly passed bipartisan legislation expanding net metering in electric cooperative territories by increasing the total capacity of the generation facilities allowed to net meter to 5% of the system peak for each electric cooperative and authorizing electric cooperatives to raise these caps to a total of 7% of its respective system peak.¹⁰³

Most recently, in the 2020 session, the General Assembly again expanded the net-metering program, but this time for customers of investor-owned utilities. It increased the total capacity of the generation facilities allowed to net meter in investor-owned utility territories from

¹⁰⁰ See 20 VA. ADMIN. CODE § 5-315-10 (2020), <https://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+20VAC5-315-10&000+reg+20VAC5-315-10>.

¹⁰¹ Act of Mar. 23, 2015, ch. 431, 2015 Va. Acts 819, <https://lis.virginia.gov/cgi-bin/legp604.exe?151+ful+CHAP0431&151+ful+CHAP0431>.

¹⁰² VA. OFFICE OF SEC'Y OF COMMERCE & TRADE, DEP'T OF MINES, MINERALS AND ENERGY, THE COMMONWEALTH OF VIRGINIA'S 2018 ENERGY PLAN 16 (2018), <https://www.governor.virginia.gov/media/governorvirginiagov/secretary-of-commerce-and-trade/2018-Virginia-Energy-Plan.pdf>.

¹⁰³ Act of Mar. 21, 2019, ch. 742, 2019 Va. Acts, <https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0742&191+ful+CHAP0742>; Act of Mar. 21, 2019, ch. 763, 2019 Va. Acts, <https://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0763&191+ful+CHAP0763>.

1% of such utilities' adjusted Virginia peak-load forecast for the previous year to 6% including a 1% carve-out low to moderate income customers.¹⁰⁴ That same legislation from the 2020 session also increased the system size caps from 20 kW to 25 kW for residential systems and one MW to three MW for commercial/industrial systems.¹⁰⁵

Currently, Virginia's net-metering structure provides that the generation from distributed energy systems, typically solar energy, is credited to a customer's bill at the retail rate.¹⁰⁶ At the end of a twelve month period, the customer may elect to roll over any excess generation or receive a payment for the excess generation from their utility at the avoided cost rate.¹⁰⁷

Virginia's increasingly robust net-metering program has resulted in tremendous growth in rooftop solar. Between 2000, when Virginia's net-metering law was enacted, and the end of 2009, Virginia had less than one MW of net-metered renewable energy installed in the Commonwealth.¹⁰⁸ That one MW was all in the form of small, distributed solar and wind power systems installed at residences and businesses.¹⁰⁹ By October 2019, the total amount of distributed solar in Virginia has risen to over 92 MW.¹¹⁰

Net metering has also had a massively positive impact on Virginia's economy. As of the end of 2019, Virginia was ranked 18th in the nation in the number of solar jobs, with a total of

¹⁰⁴ Virginia Clean Economy Act, ch. 1193, 2020 Va. Acts (enacted Apr. 11, 2020), <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1193>.

¹⁰⁵ *Id.*

¹⁰⁶ VA. CODE ANN. § 56-594 (2020); VA. OFFICE OF SEC'Y OF COMMERCE & TRADE, *supra* note 102, at 15.

¹⁰⁷ VA. OFFICE OF SEC'Y OF COMMERCE & TRADE, *supra* note 102, at 15.

¹⁰⁸ *Id.* at 8.

¹⁰⁹ *Id.*

¹¹⁰ VCU CTR. FOR URBAN AND REG'L ANALYSIS, ASSESSING THE BENEFITS OF DISTRIBUTED SOLAR IN VIRGINIA 5 (2020), https://virginiasolarforall.com/wp-content/uploads/sites/62/2020/01/cura_solar_report_-_1-22-20.pdf.

4,489 people employed.¹¹¹ These jobs include rooftop installers, engineers, sales and marketing professionals, developers, and electricians. While utility scale projects are largely driving solar growth in Virginia, smaller distributed systems offer significant employment opportunities.¹¹² In fact, the Solar Energy Industries Association projects that solar energy in Virginia will grow by an additional almost 4,000 MW over the next five years.¹¹³ This projection does not take into account the recent legislation called the Virginia Clean Economy Act that passed in March of this year that puts Virginia on track to reduce Virginia’s carbon emissions from electric utilities to zero by 2050 and to accelerate the growth of utility-scale and distributed solar and wind generation. The Virginia Clean Economy Act raised net-metering caps, among many other renewable energy provisions, and is expected to further bolster the positive economic impact of solar in the Commonwealth.

E. Tennessee

Tennessee does not have a statewide net-metering program. This is largely because the Tennessee Valley Authority, which serves local power companies in the state, has declined to adopt net metering. Instead, TVA previously offered a Green Power Providers (GPP) program, which it developed following a 2003 pilot program in response to customer demand for net metering.¹¹⁴ In 2007, following the Energy Policy Act of 2005, TVA considered adopting retail net metering, and ultimately decided that the GPP program was an appropriate substitute.¹¹⁵

¹¹¹ *State Solar Spotlight: Virginia*, SOLAR ENERGY INDUS. ASS’N (Mar. 17, 2020), <https://www.seia.org/sites/default/files/2020-03/Virginia.pdf>.

¹¹² VA. OFFICE OF SEC’Y OF COMMERCE & TRADE, *supra* note 102, at 9.

¹¹³ *State Solar Spotlight: Virginia*, *supra* note 111.

¹¹⁴ See *GPP Frequently Asked Questions*, TENN. VALLEY AUTH., <https://www.tva.com/energy/valley-renewable-energy/green-power-providers/gpp-frequently-asked-questions> (last visited May 28, 2020).

¹¹⁵ Tenn. Valley Auth., Notice of Determinations on the PURPA Standards Set Forth in the Energy Policy Act of 2005, 72 Fed. Reg. 44,910, 44,911 (Aug. 9, 2007).

Nevertheless, at least one electric cooperative in Tennessee does offer net metering. Kingsport Power Company maintains a net-metering tariff currently serving an estimated 20 residential customers and 10 commercial customers.¹¹⁶ In its order approving the tariff, the Tennessee Regulatory Authority explicitly relied on the Energy Policy Act of 2005.¹¹⁷

Across the Southeast, states, regulatory authorities, and nonregulated utilities have acted to adopt or revise net-metering programs in the wake the jurisdictional precedent established in *MidAmerican* and the Energy Policy Act of 2005. In turn, over 40,000 net-metering participants across the region and the companies that provide rooftop solar have relied on these programs to make significant financial investments. NERA's petition threatens these serious reliance interests, and the petition should be rejected.

III. Reversal of Precedent Would Detrimentially Impact the Economy and Undermine States' Clean-Energy Goals

Net metering contributes to our states' economies, generating real value for customers, developers, and the environment. Net-metering programs have contributed to a robust clean energy economy across the Southeast states, which together have over 20,000 solar workers in good-paying jobs.¹¹⁸ In addition, over 40,000 customers¹¹⁹ depend on net-metering programs to

¹¹⁶ See Form EIA-861M (formerly EIA-826) detailed data, U.S. ENERGY INFO. ADMIN., <https://www.eia.gov/electricity/data/eia861m/> (last visited May 28, 2020) (download spreadsheet at "XLS" link corresponding to 2020 (March 2020) under "Net Metering" heading); *Tennessee Regulatory Authority Docket 1100001*, TENN. REGULATORY AUTH., <http://share.tn.gov/tra/dockets/1100001.htm> (original net metering docket); *Tariff N.M.S. (Net Metering Service Rider)*, KINGSPORT POWER CO., at Original Sheet Number 17-1 to 17-5 (Sept. 1, 2016), <https://www.appalachianpower.com/global/utilities/lib/docs/ratesandtariffs/Tennessee/2020-01-01KgPCoTariff2-FTRARMASMASTER.pdf>; see also *NET METERING APPROVED FOR KINGSPORT CUSTOMERS*, KINGSPORTTN.GOV (Aug. 5, 2011), <https://www.kingsporttn.gov/net-metering-approved-for-kingsport-customers/> (stating tariff went into effect August 2, 2011).

¹¹⁷ Order Granting Approval of Special Contract, Tenn. Regulatory Auth., Docket No. 11-00001, at 3 (May 3, 2011), <http://share.tn.gov/tra/orders/2011/1100001a.pdf>.

¹¹⁸ *Solar Jobs Census 2019*, SOLAR FOUND. (2019), <https://www.thesolarfoundation.org/national/> (data on solar jobs from Virginia, Tennessee, North Carolina, South Carolina, and Georgia).

offset their energy usage with clean local independent generation, in many cases relying on the programs to recoup substantial investments in what are effectively grid assets, their rooftop solar arrays. Thus, net metering has engendered investment-backed expectations among the residents of our states. *See Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978) (discussing importance of “distinct investment-backed expectations” in takings context). To reverse course without taking these reliance interests into account would be arbitrary and capricious. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). But more importantly, it would be a grave disservice to all of the people of our region who rely on these policies.

A. The Southeast’s Clean-Energy Economy

NERA’s petition to reverse longstanding precedent threatens to undermine the enormous economic impact of solar in the Southeast and infringe on state clean energy goals. Adoption of solar energy has generated significant economic benefits for states across the Southeast. One critical metric is the amount of money the solar industry has directly invested in a state’s economy. As of 2020 the solar industry had invested:

- \$1,195.35 million in Virginia, including \$206.5 million in 2019¹²⁰
- \$8,947.99 million in North Carolina, including \$887.69 million in 2019¹²¹
- \$1,705.29 million in South Carolina, including \$525.24 million in 2019¹²²
- \$2,299.21 million in Georgia, including \$793.45 million in 2019¹²³

¹¹⁹ *See Form EIA-861M (formerly EIA-826) detailed data*, U.S. ENERGY INFO. ADMIN., <https://www.eia.gov/electricity/data/eia861m/> (last updated May 28, 2020) (download spreadsheet at “XLS” link corresponding to 2020 (March 2020) under “Net Metering” heading) (Mar. 2020 preliminary update).

¹²⁰ *State Solar Spotlight: Virginia*, SOLAR ENERGY INDUS. ASS’N (Mar. 17, 2020), <https://www.seia.org/sites/default/files/2020-03/Virginia.pdf>.

¹²¹ *State Solar Spotlight: North Carolina*, SOLAR ENERGY INDUS. ASS’N (June 11, 2020), https://www.seia.org/sites/default/files/2020-06/North%20Carolina_0.pdf.

¹²² *State Solar Spotlight: South Carolina*, SOLAR ENERGY INDUS. ASS’N (June 11, 2020), https://www.seia.org/sites/default/files/2020-06/South%20Carolina_0.pdf.

¹²³ *State Solar Spotlight: Georgia*, SOLAR ENERGY INDUS. ASS’N (Mar. 17, 2020), <https://www.seia.org/sites/default/files/2020-03/Georgia.pdf>.

- \$655.71 million in Tennessee, including \$83.35 million in 2019¹²⁴

These investments have the direct effect of creating more job opportunities for residents of these states. As of 2020, there were:

- 4,489 solar jobs in Virginia¹²⁵
- 6,617 solar jobs in North Carolina¹²⁶
- 3,307 solar jobs in South Carolina¹²⁷
- 4,798 solar jobs in Georgia¹²⁸
- 4,194 solar jobs in Tennessee¹²⁹

However, even these numbers do not capture the full impact of clean energy investment on state economies. A 2019 report issued by RTI International calculated that from 2007-2018, the total economic impact from clean energy project development in North Carolina totaled \$28.2 billion.¹³⁰ Likewise, a study completed by the Virginia Commonwealth Center for Urban and Regional Analysis estimated that if 2,500 MW of distributed solar were added to existing 92 MW installed today in Virginia, 47,000 jobs, \$2.85 billion in labor income, and a total economic benefit of \$7.1 billion would result.¹³¹ Similar studies have not yet been conducted in other Southeastern states, but would likely yield comparable results.

Finally, none of these studies take into account the societal and environmental benefits of net metering. Distributed solar generation reduces the electricity sector's greenhouse gas emissions. Studies suggest that monetizing the environmental health benefits of solar energy

¹²⁴ *State Solar Spotlight: Tennessee*, SOLAR ENERGY INDUS. ASS'N (June 11, 2020), https://www.seia.org/sites/default/files/2020-06/Tennessee_0.pdf.

¹²⁵ *State Solar Spotlight: Virginia*, *supra* note 120.

¹²⁶ *State Solar Spotlight: North Carolina*, *supra* note 121.

¹²⁷ *State Solar Spotlight: South Carolina*, *supra* note 122.

¹²⁸ *State Solar Spotlight: Georgia*, *supra* note 123.

¹²⁹ *State Solar Spotlight: Tennessee*, *supra* note 124.

¹³⁰ RTI INT'L, ECONOMIC IMPACT ANALYSIS OF CLEAN ENERGY DEVELOPMENT IN NORTH CAROLINA – 2019 UPDATE (2019), https://energync.org/wp-content/uploads/2019/05/Summary_Findings_Economic_and_Rate_Impact_Analysis_of_Clean_Energy_Development_in-North_Carolina_2019_NCSEA.pdf.

¹³¹ VCU CTR. FOR URBAN AND REG'L ANALYSIS, ASSESSING THE BENEFITS OF DISTRIBUTED SOLAR IN VIRGINIA 5 (2020), https://virginiasolarforall.com/wp-content/uploads/sites/62/2020/01/cura_solar_report_-_1-22-20.pdf.

would add approximately 3.5 cents per kWh to the value of solar energy.¹³² Compared with fossil fuel generators, solar photovoltaics and concentrated solar power produce far lower lifecycle levels of greenhouse gas emissions and harmful pollutants including fine particulate matter (PM_{2.5}), sulfur dioxide (SO₂), and nitrogen oxides (NO_x). When the National Renewable Energy Laboratory (“NREL”) calculated the monetized value of the solar industry’s environmental and health benefits in 2016, it concluded that the United States’ solar fleet as it existed in 2014 already produced over \$1.5 billion in environmental and health benefits.¹³³ In 2014, approximately 19 GW of solar were deployed across the United States.¹³⁴ According to a recent estimate, the southeastern United States *alone* will have deployed 17 GW of solar energy by 2021.¹³⁵ In other words, according to the metrics used in NREL’s study, the monetized environmental and health benefits of the level of distributed solar generation in the Southeast today are likely worth hundreds of millions, if not billions, of dollars.

Across the Southeast, the economic boon of solar energy has spanned both rooftop and utility-scale solar. This includes economic benefits associated with more than 40,000 net-metering customers in Virginia, North Carolina, South Carolina, Georgia, and Tennessee.¹³⁶ The customer demand for solar generates jobs in the region. It is estimated that there are more than 800 solar companies and 23,000 solar jobs spread across the five states.¹³⁷ Installation jobs

¹³² RYAN WISER ET AL., NAT’L RENEWABLE ENERGY LABORATORY, ON THE PATH TO SUNSHOT: THE ENVIRONMENTAL AND PUBLIC HEALTH BENEFITS OF ACHIEVING HIGH PENETRATIONS OF SOLAR ENERGY IN THE UNITED STATES vii-ix (2016), <https://www.nrel.gov/docs/fy16osti/65628.pdf>.

¹³³ *Id.* at ix.

¹³⁴ *Id.* at 5.

¹³⁵ Bryan Jacob, *Southeast Solar Update*, SOLAR TODAY MAG. (Oct. 21, 2019) <https://www.ases.org/southeast-solar-update/>.

¹³⁶ *See supra* note 119 and accompanying text.

¹³⁷ SOLAR FOUND., NATIONAL SOLAR JOBS CENSUS 2019 43 tbl.13 (2019), <https://www.thesolarfoundation.org/national/>; *Solar Jobs Census 2019: South Atlantic Division*, SOLAR FOUND. (2019), <http://solarstates.org/#division/south-atlantic/solar-jobs/2019>; *see also supra* notes 120-24 (citing state solar profiles that include solar company estimates).

account for a large percentage of the region’s solar labor market.¹³⁸ Rooftop solar accounts for a disproportionate number of these installation jobs relative to utility-scale solar as the installation process is more labor intensive in terms of jobs per MW installed. It is estimated that residential rooftop solar generates 32 jobs per MW installed and commercial solar generates 19 jobs per MW as compared to approximately four jobs per MW for utility-scale solar.¹³⁹

In South Carolina, for example, there are over 20,000 net-metered solar customers. These customers invested in rooftop solar systems with the expectation that they would be able to continue net metering under a retail-rate paradigm until at least 2025-2029 (depending on their installation year).¹⁴⁰ NERA’s petition threatens their investment-backed expectations and reliance interests, and NERA’s petition would directly increase electricity bills for these 20,000 net-metering customers who are also ratepayers of their electric utilities. South Carolinians who have installed rooftop solar have done so for a variety of reasons, including concerns for the environment, health of their communities, and to decrease reliance on fossil fuels. But the financial considerations under available net-metering policies clearly factored into their decision making. For example, in response to NERA’s petition some of Upstate Forever’s members commented that their “plans and calculations included the benefit of net metering. Without net metering, all of our financial calculations and investments fall apart.... Almost all of our financial calculations to do the ‘right thing’ for ourselves and for our community really do fall apart without some form of net metering.” *See* Attachment B, Comments from Members of Upstate Forever, at 1-2. As additionally noted, “[n]et metering is critical to making the solar

¹³⁸ SOLAR FOUND., *supra* note 137, at 23 tbl.3; *Solar Jobs Census 2019: South Atlantic Division*, *supra* note 137.

¹³⁹ SOLAR FOUND., *supra* note 137, at 23 tbl.3, 43 tbl.13; *Solar Jobs Census 2019: South Atlantic Division*, *supra* note 137.

¹⁴⁰ *See* South Carolina Energy Freedom Act (Act 62), § 5, 2019 S.C. Acts 368, 380; Order on Net Metering and Approving Settlement Agreement, S.C. Pub. Serv. Comm’n, Docket No. 2014-246-E, Order No. 2015-194, at 25 (Mar. 20, 2015), <https://dms.psc.sc.gov/Attachments/Order/29cf4369-155d-141f-23b1536c046aebc5>.

investment come even close to making financial sense.” *Id.* at 2. Over 500 South Carolinians recently signed the attached petition agreeing that net metering is a critical aspect of their state’s clean energy transition, and requesting that the Commission reject NERA’s petition to gut state net metering policies. *See* Attachment A, Petition of the Coastal Conservation League.

B. Southeastern States’ Clean-Energy Goals

In addition to the economic boon from solar energy in the Southeast, rooftop solar net-metering policies have provided a cornerstone of clean energy plans and goals in several Southeast states. Over the last fifteen years states across the Southeast have developed renewable energy goals.¹⁴¹ In some states the executive branch established the renewable energy goals, and in other states the legislative branch established the goals. But each state’s renewable-energy goals reflect its unique geography, industries, politics, laws, and regulations. Specifically, all of these renewable-energy plans and goals depend in part on each state’s distinctive net-metering policies.

In developing energy plans and renewable-energy goals, the different branches of state government have relied on their state’s respective implementation of net metering. For example, in 2014 South Carolina enacted the Distributed Energy Resource Program Act, also known as

¹⁴¹ *See e.g.*, N.C. Gov. Roy Cooper, Exec. Order No. 80 § 1(a) (2018), <https://files.nc.gov/governor/documents/files/EO80-%20NC%27s%20Commitment%20to%20Address%20Climate%20Change%20%26%20Transition%20to%20a%20Clean%20Energy%20Economy.pdf> (setting goal to reduce statewide greenhouse gas emissions by 40% from 2005 levels by 2025); N.C. DEP’T OF ENV’T L QUALITY, NORTH CAROLINA CLEAN ENERGY PLAN 12 (2019) https://files.nc.gov/governor/documents/files/NC_Clean_Energy_Plan_OCT_2019_.pdf (setting goal to “[r]educe electric power sector greenhouse gas emissions by 70% below 2005 levels by 2030 and attain carbon neutrality by 2050”); *see also* Press Release, Office of Gov. Terry McAuliffe, Governor Announces Actions to Stimulate Growth of Renewable Energy in the Commonwealth (Dec. 21, 2015), <https://www.dmme.virginia.gov/DMME/pdf/news%20releases/2015Releases/MoreRenewableEnergy.pdf> (announcing renewable energy procurement target for state government to derive approximately 8% of electricity from solar by 2019).

Act 236.¹⁴² The legislature set a goal that for any utility that develops a distributed energy resources program, *at least* 2% of the previous five-year average of the electrical utility’s South Carolina retail peak demand would be served by renewable energy facilities located in South Carolina by 2021.¹⁴³ The act also raised the cap on *net metering* to 2% of retail peak demand. The act further directed utilities to establish programs to encourage customers to purchase or lease renewable energy facilities less than or equal to one thousand kilowatts (1,000 kW AC) in nameplate capacity until the aggregate generation from the program equaled “one percent of the electrical utility’s previous five-year average of the electrical utility’s South Carolina retail peak demand.”¹⁴⁴

In 2019, the South Carolina General Assembly reaffirmed its reliance on net metering to help achieve its clean energy goals when it passed the landmark Energy Freedom Act.¹⁴⁵ The General Assembly declared its intent to

build upon the successful deployment of solar generating capacity through Act 236 of 2014 to continue enabling market-driven, private investment in distributed energy resources across the State by reducing regulatory and administrative burdens to customer installation and utilization of onsite distributed energy resources.¹⁴⁶

In support of this important purpose, the General Assembly removed any cap on net metering, and established a process for reviewing the details of the state’s net-metering programs before

¹⁴² Distributed Energy Resource Program Act (Act 236), 2014 S.C. Acts 2405, https://www.scstatehouse.gov/sess120_2013-2014/bills/1189.htm.

¹⁴³ *Id.* § 2, 2014 S.C. Acts at 2412 (codified at S.C. CODE ANN. § 58-39-130(C) (2014)), https://www.scstatehouse.gov/sess120_2013-2014/bills/1189.htm; see also *State Renewable Portfolio Standards and Goals*, NAT’L CONFERENCE OF STATE LEGISLATURES (April 17, 2020), <https://www.ncsl.org/research/energy/renewable-portfolio-standards.aspx>.

¹⁴⁴ Act 236, § 2, 2014 S.C. Acts at 2412 (codified at S.C. CODE ANN. § 58-39-130(C)(2)), https://www.scstatehouse.gov/sess120_2013-2014/bills/1189.htm.

¹⁴⁵ Act 62, 2019 S.C. Acts, https://www.scstatehouse.gov/sess123_2019-2020/bills/3659.htm.

¹⁴⁶ *Id.* § 5, 2019 S.C. Acts at 380 (codified at S.C. CODE ANN. § 58-40-20(A)(1)), https://www.scstatehouse.gov/sess123_2019-2020/bills/3659.htm.

the South Carolina Public Service Commission.¹⁴⁷

Similarly, in the Commonwealth's 2018 Energy Plan, Virginia's Governor set forth a bold renewable energy procurement target of 16% by the end of 2022 for state government energy procurement, which explicitly includes net metered distributed solar resources and off-site utility-scale renewable energy projects.¹⁴⁸ More recently, Virginia's General Assembly passed legislation this year making it the first state in the South to commit to 100% zero-carbon electricity by 2050.¹⁴⁹ This legislation sets incremental renewable energy targets for investor-owned utilities to achieve this goal and explicitly references net-metered rooftop solar installations, and significantly raised the caps on state net-metering programs.¹⁵⁰

Net metering supports North Carolina's renewable energy goals as well. In 2007, North Carolina's Governor signed Senate Bill 3, the state's Renewable Energy and Energy Efficiency Portfolio Standard ("REPS"). N.C. GEN. STAT. § 62-133.8 (2007). Among other things, REPS requires that electric public utilities in North Carolina generate an increasing percentage of their energy from renewable resources each year. *Id.* § 62-133.8(b). Utilities are permitted to meet their REPS requirements by using electric power supplied by renewable energy facilities, including net-metered rooftop solar. *Id.* In 2018, Governor Cooper issued Executive Order No. 80, which set goals to address climate change by reducing statewide greenhouse gas emissions to

¹⁴⁷ *Id.* (codified at S.C. CODE ANN. § 58-40-20(B)), https://www.scstatehouse.gov/sess123_2019-2020/bills/3659.htm.

¹⁴⁸ VA. OFFICE OF SEC'Y OF COMMERCE & TRADE, DEP'T OF MINES, MINERALS AND ENERGY, THE COMMONWEALTH OF VIRGINIA'S 2018 ENERGY PLAN 18-19 (2018), <https://www.governor.virginia.gov/media/governorviriniagov/secretary-of-commerce-and-trade/2018-Virginia-Energy-Plan.pdf>.

¹⁴⁹ Virginia Clean Economy Act, ch. 1193, 2020 Va. Acts (enacted Apr. 11, 2020), <https://lis.virginia.gov/cgi-bin/legp604.exe?201+ful+CHAP1193>.

¹⁵⁰ VA. CODE ANN. §§ 56-585.1(A), 56-585.1:4(B) (2020) (amended by the Virginia Clean Economy Act, ch. 1193, 2020 Va. Acts).

40% below 2005 levels, increasing the number of electric vehicles, and reducing energy consumption from state-owned buildings.¹⁵¹ The centerpiece of the state’s carbon-reduction effort under this executive order is its Clean Energy Plan for the electric power sector. The Clean Energy Plan established the even more ambitious goal of reducing carbon emissions from the electric power sector by 70% from 2005 levels by 2030 and to net zero by 2050.¹⁵² Among the many actions that the plan recommends is requiring utilities to offer “virtual” or group net metering in order to facilitate greater access to community solar.¹⁵³

If FERC were to grant this declaratory order petition and change net-metering policies this could have serious repercussions across the Southeast on state renewable energy plans and goals. States have acted within their authority to establish energy plans and NERA’s requested reversal of long-standing precedent would significantly undermine these plans.

IV. Practical Consequences of Dismantling Net Metering

NERA would have the Commission dismantle net-metering policies across the country, including the Southeast, gutting the work states have accomplished over decades to develop fair and effective net-metering programs for their particular circumstances and constituents. In many Southeast states, legislative and regulatory bodies have developed nuanced net-metering policies tailored to their constituents’ needs. The diversity in net-metering policies developed throughout the Southeast speaks to the relative success of a constituent-centric approach. Furthermore, dismantling net metering could result in unnecessary and burdensome waves of litigation.

¹⁵¹ N.C. Gov. Roy Cooper, Exec. Order No. 80. (2018), <https://files.nc.gov/ncdeq/climate-change/EO80--NC-s-Commitment-to-Address-Climate-Change---Transition-to-a-Clean-Energy-Economy.pdf>

¹⁵² N.C. DEP’T OF ENV’T’L QUALITY, NORTH CAROLINA CLEAN ENERGY PLAN 58 (2019), https://files.nc.gov/governor/documents/files/NC_Clean_Energy_Plan_OCT_2019_.pdf

¹⁵³ *Id.* at 98-99.

A. Many Southeastern States Have Successfully Tailored Their Net Metering Programs to Their Constituents' Needs

The details of net-metering programs vary significantly across the country. Likewise, Southeast states have developed different programs suited to their needs. While many programs have the common thread of netting on a kWh-to-kWh basis, there are many other variations among the programs. In practice, there is no uniform one-size-fits-all net metering as NERA would have the Commission believe. Dismantling these state programs as NERA requests would not only wipe out many years of hard work in these laboratories of democracy but the effects in each state would be different. This is particularly concerning where state programs have grandfathering provisions and net-metering participants have anticipated net-metering programs continuing for the foreseeable future under those provisions.

Virginia has developed three net-metering structures: one for customers of investor-owned utilities, one for customers of electric cooperatives, and one for customers of municipal-owned public utilities. Even within the net-metering structure for investor-owned utilities differences between utilities abound. Customers of investor-owned utilities may net meter if they own and operate or contract “with other persons to own, operate, or both, an electrical generating facility” that is on their premises and “that (i) has a capacity of not more than 25 kilowatts for residential customers and not more than three megawatts for nonresidential customers.”¹⁵⁴ In addition to the kilowatt size limitation, the capacity of any generating facility after July 1, 2020 “shall not exceed 100 percent of the expected annual energy consumption based on the previous 12 months of billing history” or an annualized calculation of billing history for customers in Appalachian Power Company and Old Dominion Power Company, and

¹⁵⁴ VA. CODE ANN. § 56-594(B) (2020) (as amended by Virginia Clean Economy Act (VCEA), ch. 1193, 2020 Va. Acts).

the capacity shall not exceed 150 percent of the expected annual energy consumption for customers in Virginia Electric and Power Company.¹⁵⁵

In Virginia, the generation from distributed energy systems, typically solar energy, is credited to a customer's bill at the retail rate.¹⁵⁶ If a net-metered customer generates excess energy during a month, that excess generation is rolled over to the next month until the end of the "net metering period," which is the twelve-month period following the date of the interconnection.¹⁵⁷ At the end of such twelve-month period, the customer may elect to roll over any excess generation or receive a payment for the excess generation from their utility at the avoided cost rate.¹⁵⁸ The law further specifies that any net-metered customer with a facility exceeding 15 kilowatts in capacity must pay a monthly standby charge to their utility.¹⁵⁹

Net metering in Virginia is available to customers on a first-come, first-served basis in each investor-owned utility territory until the rated generating capacity of net-metering customers in such territory reaches six percent in the aggregate, one percent of which is available only to low-income utility customers.¹⁶⁰ But, by the sooner of a specific date for each investor-owned utility, or when the aggregate capacity of net metered customers in a specific utility territory reaches three percent, the Virginia State Corporation Commission shall conduct a net-metering proceeding for such investor-owned utility.¹⁶¹ Within this proceeding the Virginia

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* § 56-594; VA. OFFICE OF SEC'Y OF COMMERCE & TRADE, DEP'T OF MINES, MINERALS AND ENERGY, THE COMMONWEALTH OF VIRGINIA'S 2018 ENERGY PLAN 15 (2018), <https://www.governor.virginia.gov/media/governorviriniagov/secretary-of-commerce-and-trade/2018-Virginia-Energy-Plan.pdf>.

¹⁵⁷ VA. CODE ANN. § 56-594(B).

¹⁵⁸ *Id.* § 56-594; VA. OFFICE OF SEC'Y OF COMMERCE & TRADE, *supra* note 156, at 15.

¹⁵⁹ VA. CODE ANN. § 56-594(F) (as amended by VCEA).

¹⁶⁰ *Id.* § 56-594(E) (as amended by VCEA).

¹⁶¹ *Id.*

State Corporation Commission must establish an appropriate rate structure related to net metering and evaluate whether the six percent aggregate net metering cap should be lifted.¹⁶² It is evident that in drafting this law the Virginia General Assembly took great care in establishing guidelines that are specific to Virginia and that contemplate the future growth of distributed generation in Virginia.

In addition to the net-metering policy for the investor-owned utilities, Virginia also maintains net metering for electric cooperatives and municipalities and it differs in a variety of ways. For example, electric cooperatives in Virginia offer customers net metering if they own and operate or contract “with other persons to own, operate, or both, an electrical generating facility” that is on their premises and “that (i) has a capacity of not more than 20 kilowatts for residential customers and not more than *one* megawatt for nonresidential customers.”¹⁶³ The capacity of a net metered generating facility is capped at 100 percent of the expected annual energy consumption based on the previous 12 months of billing history or an annualized calculation of billing history for customers.¹⁶⁴ The law further specifies that any net-metered customer with a facility exceeding 10 kilowatts in capacity must pay a monthly standby charge to their cooperative.¹⁶⁵ Net metering is available to customers of electric cooperatives on a “first-come, first-served basis until such time as the total capacity of the generation facilities, expressed in alternating current nameplate, reaches two percent of system peak for residential customers, two percent of system peak for not-for-profit and nonjurisdictional customers, and

¹⁶² *Id.*

¹⁶³ *Id.* § 56-594.01(B) (emphasis added).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* § 56-594.01(H).

one percent of system peak for other nonresidential customers.”¹⁶⁶ But, an electric cooperative may also increase this aggregate net-metering cap up to a cumulative of seven percent of system peak.¹⁶⁷

Virginia law also allows each cooperative to make adjustments to their rates, terms, conditions, and rate schedules governing net metering in the future. Upon the date the cooperative reaches its aggregate net-metering cap or five years following notice, the cooperative may implement new rate schedules for net metering and adopt additional standby charges and demand charges.¹⁶⁸ These specific rate schedules are outlined in great detail in the Code of Virginia.¹⁶⁹ Finally, in addition to investor-owned utilities and electric cooperatives, the municipal-owned utilities also have their own parameters for net metering in Virginia. Each net-metering program in each municipality varies and would have to be taken into account on a case-by-case basis.

In North Carolina, net-metering eligibility is capped at one MW for nonresidential systems and 20 kW for residential systems.¹⁷⁰ Residential systems may not exceed the estimated maximum monthly kilowatt demand of the residence or 20 kW, whichever is less.¹⁷¹ Nonresidential systems may not exceed the customer’s contract demand or one MW, whichever is less.¹⁷² North Carolina net-metering customers of Duke Energy are credited for the excess

¹⁶⁶ *Id.* § 56-594.01(F).

¹⁶⁷ *Id.* § 56-594.01(G).

¹⁶⁸ *Id.* § 56-585.4.

¹⁶⁹ *See id.*

¹⁷⁰ Act of July 27, 2017, Sess. L. 2017-192, 2017 N.C. Sess. Laws 1340.

¹⁷¹ Duke Energy Carolinas, LLC, *RIDER NM (NC): NET METERING*, 2 (2018), https://www.duke-energy.com/_media/pdfs/for-your-home/rates/electric-nc/ncriderm.pdf?la=en.

¹⁷² *Id.*

kilowatt-hours generated during a billing period.¹⁷³ The kilowatt-hour credits, if any, are applied to the following billing period, but reset to zero at the beginning of each summer and winter billing season as defined in the utility’s tariff.¹⁷⁴ For Duke Energy Progress customers, the kilowatt-hour credits are reset to zero each May 31st.¹⁷⁵ For Duke Energy Carolinas customers, the kilowatt-hour credits are reset to zero each June 1st.¹⁷⁶ For Dominion customers, the kilowatt-hour credits are reset “at the beginning of each summer billing season” as defined by the applicable time-of-use rate schedule.¹⁷⁷ For Duke Energy and Dominion Energy customers, state law provides for net-metering grandfathering through at least 2027.¹⁷⁸ Several North Carolina municipal utilities and electric cooperatives also have their own net-metering programs. Apex,¹⁷⁹ Landis, Brunswick EMC,¹⁸⁰ EnergyUnited EMC,¹⁸¹ Piedmont EMC,¹⁸² South River EMC, and Surry-Yadkin EMC¹⁸³ all offer customer-generators and opportunity to sell the energy they generate back to the grid at retail rate.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Duke Energy Progress, LLC, *NET METERING FOR RENEWABLE ENERGY FACILITIES: RIDER NM-4B*, 2 (2015), https://www.duke-energy.com/_media/pdfs/for-your-business/generate-your-own-renewable/nc/net-metering/dep-tariff-nc-rider-nm.pdf?la=en.

¹⁷⁶ Duke Energy Carolinas, LLC, *supra* note 171, at 2.

¹⁷⁷ Va. Elec. & Power Co., *TERMS AND CONDITIONS*, 2 (2018),

<https://www.dominionenergy.com/library/domcom/media/home-and-small-business/rates-and-regulation/terms-and-conditions/north-carolina/term25.pdf?la=en&modified=20190314145302>.

¹⁷⁸ N.C. GEN. STAT. ANN. § 62-126.4 (c) (2020).

¹⁷⁹ Town of Apex, *NET METERING FOR RENEWABLE ENERGY FACILITIES RIDER* (2018),

<https://www.apexnc.org/DocumentCenter/View/25291/Renewable-Energy-Facilities-Net-Metering-Rider-PDF>.

¹⁸⁰ Brunswick Elec. Membership Corp., *Rate Schedules*, 27-32 (2018),

http://www.bemc.org/sites/bemc/files/PDF/Member_Services/19Rates_07_01.pdf.

¹⁸¹ EnergyUnited, *NET METERING RIDER – RESIDENTIAL (RIDER NM-4)* (2018),

<https://www.energyunited.com/wp-content/uploads/NM-R-Rider.pdf>; EnergyUnited, *NET METERING RIDER – NON-RESIDENTIAL (RIDER NM-CI)* (2018), <https://www.energyunited.com/wp-content/uploads/NM-CI-Rider.pdf>.

¹⁸² Piedmont Elec. Membership Corp., *ELECTRIC SERVICE RATES*, 53-58, https://pemc.coop/wp-content/uploads/2018/07/Piedmont_Rates_eff-9-01-2018.pdf (last visited June 3, 2020).

¹⁸³ Surry-Yadkin Elec. Membership Corp., *RATE RIDER RG: Renewable Generation Rider* (2018), <https://www.syemc.com/sites/syemc/files/2018%20Rate%20Rider%20RG.pdf>.

In South Carolina, net-metering customers of the investor-owned utilities, Duke Energy and Dominion Energy South Carolina, receive an equivalent credit of the retail rate of electricity rolled over each month.¹⁸⁴ There is annual kWh credit reconciliation.¹⁸⁵ This program is available for residential customers with solar facilities up to 20 kW in size and nonresidential customers with solar facilities up to one MW in size or 100 percent of contract demand.¹⁸⁶ For customers who signed up for the rates between 2015 and 2020, they are grandfathered into the program until December 31, 2025.¹⁸⁷ Act 62 passed in May 2019 extended net-metering grandfathering provisions through 2029.¹⁸⁸ If a customer-generator produces excess generation, Duke Energy is required to pay the customer for the amount of excess energy at a predetermined rate, after which the amount of excess energy is set to zero.¹⁸⁹ This annual crediting for excess generation occurs on the March billing date.¹⁹⁰

Furthermore, sixteen municipal utilities and cooperative utilities in South Carolina have their own net-metering programs. This includes several cities and towns such as Camden¹⁹¹ and Orangeburg.¹⁹² This number also includes the Black River Electric Municipal Cooperative,¹⁹³

¹⁸⁴ Order on Net Metering and Approving Settlement Agreement, S.C. Pub. Serv. Comm'n, Order No. 2015-194, Docket No. 2014-246-E, at 11 (March 20, 2015), <https://dms.psc.sc.gov/Attachments/Order/29cf4369-155d-141f-23b1536c046aebc5>.

¹⁸⁵ *Id.* at 19.

¹⁸⁶ See e.g., Duke Energy Carolinas, LLC, *RIDER RNM (SC): RENEWABLE NET METERING*, 1 (2019), https://www.duke-energy.com/_/media/pdfs/for-your-home/rates/electric-sc/scriderrnm.pdf?la=en.

¹⁸⁷ *Net Metering*, DUKE ENERGY, <https://www.duke-energy.com/business/products/renewables/generate-your-own/net-metering> (last visited June 12, 2020).

¹⁸⁸ South Carolina Energy Freedom Act (Act 62), § 5, 2019 S.C. Acts 368, 380 (codified at S.C. CODE ANN. § 58-40-20 (2019)).

¹⁸⁹ See e.g., Duke Energy Carolinas, LLC, *supra* note 186, at 2.

¹⁹⁰ *Id.*

¹⁹¹ City of Camden, S.C., *Electric Rate – Code NM: Net Metering Rider*, <https://www.cityofcamden.org/sites/default/files/files/Services/Net%20Metering%20Rider%20v%201%202016.pdf> (last visited June 12, 2020).

¹⁹² Dep't of Pub. Utils., Orangeburg, S.C., *Electric Rate – Code 2NM: Net Metering Rider* (2017), <http://www.orbgdpu.com/home/showdocument?id=62>.

Laurens Electric Cooperative,¹⁹⁴ Little River Electric Cooperative, Inc.,¹⁹⁵ Mid-Carolina Electric Cooperative Inc.,¹⁹⁶ Palmetto Electric Cooperative,¹⁹⁷ and Pee Dee Electric Cooperative.¹⁹⁸

In late 2019, the Georgia Public Service Commission (“GPSC”) declared that the netting period for Georgia Power’s behind-the-meter solar program “shall be changed from instant to monthly for the first 5000 rooftop solar ratepayer[s]” or until the “installed capacity reaches 32 [MW], whichever comes first.”¹⁹⁹ Prior to this GPSC ruling, Georgia Power had offered only instantaneous netting at the avoided cost rate for any solar exports to the grid for customers participating in its on-site solar tariff. Georgia Power is expected to reflect the new policy on the electric bills of existing rooftop solar customers effective July 1, 2020, but the policy will be retroactively applied so that customers qualify for the change from January 1, 2020 onward.²⁰⁰ The GPSC will re-evaluate the appropriate netting period in Georgia Power’s next rate case.²⁰¹ Beyond Georgia Power, some of the other approximately 90 electric utilities in Georgia offer monthly net metering to customers with on-site solar systems of a certain size. These size

¹⁹³ Black River Elec. Coop., Inc., *NET METERING RIDER FOR RESIDENTIAL AND SMALL COMMERCIAL RATES* (2012), <https://blackriver.coop/wp-content/uploads/2016/05/BREC-NET-METERING-RIDER-FOR-RESIDENTIAL-AND-SMALL-COMMERCIAL-RATES.pdf>.

¹⁹⁴ *Go Solar: Interconnection/Net Metering*, LAURENS ELEC. COOP., INC., <https://www.laurenselectric.com/go-solar/> (last visited June 3, 2020).

¹⁹⁵ Little River Elec. Coop., Inc., *NET METERING RIDER FOR RESIDENTIAL AND SMALL COMMERCIAL RATES* (Dec. 4, 2019), <https://lreci.coop/download/net-metering-rider-rates/>.

¹⁹⁶ Mid-Carolina Elec. Coop., Inc., *NET METERING RIDER FOR RESIDENTIAL AND SMALL COMMERCIAL RATES*, <http://www.mcecoop.com/sites/midcarolinaelectric/files/PDF/Rate-Rider-Net%20Metering%20-%20Residential%20and%20Small%20Commercial%20%202-1-2016.pdf> (last visited June 12, 2020).

¹⁹⁷ Palmetto Elec. Coop., Inc., *NET METERING RIDER FOR RESIDENTIAL AND COMMERCIAL RATES* (2011), <https://www.palmetto.coop/wp-content/uploads/2016/06/Net-Metering-Rider-for-Residential-and-Small-Commercial-Rates-12-11-2016.pdf>.

¹⁹⁸ Pee Dee Elec. Coop., Inc., *NET METERING RIDER FOR RESIDENTIAL AND SMALL COMMERCIAL RATES RIDER NM-RSC* (2019), <https://www.pdec.com/wp-content/uploads/2019/06/Solar-Net-Metering-Rate-Schedule.pdf>.

¹⁹⁹ Short Order Adopting Settlement Agreement as Modified, Ga. Pub. Serv. Comm’n, Docket No. 42516, at 10-11 (Dec. 31, 2019), <https://psc.ga.gov/search/facts-document/?documentId=179339>.

²⁰⁰ See Ga. Power Co., Amended Version of the RNR-10 Tariff, Ga. Pub. Serv. Comm’n, Docket No. 42516 (June 10, 2020), <https://psc.ga.gov/search/facts-document/?documentId=181490>.

²⁰¹ Order Adopting Settlement Agreement as Modified, Ga. Pub. Serv. Comm’n, Docket No. 42516 (Feb. 6, 2020), <https://psc.ga.gov/search/facts-document/?documentId=179856>.

restrictions are 10kW or less for residential customers and 100kW or less for non-residential customers.²⁰²

Although Tennessee does not have a state-wide net-metering program, some local utilities have acted on the Commission’s long-standing precedent on net metering to deliver their customers an opportunity to self-generate. For example, Cumberland Valley Electric has provided a net-metering program to its customers for over a decade.²⁰³ Kingsport Power, a municipal utility in Tennessee, was also granted authority to implement a net-metering service tariff nearly a decade ago by the Tennessee Regulatory Authority.²⁰⁴

Net-metering program details have been carefully crafted by elected officials, utilities, and regulatory bodies, often with input by stakeholders, within each state to address its own unique circumstances as well as those of the utility to which it applies. Even within our region there is great diversity, not to mention the diversity that exists across the country. A single uniform “Full Net Metering” program as described by the petitioners does not exist in practice.

B. Potential Litigation Burden

NERA requests that the Commission begin treating an estimated 2.3 million individual retail customers as wholesale generators. Under this approach, each state would need to determine the avoided-cost rate at which each legacy and future net-metering customers’ utility would purchase any electricity output. 16 U.S.C. § 824a-3(b) (2020) (setting purchase obligation at avoided-cost rates); 18 C.F.R. § 292.304(a) (2020) (same); *id.* § 292.304(f) (requiring states to

²⁰² See *Net Metering*, DSIRE (Nov. 16, 2018), <https://programs.dsireusa.org/system/program/detail/574> (describing the net metering policies for Georgia).

²⁰³ Cumberland Valley Elec., *RATE SCHEDULE NM—NET METERING* (April 2, 2009), http://www.cumberlandvalley.coop/wp-content/uploads/2015/04/Cumberland_Tariff.pdf.

²⁰⁴ *NET METERING APPROVED FOR KINGSPORT CUSTOMERS*, KINGSPORTTN.GOV (Aug. 5, 2011), <https://www.kingsporttn.gov/net-metering-approved-for-kingsport-customers/>.

implement the Commission's PURPA regulations); Policy Statement Regarding the Comm's Enft Role Under Section 210 of the Pub. Util. Regulatory Policies Act of 1978, 23 FERC ¶ 61304, 61644 (1983) (explaining same). Accordingly, treating net metering customers as wholesale generators rather than retail customers would require extensive and likely contentious proceedings to determine compensation rates under the PURPA avoided-cost paradigm.

This would have two interrelated and potentially very burdensome consequences. First, it would burden state regulators and net-metering customers, in addition to litigating parties including utilities and interested stakeholders and intervenors. There are millions of net metering customers across the country and over 40,000 in the Southeast, each of whom would have an interest and the right to intervene in avoided-cost proceedings, along with organizational intervenors.²⁰⁵ These customers clearly have also had an interest in net-metering proceedings, however, these proceedings are largely established and the basic compensation mechanism is typically straightforward even if eligibility and other program requirements vary as described above. If compensation for net-metering customers is to be determined in avoided-cost proceedings rather than through net metering, many of these customers or new customer-generator advocate groups may be expected to participate extensively. The stakes are particularly high for existing net-metering customers who made investments in reliance on previously approved net-metering programs.

Second, NERA's request would burden state and federal courts. Under PURPA, judicial review of an avoided-cost proceeding is available in state court. 16 U.S.C. § 824a-3(g); *id.*

²⁰⁵ See, e.g., N.C. UTILS. COMM'N, NCUC RULES, Rule R1-19, <https://www.ncuc.net/ncrules/Chapter01.pdf> (last visited June 12, 2020) (allowing intervention by "[a]ny person having an interest in the subject matter of any hearing or investigation pending before the Commission").

§§ 2633(a), (c)(3); see *Freehold Cogeneration Assocs., L.P. v. Bd. of Regulatory Comm'rs of N.J.*, 44 F.3d 1178, 1184 (3d Cir. 1995) (“[S]ection 210(g)(1) applies only to review of proceedings by state regulatory or nonregulated utilities designed to implement any requirement of rules promulgated by the FERC pursuant to section 210(a), 16 U.S.C. § 824a-3a.” (emphasis removed)). Accordingly, each impacted net-metering customer could appeal an avoided-cost order to state court and would now have an incentive to do so.

Separately, qualifying facilities may petition the Commission to enforce the Commission’s PURPA regulations, 16 U.S.C. § 824a-3(h)(2)(B), and if the Commission does not act, the petitioner may bring suit in United States district court, *id.*; see *id.* § 824a-3(h)(2)(A) (treating PURPA regulations as rules under FPA); *id.* § 825p (granting U.S. district courts exclusive jurisdiction over FPA regulations); *Portland Gen. Elec. Co. v. FERC*, 854 F.3d 692, 697-702 (D.C. Cir. 2017) (reviewing PURPA judicial-review and enforcement provisions). Accordingly, each net metering customer could appeal an avoided-cost order to federal court, so long as the basis for the challenge was failure to comply with PURPA regulations. In practice, plaintiffs would be likely to bring both types of claims, in which case the federal court could exercise supplemental jurisdiction over the state-court claims, 28 U.S.C. § 1367, and a defendant could remove the case to federal court, 28 U.S.C. § 1441.

The Commission should deny NERA’s petition for many reasons, not least the significant burden that granting it would impose on courts. A wave of litigation may be particularly vast during the first round of post-net metering avoided-cost determinations that would impact an estimated 2.3 million net-metered solar ratepayers. This initial wave would likely be followed by successive litigation following each updated avoided-cost determination.

Conclusion

NERA's petition threatens to upend decades of reliance on Congressional direction and Commission precedent. In the Energy Policy Act of 2005, Congress expressly authorized and required states to consider adopting net-metering policies, and states have acted in reliance on this requirement and the Commission's ruling in *MidAmerican* to adopt and expand net-metering programs. Likewise, millions of ratepayers, including over 40,000 net-metering participants in the Southeast, and the renewable energy industry have acted in reliance on this long-standing precedent, creating jobs and stimulating economic growth. NERA's petition would undermine these reliance interests and result in staggering disruption at the state level and significant administrative burden. For all of the foregoing reasons, the Southern Environmental Law Center on behalf of Appalachian Voices, Georgia Interfaith Power & Light, North Carolina Interfaith Power & Light, North Carolina Sustainable Energy Association, South Carolina Coastal Conservation League, South Carolina Interfaith Power & Light, Southern Alliance for Clean Energy, and Upstate Forever, request that NERA's petition be denied.

Respectfully submitted, this 15th day of June, 2020.

[s] Lauren J. Bowen
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Attachment A



We the undersigned do petition the Federal Energy Regulatory Commission to deny the New England Ratepayers Association (NERA) Petition that is the subject of Docket No. EL20-042-000 for the following reasons:

1. Approximately 20,000 South Carolinians have invested in solar energy on their homes pursuant to net metering programs developed under state law, and in reliance on FERC's own precedents.
2. The South Carolina General Assembly unanimously enacted major statutes supporting net metering in 2014 and 2019, and most of the solar energy systems in the state were recently constructed under those laws.
3. South Carolina residents and businesses have heavily invested in long-lived distributed renewable energy assets for reasons including job creation, long-term economic security, environmental protection, and the development of a more market-based energy sector. These South Carolina residents and businesses—and the public interests they pursue in reliance on state law and FERC precedent—will be irreparably harmed if FERC grants NERA's reckless petition.
4. The resulting sudden, improper, and unforeseeable shift from known state regulations to federal wholesale rate regulation would disrupt settled financing arrangements for thousands of homeowners and businesses, including contracts, leases, and loans. It would effectively raise rates and potentially taxes on tens of thousands of these investors.
5. It would bring to a halt an approximately 3,000-person solar industry in South Carolina that is already facing the challenges of Covid-19.
6. Like many states, in reliance on FERC rulings establishing that net metering is a matter of state retail jurisdiction, South Carolina has developed an approach to renewable distributed generation that is suited to its own unique geographical, regulatory, and historical context.

Petition Signatures

	First Name	Last Name	Home Zip/Postal
1	Bert	Corley	29410
2	Michael	Frederick	29907
3	Robert	Grenfell	29492
4	Gwylene	Gallimard	29403
5	Rhonwen	Newton	29206
6	W.	Gowder	29464
7	Steven	Gilbert	29412
8	Lewis	Hay	29487
9	Felicity	Myers	29487
10	Stephen	Middour	29464
11	William	McCullough	29036
12	Sandra	Cartledge	29920
13	Louis	Smith	29464
14	Patricia	Wright	29464
15	Charles	Wenner	29487
16	Margaret	Blackmer	29412
17	Phoebe	Mendez	29451
18	Barbara	Sussberg	29401
19	Peg	Mills	29625
20	Margaret	Claypool	29044
21	Brandon	Inabinet	29617
22	Sara	Schechter-Schoeman	29205
23	David	Quick	29464
24	Stan	Foxworthy	29418
25	Virginia	Prevost	29458
26	Virginia	Dixon	29055
27	Bruce	Wood	29651
28	Mary	McGowan	29609
29	Alice	Williams	29440
30	Markus	Kruesi	29451
31	Vincent	Digangi	29451
32	Doug	Hendrick	29325
33	Bessie	Gantt	29482
34	Mark	Semler	29464
35	Melanie	Mauldin	29458
36	Mike	Overton	29928
37	Frankie	Riggs	29455
38	Copley	Smoak	34134
39	Jerry	Taylor	29910
40	Ronald	Smith	29439
41	Margaret	Wildermann	29455
42	Katie	Jones	29609
43	Alyssondra	Campaigne	29464
44	Ian	Clark	29482
45	Norman	Pulliam	29302

46	John	Keyser	29909
47	Jennie	Summerall	29401
48	Carol	Corbin	29902
49	Andrew	Hollis	29407
50	Jim	Prutting	29401
51	William	Wingfield Jr	29466
52	Emma	Berry	29403
53	John	Schenck	29020
54	Carla	Golden	29928
55	Bootsie	Hutchison	29907
56	Marilyn	Mutchler	29909
57	Lewis	Horton	29464
58	Alex	Chandler	29455
59	Pat	Sullivan	29464
60	Nina	Fair	29412
61	Virginia	Norvell	29492
62	Dan	Shine	29536
63	Jan	Ferrari	29926
64	Anthony	Del Porto	29403
65	Paula	Brady	29401
66	Lynne	Cody	29620
67	Keith	Bowers	29451
68	Robert	Phillips	29638
69	Janice	Modjeski	29576
70	Yvonne	Hammes	29405
71	Frank	Holleman	29601
72	Kati	McArdle	29464
73	Terry	Walker	29689
74	Dawn	Bergren	29464
75	Jerry	Miller	29554
76	Lorraine	Bergman	29466
77	Ariel	Anoceto	29486
78	Karen	Storrs	29902
79	Suzanne	Ravenel	29464
80	Katherine	Pringle	29907
81	Vrinda	Dubois	29401
82	Steffani	Schwerdt	29403
83	Kathlyn	Gray	29920
84	William	Wilson	29407
85	Elizabeth	Belenchia	29302
86	Emily	Baumann	29205
87	Nancy	Appel	29466
88	Jill	Zlogar	29455
89	Lisa	Willits	29464
90	Jamie	McCulloch	29205
91	Sheryl	Bickley	29072
92	Miriam	Mitchell	29940
93	Alice	Nix	29940

94	Saskia	Amaro	29902
95	Philip	Nelson	29926
96	Jessica	Peragine	29410
97	Kristin	Carstarphen	29407
98	Rosemarie	Newport	29420
99	David	Castle	29631
100	Katie	Kuhn	29412
101	Grey	Duke	29403
102	Sally	Krebs	29910
103	Jennifer	Mathis	29405
104	Michael	Chambers	29920
105	Mark	Vanderpool	29907
106	Carol	Dodson	29045
107	Beverly	Peterson	29579
108	Paula	Smith	29909
109	Bruce	Peterson	29579
110	Nancy	Moore	29439
111	Jacqueline	Graham	29229
112	Sam	Stokes	29403
113	Allen	Edgerton	29302
114	Margaret	Allard	29907
115	Cindy	Renkas	29412
116	Amy	Armstrong	29585
117	Emily	Guess	29042
118	Jeremiah	Milbank	29401
119	Barbara	Beckingham	29407
120	Philip	Snead	29407
121	Nancy	James	29456
122	Laura	Gates	29487
123	Marcia	West	29464
124	Douglas	Storrs	29902
125	Linda	Hartough	29909
126	Joe	Chinnes	29073
127	Suzanna	Ellison	29403
128	Francesca	Denton	29909
129	Harriet	Gupton	29550
130	Michael	Mathews	29910
131	Sandra	Whitaker	39507
132	James	Bowers	29445
133	Kimberly	Perry	29412
134	Karin	Hauptstein	29926
135	Susan	Dressler	29902
136	Justin	Kirby	29403
137	Maryrose	Randall	29730
138	Michael	Criss	29072
139	Gabriel	Del Valle	29928
140	Elizabeth	Dodson	29466
141	Denise	Collins	29902

142	Rosemary	Smith	29909
143	Jacqueline	Cordray	29926
144	Stewart	Wingate	29902
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146	Linda	Holsapple	29455
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148	Candace	Potter	29902
149	Robert	Dodson	29466
150	Meribel	Rojas	29404
151	Tom	Balliet	29909
152	Patricia	McGowan	29902
153	Thomas	Finley	29625
154	Mel Richard	Kahrs	29356
155	Will	Gregg	29492
156	Rick	Stein	29920
157	Francis	Way	29412
158	Martin	Hyatt	29412
159	Michael	Koon	29482
160	Jeanne	Snell	29412
161	Ilene	Schwartz	29909
162	Susan	Creed	29201
163	Patricia	Jennings	29407
164	Dorothy	Doniphan	29206
165	James	Drennan	29172
166	Erin	Pate	29440
167	Joan	Pittman	29482
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169	Arthur	Meeder	29909
170	Connie	Lippert	29672
171	Anne	Heles	29935
172	Lisa	Scharin	29470
173	Dennis	Davis	29488
174	Judy	McElynn	29926
175	J Paul	Jones	29601
176	Deb	Richardson-Moore	29609
177	Rachel	Hawes	29403
178	Dennis	Moss	29605
179	William	Crawford	29609
180	Phil	Whirley	29407
181	Shelley	Robbins	29302
182	Elizabeth	Andrews	29464
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193	Irene	Hoogenboom	29901
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197	Laura	Buice	29853
198	Maggie	Woodruff	29412
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202	David	Smith	29909
203	Sally	Webb	29449
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206	Christie	James	29206
207	Jeanne	Owen	29020
208	Margaret	Osterkamp	29414
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222	Ted	McCormack	29412
223	Jonathan	Lamb	29414
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225	Denise	Mulvihill	29412
226	Carol	Dotterer	29412
227	Roberta	Reynes	29920
228	John	Gladstone	29902
229	Lynn	Newsom	29910
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231	Emily	Silversparre	29579
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233	Amy	Buckley	29412
234	John	Sisson	29458
235	Johanna	Miller	29455
236	Andrea	Kelly	29492
237	Greg	Singleton	22153

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240	Rosalie	Arnoff	29449
241	Jessica	Hofford	29412
242	David	Christopher	29405
243	Fred	Palm	29438
244	Mollie	Fair	29412
245	Fleming	Markel	29605
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248	James	Hutto	29455
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250	Audrey	Anderson	29928
251	Maria	Rivers	29412
252	Jack	Nietert	29902
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254	Dee Dee	Barnette	29455
255	Johnston	Adams	29585
256	Mallory	Norvell	29464
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262	Diane	Knich	29407
263	Jonathan	Rittenhouse	29403
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265	Kate	Nevin	29455
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268	Amy	Johnson	29205
269	Stephen	Zimmerman	29073
270	Jonathan	Denhartog	29621
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275	Catherine	McCullough	29464
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282	Nancy	Brown	29906
283	Sally	Nicholson	29609
284	Thelma	Wheeler	29418
285	Catherine	Cobb	29927

286	Tim	Oolman	29492
287	Andrew	Cobb	29927
288	Doug	Hendrick	29325
289	William R.	Carpenter III	29920
290	Michael	Cline	29405
291	Susannah	Knox	29403
292	Nan	Morrison	29401
293	Cassandra	Conroy	29902
294	Carolyn	Matalene	29401
295	Andrea	Cooper	29605
296	Susan	Maguire	29407
297	U	Ravenel	29401
298	Jennifer	Jenkins	29910
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300	Eleanor	Harris	29455
301	Marilyn	Gearhart	29909
302	Matthew	Lee	29407
303	Steven	Merrick	29150
304	Sherl	Gaskins	29414
305	Caitie	Forde-Smith	29455
306	Susan	Montgomery	29455
307	Janet	Hopkins	29401
308	Kevin	Smith	29205
309	Constance	West	29401
310	Pat	McWhirter	29205
311	Suzanne	Barns	29006
312	Virginia	Prevost	29458
313	Andrew	Cheever	29412
314	Robert	Wever	22601
315	Timothy E.	West M.D.	29464
316	Trevor	Gildea	29405
317	Patricia	Carrell	29902
318	Beekman	Webb	29907
319	Barbara	Brockell	29640
320	Keith	Butler	29466
321	Ronald	Smith	29439
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324	John	Bracy	29455
325	Judith	Kammer	29501
326	Mary Edna	Fraser	29422
327	Sara Lynn	Postma	29302
328	George	Sanford	29464
329	Jt	Ronk	29464
330	Amy	Bradley	29412
331	John	Manzi	29439
332	Cator	Sparks	29403
333	Frank	Powell	29672

334	Fleming	Markel	29605
335	Cathleen	Olsen	29466
336	Robin	Hardin	29412
337	Andrew	London	29405
338	Rhonda D.	Wright MD	29414
339	Marilynn	Koerber	29920
340	Deborah	Adams	29709
341	Elizabeth	Milner	29451
342	Donald	Lewis Jr	29412
343	Christine	Von Kolnitz	29425
344	LaBruce	Alexander	29206
345	Peter	Johnson	29910
346	Travis	Toelkes	29412
347	R	Smith	29678
348	Janice	Modjeski	29576
349	Alison	Mantini	29403
350	Jennifer	Sharp	29902
351	John	Hutchens Jr.	29579
352	Kathleen	King	29464
353	Marcelle	Ross	29582
354	Philip	Ramsey	29407
355	Tracy	Cole	85302
356	John	Trinkl	29418
357	Joseph	Dubois	29412
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359	Bryan	Merrick	29906
360	Wayne	Richard	29678
361	Charlotte	Caldwell	29412
362	Theodore	Taylor	29672
363	William	Simpson	29401
364	Nancy	Osguthorpe	29429
365	Jeanne	DuBois	29414
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367	Merike	Tamm	29302
368	Ted	Mamunes	29920
369	John	Mollick	29920
370	David	Wyanski	29407
371	Wilson	Moore	29920
372	Christopher	David	29414
373	Cherna	Bednarsh	29412
374	Barbara	Evans	29412
375	Yvonne	Michel	29492
376	Sherman	Barker	29926
377	William	Anderson	29412
378	La	Buice	29853
379	Haley	Merrill	29403
380	Amy	Horwitz	29407
381	Barbara	Erny	29928

382	Wayne	Severance	29532
383	Lanneau	Lide	29204
384	Olivia	Bueno	29412
385	Thomas	Newberry	29607
386	Grey	Gowder	29464
387	Jessica	Epley	29605
388	Gerald	Schulze	29907
389	Liza	Thompson	29464
390	Jerilyn	McCombs	29445
391	Mark	Wolff	29464
392	Timothy	Arlet	29464
393	Reed	Rayborn	29403
394	David	Pittman	29379
395	Laura	Cantral	29403
396	Aaron	Alexander	29439
397	Carol	Jackson	29412
398	Mark	Tappe	29801
399	Arlene	Flick	29910
400	Robert	Flick	29910
401	Sharon	Hough	29485
402	Ben	Hough	29485
403	Lisa	Johnson	29466
404	Stephen	Smith	29928
405	Dianne	McKenzie	29451
406	Rachel	Landis	29401
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408	Amy	Gentes	29464
409	Betsy	George	29661
410	Joy	Pinson	29576
411	Susan	Leggett	29455
412	Roger	White	29401
413	Bert	Corley	29410
414	Stephen	Middour	29464
415	Tom	Kennedy	29464
416	Peter	Roy	29585
417	Marla	Talley	29102
418	Bobbie	Lyon	29412
419	Laura	Blake-Orr	29036
420	Todd	Poore	29407
421	Susan	Lovdjieff-Levin	29906
422	Susan	Walter	29407
423	Patty	Carrell	29902
424	John	Zillioux	29455
425	Nancy	Johnson	29910
426	John	Scott	29209
427	David	Brick	29707
428	Vicki	Lant-Baird	29909
429	Bonnie	Fell	29902

430	John	Bracy	29455
431	Michael	Chapman	29455
432	Kris	Kordonowy	29466
433	Amy	Bradley	29412
434	Gwen	Greenwalt	29483
435	Stephanie	Calandra	29401
436	Kathy	Bradley	29078
437	Kristy	Lucas	29910
438	Douglas	Hendrick	29325
439	Lynne	Cody	29620
440	Dianne	Williams	29307
441	Alicia	Barnes	29585
442	Trevor	Gildea	29405
443	John	Strother	29928
444	Deborah	Donovan Rice	29585
445	Margaret P.	Blackmer	29412
446	Glenda	Bunce	29205
447	Jessica	P	29410
448	Paul	Siegel	29464
449	Tobias	Van Buren	29464
450	Brandi	Sloan	29040
451	Stewart	Wingate	29902
452	Bill	Knight	29405
453	Robert	Phillips	29638
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457	Robert T	Ball Jr Md Mph Facp	29407
458	Deb	Davidson	29407
459	Mary Edna	Fraser	29422
460	Suzanne	Feutz	29928
461	Elizabeth	Tapp	29649
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466	April	Gordon	29464
467	Brett	Jacobs	29466
468	Lynn	Newsom	29910
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471	Betty F	Breedlove	29401
472	Delia	Frederick	29801
473	Jon	Piebenga	29464
474	Kenneth	Kammer	29501
475	F Marion	Mitchell III	29487
476	Linda	Carroll	29920
477	Michael	Luciano	29410

478	Jennifer	Jenkins	29910
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480	Martin	Hyatt	29412
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500	Allison	Orvin	29204
501	Peggy	Thompson	29206
502	Maryrose	Randall	29730
503	Mary	Coish	29482
504	Evelyn	McGee	29482
505	Arianne	Wolfe	29407
506	George	Jones	29920
507	Kathleen	Strother	29928
508	Ronda	Reynolds	29229
509	William	Smith	29412
510	Veronica	Goodrich	29401
511	Gary	Smith	29401
512	Doug	Sedlacek	29412
513	James	Bowers	29445
514	Carole	Hartness	29910
515	Kathy	Roys	29445
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517	Jay	Jackson	29412
518	Marilyn	Gearhart	29909
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520	Francesca	Denton	29909
521	Cathleen	Olsen	29466
522	Jane	Beak	29401
523	Eric	Brooker	29492
524	Karen	Oakes	29455
525	John	Brugge	29407

526	Michael	Coker	29588
527	Joseph	Rider	29526
528	Karin	Hauptstein	29926
529	Sally	Tuten	29488
530	John	Rose	29662
531	Ansel	Meadors	29649
532	Paula	Rivers	29464
533	Nancy	Buchanan	29401
534	David	Quick	29464
535	Jewel	Reavis	28086
536	Albert	Segars	29920
537	Marijean	Dornback	29909

Attachment B

Upstate Forever Member and Supporter Comments, FERC Docket No. EL20-42-000

Yes, we have rooftop solar and are receiving net metering from Duke Energy. We invested in solar panels to help prevent the need for Duke to build more power plants, be they nuclear or hydrocarbon burning. Also to protect ourselves from the rising cost of utilities and because it's just a good feeling to know we are producing most of the power we consume without contributing to CO2 levels in the atmosphere.

As long as there is net metering, we don't need a battery for our solar energy system. That is a savings for us and the environment, since these big lithium batteries are expensive and are not exactly a sustainable technology in the long run.

Jim Wrobel

Yes I have solar at home that runs my house, pool and two electric cars. I also get a check from Duke for the excess energy I produce annually. I also have a 24kw solar array on my office building at the below address. I have done all I can individually to reduce my carbon footprint including my vegetarian diet of 42 years and would not want any legislation to threaten net metering. Let me know what I can do to help.

Gary Davis

Eleven years ago we designed and built a new house in Travelers Rest, SC after living for thirty years in downtown Greenville, SC on Whitsett St. Our new house was designed as a passive solar house constructed with SIPS technology, and also included a geothermal heat pump for heating and air conditioning. The design included provisions for photovoltaic roof panels when we could afford the installation. Our roof angle and orientation were designed specifically to optimize the efficiency of the panel installation. About 5 years ago we were able to afford the installation of the photo voltaic system. We were aided by federal and state tax benefits that made the financial calculations possible for our budget. All of our plans and calculations included the benefit of net metering. Without net metering, all of our financial calculations and investments fall apart.

Of course, we did all of the design, building and financial investment to benefit ourselves and any future buyer of our property, but we also made all of our decisions based on the idea that we were doing our part to ease demands on the burning of coal and/or using nuclear processing. In short, we thought we were helping our community, state and nation solve a critical and pressing problem with energy supply, and with global warming.

All of this said, we would quite likely never have approached any of the construction without the financial benefit of net metering. Almost all of our financial calculations to do the "right

thing" for ourselves and for our community really do fall apart without some form of net metering.

Sincerely,
Jim Campbell

I have solar roof top panels on my new house. Last month I generated twice as much energy as I used, so I now have a good carry forward.

My bill has been just the flat charge plus taxes for the past two months.

The decision to use solar also allowed me to go to all electric heating instead of gas further reducing my carbon emissions.

Net metering is critical to making the solar investment come even close to making financial sense. Without net metering, one would just have to do solar for the good of the earth which would limit the number drastically.

Tom Kester

Hi,

We have a 14.4 kw solar array (40 SunPower 360s) (Since June 2018.)

I drive a Tesla EV ...as do my 2 sons and we have three Tesla Powerwall batteries that provide 40 kW of solar storage.

We are very concerned about the environmental impact of fossil fuels. When I got my EV I could not bear to fuel it with fossil fuels through coal so we decided to fight our HOA and try to get solar(they had already refused us previously)

I "oversized" my solar system to be sure we could charge the car and run our house as much without the grid as possible.

Without net metering we would need to purchase more expensive batteries so our excess would not go back to Duke for free.

They would be essentially robbing us by taking our excess production for free and then selling it for profit to someone else.

Additionally, net metering helps us to get our ROI sooner and make solar affordable in the long run. We paid a lot of money up front. Without net metering we would actually lose money. I feel that utilities need us to help the aging grid. Duke Energy employees have actually said this to me. They need us!!!

Net metering is a very important part of making solar financially feasible.

I'm sure fewer people would install solar without net metering.

I believe in renewable energy so much...it just makes so much sense! it's difficult to understand why it takes so long to transition.

I do solar open houses to share my joy of producing my own clean energy with others.(I also go to car shows to show how solar and EVs work together so well. We were hoping to have an Earth Day Drive Electric event but Covid stopped everything.

We are still hoping to have a Greenville National Drive Electric Event where we would feature solar power as well ...even if it is virtual.)

I feel better about myself now that we are not using fossil fuels.

I'm 65 years old and this system was top priority on my bucket list.

I wanted to set an example for others.

We added 10 more panels since this photo so the roof is all glass.

The HOA tried to refuse on the grounds that solar panels are ugly. I think they are beautiful!

Best Regards,
Rebecca Limpalair

We do have solar and are starting year three with 39 panels on our house. We got the panels after the last presidential election as we saw environmental issues taking a back seat, or being cut. We decided to do what we could in our life to make an environmental impact. We started with solar power, then an electric car and continue to compost, recycle, upcycle etc.. We have three children who have taken part in all of it and we hope will take this approach in their own lives.

Thanks for helping with the mission!

Brooke Reed

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the foregoing document has this day been served by a means permitted by Rule 2010(f) of the Federal Energy Regulatory Commission's Rules of Practice and Procedure on each person whose name appears on the Official Service List compiled by the Secretary in this proceeding.

This the 15th day of June, 2020.

/s/ Lauren J. Bowen

Lauren J. Bowen
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Dated at Durham, NC
This the 15th day of June, 2020