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FERC UPHOLDS NET METERING LAWS

Net metering advocates applauded a March 28 Federal Energy Regulatory Commission (FERC) decision rejecting MidAmerican Energy Company's legal challenge to Iowa's net metering rule (FERC Order 94 FERC P61,340).

Tom Starrs, who participated in the proceeding on behalf of the Energy Foundation, summed up the effect of the decision by saying, "This clear and unequivocal support for the prevailing practice in 30 states of allowing net metering is welcome, particularly as it removes the element of uncertainty that had been hovering over policymakers in some of the remaining states, who had been hesitant to move forward on net metering in the face of this pending challenge."

The challenge hinged on the question of whether electricity flowing to a utility from an individual who generates power for his own use constitutes a sale, or whether the individual is in effect banking the excess generation on the power grid for later use.

MidAmerican claimed that such a flow was a sale, and the seller should be regarded as a wholesale power seller. If the power seller were viewed as a qualifying facility (QF) under the Public Utility Regulatory Policy Act of 1978 (PURPA), net metering would violate PURPA by requiring utilities to purchase the excess power generated by customers at a price in excess of the utility's avoided cost of power. If the power seller were not a QF, MidAmerican argued, states would have no authority to set rates for power purchases, because the Federal Power Act grants FERC exclusive authority to set rates for non-QF customers.

Advocates in support of net metering, including renewable energy supporters, environmental groups, state regulators, and consumer advocates, argued that net metering represents an offset or exchange of the excess power, rather than a sale of power, and as such is not subject to PURPA's limitation on the buyback price. They also argued that net metering was within a state's jurisdiction over retail sales, rather than the FERC's jurisdiction over wholesale sales within interstate commerce.

The FERC sided with the latter argument, saying, "[w]e find . . . 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."

The FERC order left the door open, however, to legal challenges to a state's authority to set prices on excess electricity from a QF supplier and to determine the time interval over which the netting process may take place.
