

Making DER Hay While the Sun Shines on Solar

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On my father's side, I am descended from a long line of farmers. My father broke the chain by leaving the farm and becoming a businessman. But when the time came to use his success to buy a ski or lake house, he instead bought a large farm. Instantly my siblings and I (and sometimes our semi-reluctant friends) became farmhands. Our main crop was hay, which was destined for all of my father's pets...er, I mean cows. Anyway, I quickly learned from my dad the importance of using a window of good weather for "hayin" given the time it took to cut it, rake it, bale it and get it into the barn. Thus I learned the true meaning of the saying "making hay while the sun shines."

There are a lot of windows open with respect to DER right now. But most of them, as far as I can tell, are focused on solar, and often specifically on rooftop solar. I read a few days ago that 39 states are currently taking some kind of look at what to do about solar in terms of net metering and how utilities should recover the costs of their wires system. Some of these states have full-blown proceedings, while others are in some way studying or evaluating the issue.

But the issues at the core of these activities are not related only to solar. At their core, and whether or not anything explicit is said on it, these efforts are about how utility infrastructure and services will be funded in the future and how customers will pay for such costs. The activities will likely set all sorts of precedent for future rate design, fixed vs. variable charges, and the measurement and pricing of demand by smaller customers, who have never been charged for that type of thing in the past.

The efforts underway are not and will not become the end-all on these issues and questions, but as I said they could set a precedent. That is in part because of the way energy law and regulation works. It is in part due to the fact that policymaking is subject to what I call the "Law of Windows", or the idea that policymaking on any given issue doesn't happen every day, every year or in some cases, every decade.

Energy policy follows the same basic tenets of our overall legal system. It gives great deference to consideration and decision-making on a question or issue by previous policymakers. It also uses existing policy to build upon to create something new.

It is not that existing policy cannot be completely scrapped. For example, how many of you remember or know that back in 1978, in response to the energy crisis earlier in that decade, Congress passed the Fuel Use Act, which restricted the use of natural gas in power plants? Well it turned out that there was plenty of natural gas - it just had to be deregulated a bit so more would be produced - so that act was later repealed. Other examples are the metering laws that Texas and New York passed not that long ago which opened up utility meter deployment to competition. They were later repealed when it became obvious they were not working.

Whether new policy is being created or existing policy changed or removed, policymaking on any given issue is not constantly and continually happening. There is not an energy bill or major state regulatory proceeding every year. In fact, such things can be many years apart in a given policymaking body. I could talk about why that is, but I might digress into too many war stories. But most evidence shows that major policy takes a while to develop, debate and enact. That means that when policy is being made on a given energy issue, it may be a while before policymakers return to that issue.

So the question to ask is this: is the policy being made, or at least set up to be made, by all of the states' present activities such that it will set policy for more than just solar? And does that mean that if you are in any of the other DER segments and subsectors that you need to pay attention, or even participate, in these solar activities? I can't give you the answer, because each policymaking or study activity is likely unique in a variety of ways and those differences could matter. But I would say that you might want to think out of the solar box and at least consider what might be happening there that could affect you.

And you could be affected in two ways. The first is using a policymaking window as the opportunity to add things that are good for you and your business. The second is when an open window becomes a threat in because things that are not good for your business are inserted and become set in stone for a while.

On the farm when the sun was shining, we worked like crazy to "get the hay in" during a window of good weather. We knew that if a storm came after we had started cutting it, it could be ruined by getting wet, and we would have to wait for a while (maybe even until next year) before we hayed that field again. Now that the sun is shining for solar power, I suggest we all figure out how to use this opportunity to set policy for the broader DER sector - because who knows when the next chance will come along.

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