



HARVARD LAW SCHOOL
Environmental & Energy Law Program

The Case Against Direct FERC Regulation of DER Energy Sales

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Federal Power Act

FERC Jurisdiction

“Transmission of electric energy in interstate commerce and [] the sale of electric energy at wholesale in interstate commerce”

Rules and practices directly affecting those rates

- i.e., wholesale demand response

State Jurisdiction

“Any other sale” of electric energy

- Retail rates
- Intrastate wholesale sales

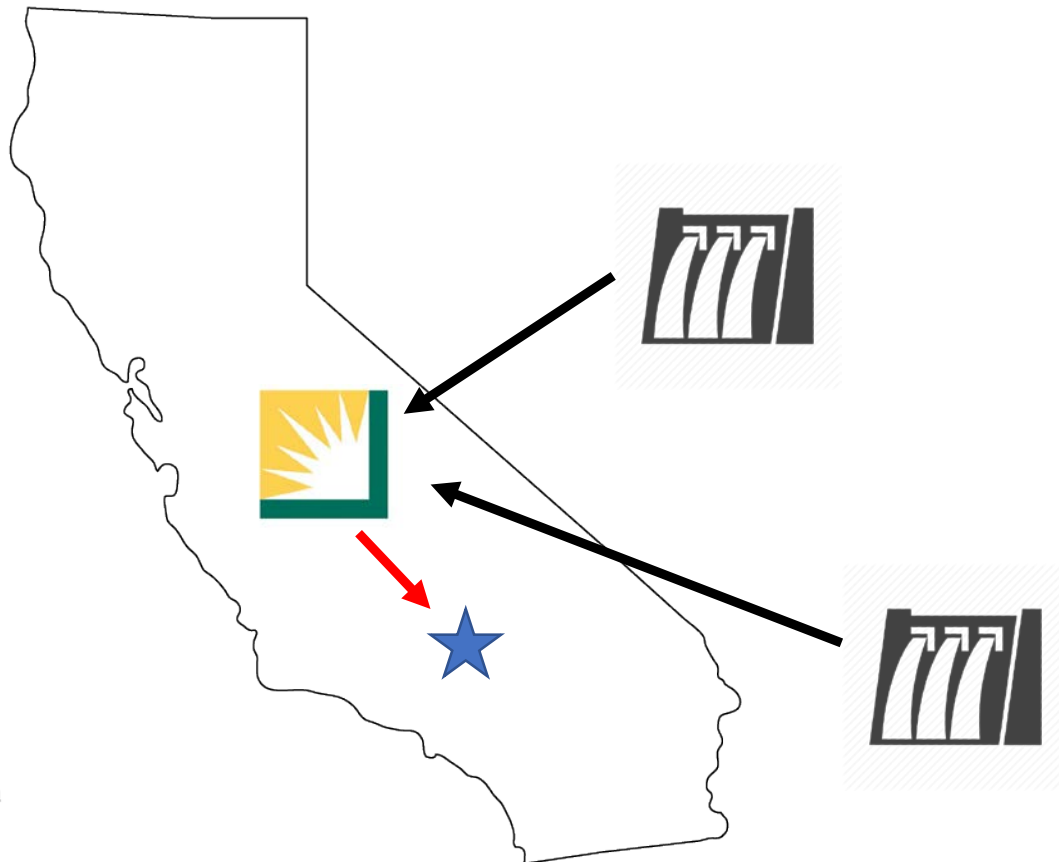
Power plants

- Siting
- Utility portfolios

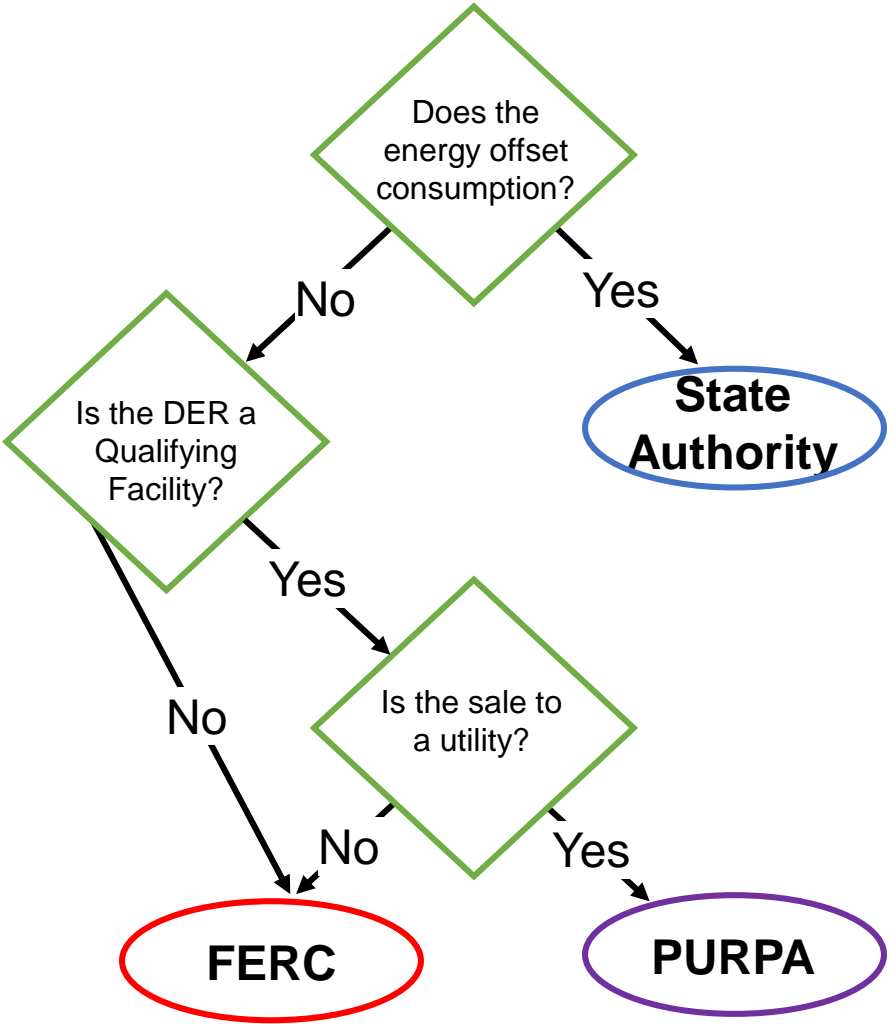
Distribution

FERC Jurisdiction over Energy Sales

Supreme Court, 1964: Sale by CA utility to CA municipality is “in interstate commerce”



Fragmented Authority over DER Energy Sales

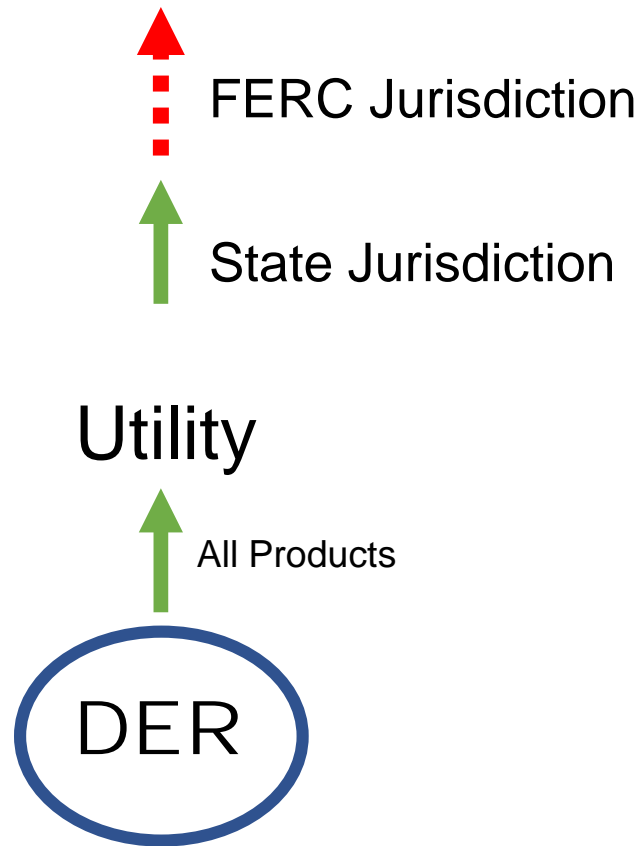


FERC Jurisdiction over DER Energy Sales

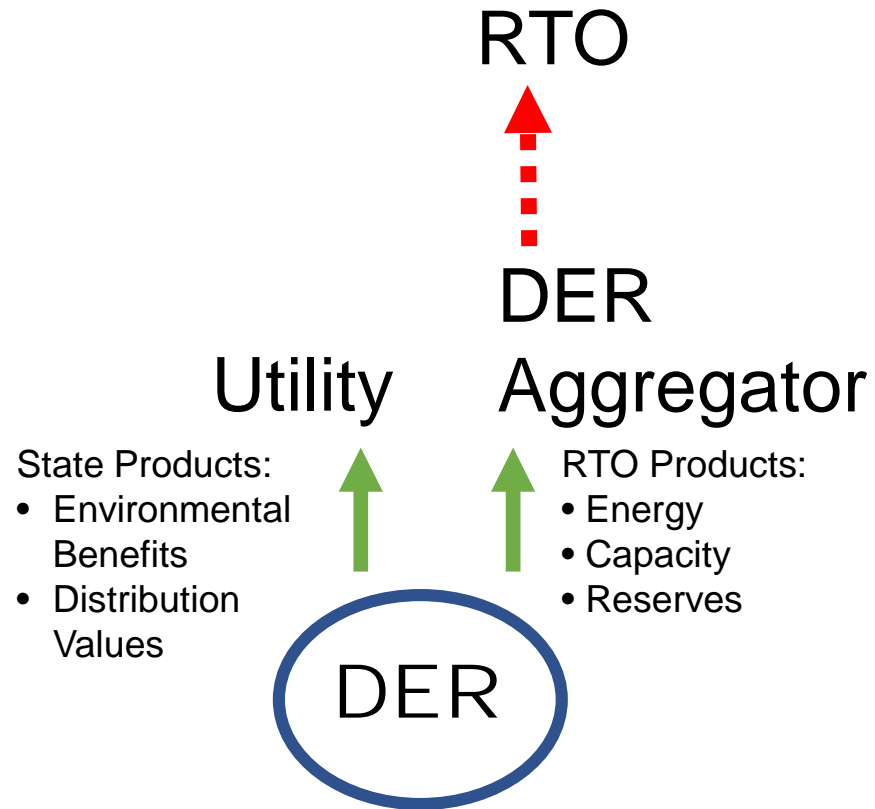
FERC should disclaim jurisdiction over DER energy sales.

- Legal argument: sales by a DER to a local buyer are “other sales” and not wholesale sales “in interstate commerce”

DER Development Models



Model 1: Utility-Centric



Model 2: Aggregation-RTO

