

UPDATES

U.S. Federal Energy Regulatory Commission Opens Wholesale Power Markets to Distributed Energy Resources

September 22, 2020

On September 17, 2020, the U.S. Federal Energy Regulatory Commission (FERC) issued Order No. 2222, a final rule to remove barriers for distributed energy resource (DER) aggregators to participate in the wholesale capacity, energy, and ancillary service markets operated by regional transmission organizations and independent system operators (RTO/ISO). This order is expected to allow new technologies, such as electric vehicles, to come online and participate in the wholesale power markets on a level playing field.

FERC's order defines DER as any resource on the distribution system or subsystem or behind a customer meter including but not limited to "electric storage resources, distributed generation, demand response, energy efficiency, thermal storage, and electric vehicles and their supply equipment."

Order No. 2222 is an extension of FERC Order No. 841 issued in 2018, which amended FERC's regulations to remove barriers to the participation of electric storage resources in RTO/ISO markets. Although the proposed rule underlying Order No. 841 had also considered DERs, FERC ultimately held that more information was needed and tabled final action on DER aggregation reforms. Thereafter, on July 10, 2020, the U.S. Court of Appeals for the D.C. Circuit upheld Order No. 841, holding that promulgation of Order No. 841 was within FERC's authority and that states cannot ban storage resources from participating in wholesale markets.

The D.C. Circuit's decision upholding FERC's authority to promulgate such rules under the Federal Power Act (FPA) solidified the commission's jurisdictional authority. In addition, beginning in 2018, FERC gathered more information from its technical conferences on DER aggregators. These developments provided FERC with a clearer path to issuing Order No. 2222.

Based in part on the D.C. Circuit's ruling, in Order No. 2222, FERC determined that retail regulatory authorities cannot ban DERs from participating in the wholesale regional markets. FERC further held that it was unjust and unreasonable to mandate certain size and performance requirements as preconditions to participating in RTO/ISO markets. To remedy this issue, pursuant to its authority under FPA section 206, FERC is requiring each RTO/ISO to revise its tariff to include provisions that

- establish DER aggregators as a type of market participant and allow them to participate directly in RTO/ISO markets
- allow DER aggregators to register DER aggregations
- establish a minimum size requirement for DER aggregations
- address a number of additional requirements (e.g., locational requirements, distribution factors, bidding parameters, and information and data requirements)

FERC found that allowing DERs to participate in wholesale markets would enhance competition in wholesale markets and in turn produce just and reasonable rates. FERC also found that DERs could rapidly respond to generation or transmission constraints and thus alleviate congestion costs.

Order No. 2222 also acknowledges the jurisdictional authority of retail regulators. Specifically, FERC (i) allows retail regulators to prevent DER aggregators from bidding demand response of retail customers into regional markets, (ii) requires RTO/ISOs to obtain approval from the relevant retail regulator for bids from small utilities whose aggregate customer electric output exceeds a certain threshold, and (iii) ensures that local authorities remain responsible for the interconnection of individual DERs.

FERC Chairman Neil Chatterjee applauded FERC's action, saying that "Order 2222 is a landmark, foundational rule that paves the way for the grid of tomorrow" and that "this order will allow us to build a smarter, more dynamic grid that can help America keep pace with our ever-evolving energy demands." Commissioner Rich Glick said, "The rule will enhance grid reliability, expand market competition, and reduce consumer electric costs." Commissioner James Danly dissented from FERC's order, arguing that "the Commission goes too far in declaring the extent of its own jurisdiction and because the Commission should not encourage resource development by fiat."

Order No. 2222 takes effect 90 days after publication in the *Federal Register*. RTO/ISOs must make compliance filings to FERC within 270 days of the effective date. The FERC order is available [here](#).

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