

FERC Actions Boost Distributed Resources In Power Markets

By **Alvin Taylor and Brendan Connors** (April 5, 2021, 2:43 PM EDT)

On March 18, in Order No. 2222-A, the Federal Energy Regulatory Commission largely reaffirmed its seminal Order No. 2222, which dramatically relaxed barriers to aggregated distributed energy resource, participation in the wholesale energy markets operated by regional transmission organizations and independent system operators.

However, FERC did change or clarify certain aspects of Order No. 2222, and the commission indicated in a concurrent order that it appears willing to eliminate a state's ability to prevent demand response resources — a specific type of distributed energy resource — from participating in these regional wholesale markets.

Background

Distributed energy resources, or DERs, are physical and virtual assets located on a local electric distribution system, such as rooftop solar panels, wind generation units, battery storage, smart thermostats and the like. They can be aggregated to provide beneficial services to the distribution grid — and, critically, can help to reduce retail consumer costs.

Regional transmission organizations, or RTOs, and independent system operators, or ISOs, are nongovernmental public utilities that oversee certain parts of the electric grid, and many of them also operate regional wholesale markets for energy, electric capacity and other ancillary services relating to the grid. These markets fall under FERC's jurisdiction.

Historically, it had been difficult for DERs to participate in these markets, mainly due to minimum size requirements and other obstacles RTOs and ISOs impose as barriers to entry in their governing documents, known as tariffs. Moreover, states — which have jurisdiction over discrete DERs, given their presence on the retail electric system — had often hindered them in various ways from participating in regional wholesale markets, even as aggregations.

Order No. 2222

FERC's Order No. 2222, issued on Sept. 17, 2020, was meant to largely remove these barriers. In that order, the commission required that the RTOs and ISOs under its jurisdiction change their tariffs to allow DER aggregations that meet certain performance requirements to bid into RTO/ISO wholesale markets.

This included, importantly, DERs that are "behind the customer meter," such as solar panels, batteries, gas or diesel generators, fuel cells, and combined heat and power systems. Even more significantly, because aggregated DER participation in wholesale markets falls exclusively under FERC jurisdiction, the commission found that states were powerless to prevent or otherwise inhibit aggregated DERs from participating accordingly.

There were exceptions to this broad mandate. One was for demand response resources — a



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specific type of DER that includes certain technologies such as smart thermostats and other energy efficiency appliances — that reduce consumer electricity usage. Order No. 2222 preserved earlier FERC orders holding that states could withdraw or opt out demand response resources from participating in wholesale markets.

The other exception FERC allowed was for small utilities that had distributed 4 million megawatt-hours or less to consumers in the previous year. Realizing that it would be logistically difficult and costly for such small utilities to implement the changes necessary to allow their DER customers to participate in wholesale markets, FERC provided them with opt-in authority.

In other words, DER customers of these small utilities would not be able to participate in RTO/ISO markets as part of aggregations without express permission from their local distribution utilities to do so.

Order No. 2222-A

The groundbreaking changes wrought by Order No. 2222 led predictably to various requests for FERC to reexamine — or at least clarify — its decision. For the most part, in Order No. 2222-A, the commission has rebuffed these requests.

FERC has partially reversed its decision to maintain the demand response resource opt-out authority for states. It has held that the opt-out will only apply to DER aggregations consisting solely of demand response resources.

Demand response resources can still join aggregations composed of other diverse forms of DER, and states can not prevent them participating in regional wholesale markets. FERC has also clarified other aspects of Order No. 2222. Specifically, the commission has clarified that:

- It declines to exercise jurisdiction over the interconnections of DERs to distribution utilities, which continue to be a state affair — even interconnections of qualifying facilities such as renewable generators, a type of entity defined under the federal Public Utilities Regulatory Policies Act.
- RTOs and ISOs do not have to implement new restrictions to avoid double-counting of DER services in their wholesale markets, if they already have such restrictions in place.
- Only a distribution utility hosting a DER on its system should be given the opportunity under Order No. 2222 to review the addition of that resource to an aggregation, a process that can take no longer than 60 days.

Finally, rejecting various appeals, FERC has retained the opt-in authority for small utilities described above.

Republican FERC Commissioners James Danly and Mark Christie filed dissents to Order No.

2222-A. They argued vigorously that the order and its predecessor have dramatically encroached upon the jurisdiction of the states to govern DERs.

Demand Resource Opt-Out: On the Ropes?

On the same day FERC issued Order No. 2222-A, it issued a notice of inquiry investigating the possibility of eliminating the state opt-out regarding demand response resource participation in wholesale markets.

The notice, the initial step in a potential FERC rulemaking, indicates that the commission is considering removing the opt-out altogether, particularly when considered with the clarification it issued regarding the opt-out in Order No. 2222-A.

Now that FERC has completed rehearing of Order No. 2222, it is eligible to be appealed to a federal appellate court — and given the gravity of the order, it likely will be. Meanwhile, several RTOs have already requested that they be given significantly more time to comply with the order. So there are bound to be delays before — and if — this pivotal regulation is ever fully implemented.

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