

## FERC Issues Order No. 2222 to Increase Participation of Distributed Energy Resource Aggregations in Organized Markets

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On September 17, 2020, the Federal Energy Regulatory Commission (FERC) issued Order No. 2222, a Final Rule aimed at increasing participation of distributed energy resource (DER) aggregations in the energy, capacity and ancillary services markets operated by Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs). By requiring the development of market rules for the participation by DER aggregations in RTO/ISO organized markets, Order No. 2222 seeks to address the barriers that individual DERs face due to their inability to meet the size and operational requirements necessary to qualify as market participants.

Order No. 2222 will become effective 60 days from the publication in the Federal Register. RTOs/ISOs are required to make compliance filings with the proposed tariff revisions within 270 days from publication of Order No. 2222 in the Federal Register. Each RTO/ISO is required to propose in its compliance filing a reasonable implementation date for their proposed tariff revisions.

### FERC Jurisdiction over DER Aggregators

Order No. 2222 requires RTOs/ISOs to define a “distributed energy resource aggregator” as a type of market participant that participates directly in the RTO/ISO markets under one or more participation models. FERC found that a DER aggregator that participates in the RTO/ISO energy, capacity or ancillary services markets engages in wholesale sales and is considered a “public utility” subject to FERC jurisdiction, unless the aggregation is limited to demand response, energy efficiency, or customers in a net metering program that are not net sellers. However, FERC clarified that an individual DER’s participation in an aggregation would not cause the individual DER to become subject to FERC’s public utility requirements.

### Eligibility to Participate in RTO/ISO Markets via DER Aggregation

**Broad Definition of DER.** Order No. 2222 defines a DER as “any resource located on the distribution system, any subsystem thereof or behind a customer meter.” The broad definition is technology-neutral and encompasses both current and future technologies. For example, DERs may include resources that are in front of and behind the customer meter, electric storage resources, intermittent generation, distributed generation, demand response, energy efficiency, thermal storage, and electric vehicles and their supply equipment. The Final Rule does not allow RTOs/ISOs to prohibit any particular type of DER technology from participating in DER aggregations. FERC declined to establish a minimum or maximum capacity requirement for individual DERs to participate in the RTO/ISO markets through a DER aggregator, but directed each RTO/ISO to either propose a maximum capacity requirement for DERs that participate in an aggregation or explain why such requirement is not necessary.

**Characteristics and Size of DER Aggregation.** Order No. 2222 allows a single DER to serve as its own DER aggregator and participate in the RTO/ISO markets under the DER aggregation rules. The Final Rule establishes a minimum size of 100 kW for a DER aggregation, but FERC declined to establish a maximum size for DER aggregations. Order No. 2222 requires RTOs/ISOs to allow different types of DER technologies to participate in a single DER aggregation—a “heterogeneous” DER aggregation—to ensure that complementary resources with different physical and operational characteristics can meet, as an aggregation, RTO/ISO qualification and performance requirements that individual DERs may not be able to meet (e.g., minimum run time).

**Flexible Participation Models.** Order No. 2222 intends to provide RTOs/ISOs with the flexibility to determine how best to amend or establish the participation models for DER aggregations in the



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organized markets. To that end, the Final Rule allows RTOs/ISOs to modify existing participation models, establish new participation models, or adopt some combination of the two approaches.

**No “Opt-Out” Provision for Retail Authorities.** FERC declined to establish an “opt-out” mechanism to allow relevant electric retail regulatory authorities to prohibit DERs from participating in the RTO/ISO markets via a DER aggregator. However, retail regulatory authorities may condition the participation of DERs in retail DER programs on those DERs not participating in RTO/ISO markets. The Final Rule also creates an “opt-in” requirement for customers of “small utilities,” *i.e.*, utilities that distributed 4 million megawatt-hours or less in the previous fiscal years. RTOs/ISOs may not allow a DER aggregator to participate in the organized markets if the aggregation includes DERs that are customers of small utilities, unless the relevant electric retail regulatory authority allows such customers to participate in DER aggregations.

**No FERC Jurisdiction Over Interconnection when DERs Participate through Aggregations.** In Order No. 2222 FERC declined to exercise its jurisdiction over the interconnection of DERs for the purpose of participating in RTO/ISO markets exclusively through a DER aggregation. Therefore, the Final Rule does not require RTOs/ISOs to amend their tariffs to include standard procedures and agreements for the interconnections. FERC clarified that the interconnection of a DER for participating in the RTO/ISO markets directly and not through an aggregation would be subject to FERC’s jurisdiction, subject to the existing “first-use” test. Any DER currently interconnected under FERC-jurisdictional procedures would not need to convert to a state or local interconnection agreement to participate in RTO/ISO markets exclusively through an aggregation.

**Double Counting.** A single DER can participate in both retail and wholesale programs and be compensated in each for providing different services. Therefore, Order No. 2222 does not bar the participation of DERs in both wholesale and retail programs or in multiple wholesale programs. However, to avoid any double counting, the Final Rule directs RTOs/ISOs to adopt appropriate restrictions to prohibit a DER from participating in the RTO/ISO markets through a DER aggregator if the DER receives compensation for the same services as part of another wholesale or retail program. FERC declined to define what constitute “same services” across wholesale and retail markets and granted RTOs/ISOs regional flexibility with respect to proposed restrictions to avoid double counting.

## **RTO/ISO Flexibility in Developing Market Rules for Participation of DER Aggregations**

The Final Rule provides RTOs/ISOs flexibility in the development of market rules that address the following aspects of the participation of DER aggregations in the organized markets.

**Locational Requirements.** Order No. 2222 requires RTOs/ISOs to establish locational requirements for DER aggregation participation that are as geographically broad as technically feasible. Each RTO/ISO is granted flexibility to implement this directive by developing a tailored approach based on regional needs. To that end, Order No. 2222 does not require RTOs/ISOs to adopt either a multi-node or single-node aggregation approach. However, the Final Rule requires RTOs/ISOs to provide a detailed technical explanation for the geographical scope of its proposed locational requirements to ensure they are as geographically broad as is technically feasible.

**Distribution Factors and Bidding Parameters.** When DERs can participate through a single aggregation that uses multiple nodes, Order No. 2222 directs RTOs/ISOs to require aggregators to provide and update distribution factors showing how much of the total response from an aggregation would be coming from each of the nodes where DERs in the aggregation are located. The Final Rule also requires RTOs/ISOs to incorporate in the participation model for DER aggregators an appropriate set of bidding parameters that account for the physical and operational characteristics of DER aggregations.

**Data Requirements, Metering and Telemetry.** Order No. 2222 clarifies that the DER aggregator is the single point of contact with the RTO/ISO and is responsible for managing, dispatching, metering and settling the individual DERs that participate in the aggregation. RTOs/ISOs are directed to revise their tariffs to specify the information and data that DER aggregators must provide about their aggregation, require DER aggregators to provide and update a list of individual DERs in the aggregation, and establish

any necessary information that must be submitted for individual DERs. Order No. 2222 does not impose standard metering and telemetry requirements but requires RTOs/ISOs to explain in their compliance filings how their proposed metering and telemetry requirements do not impose unnecessary and undue barriers to individual DERs joining a DER aggregation. The Final Rule also instructs RTOs/ISOs to rely on existing meter data from distribution utilities or local regulatory authorities, whenever possible.

## Role of Distribution Utilities and Electric Retail Regulatory Authorities and Operational Coordination

**Distribution Utilities.** Order No. 2222 provides guidance on the role distribution utilities should have in DER aggregation participation in the RTO/ISO markets. The Final Rule requires RTOs/ISOs to establish a comprehensive and non-discriminatory process for distribution utilities to review individual DERs that will comprise a DER aggregation to ensure the proposed DER is capable of participation and that such participation does not pose significant risks to the reliable and safe operations of the distribution system. The RTO/ISO tariffs will set the amount of time that distribution utilities will have to conduct such reviews, which FERC expects would not exceed 60 days. Distribution utilities will be given the ability to override RTO/ISO dispatch of DER aggregations when such override is needed to maintain the reliable and safe operation of the distribution system.

**Electric Retail Regulatory Authorities.** RTOs/ISOs must specify in their proposed tariff amendments how they will incorporate voluntary involvement by relevant electric retail regulatory authorities in coordinating the participation of DER aggregation in the wholesale markets. The role of relevant electric retail regulatory authorities could include: developing interconnection agreements and rules; developing local rules to ensure safe and reliable distribution systems, data sharing, metering and telemetry requirements; overseeing the distribution utility's review of the DER aggregations; establishing rules for multi-use applications; and resolving disputes.

**Ongoing Operational Coordination.** Order No. 2222 requires RTOs/ISOs to establish market rules addressing ongoing coordination between RTOs/ISOs, DER aggregators, distribution utilities, and relevant electric retail regulatory authorities to ensure the individual DERs participating in the aggregations are eligible to be part of the aggregation and are technically capable of providing services into the wholesale markets. Such coordination market rules will include developing a process for addressing data flows and communication amongst the RTO/ISO, the DER aggregator, and the distribution utility.

## Implications

Order No. 2222 acknowledges and promotes the role that new technologies are playing and will continue to play in the organized markets. The Final Rule requires RTOs/ISOs to provide a level playing field upon which DERs and DER aggregations may rapidly increase in number and size. Opening up the wholesale markets to DERs and DER aggregations on a greater scale will likely create new challenges for RTOs/ISOs, distribution utilities, electric retail regulatory authorities, and DER aggregators. In light of the flexibility that Order No. 2222 grants RTOs/ISOs in designing market rules, the compliance filings may show important variations in the rules that each RTO/ISO proposes for the participation of DER aggregators in its markets. Such tailored solutions are likely to better address regional needs, but market participants active in multiple RTOs/ISOs will need to be aware of potential differences among various organized markets.

## FOR MORE INFORMATION

If you are interested in additional information regarding Order No. 2222 or would like to discuss its implications, please contact [Vincenzo Franco](#), [Jessica Friedman](#), [Erin Bartlett](#) or any member of the firm's [Electric Practice](#) at (202) 298-1800 in Washington, D.C. or in Seattle at (206) 623-9372.

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