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EDITOR'S NOTE: RENEWABLE ENERGY

Victoria Prussen Spears

THE RELATIONSHIP BETWEEN VOLUNTARY AND COMPLIANCE RENEWABLE ENERGY MARKETS

Flossie Davis and Lynn Fountain

CHANGING COURSE: FERC ADOPTS NEW POLICY ON ITS CONSIDERATION OF CERTAIN CLIMATE IMPACTS IN REVIEWING PROPOSED INTERSTATE PIPELINE (AND LNG?) INFRASTRUCTURE

Brooksany Barrowes, Robert S. Fleishman, Nicholas Gladd, and Ammaar Joya

FERC PROMOTES GREATER PARTICIPATION OF DISTRIBUTED ENERGY RESOURCES AND DEMAND RESPONSE IN ENERGY MARKETS

Levi McAllister and Patrick R. Pennella

NEW YORK ISSUES FINAL RENEWABLE ENERGY SITING REGULATIONS TO STREAMLINE PERMITTING

M. Benjamin Cowan and Stephen Bright

ESG IN U.S. OFFSHORE WIND (AND NOT FOR THE REASON THAT YOU PROBABLY ARE THINKING)

J. Paul Forrester

THE GENUINE LINK AND THE FLAG STATE IN MARITIME LAW

Zaid Mahmoud Aladwan

Pratt's Energy Law Report

VOLUME 21

NUMBER 7

July–August 2021

Editor's Note: Renewable Energy

Victoria Prussen Spears

209

The Relationship Between Voluntary and Compliance Renewable Energy Markets

Flossie Davis and Lynn Fountain

211

Changing Course: FERC Adopts New Policy on Its Consideration of Certain Climate Impacts in Reviewing Proposed Interstate Pipeline (and LNG?) Infrastructure

Brooksany Barrowes, Robert S. Fleishman, Nicholas Gladd, and Ammaar Joya

221

FERC Promotes Greater Participation of Distributed Energy Resources and Demand Response in Energy Markets

Levi McAllister and Patrick R. Pennella

226

New York Issues Final Renewable Energy Siting Regulations to Streamline Permitting

M. Benjamin Cowan and Stephen Bright

230

ESG in U.S. Offshore Wind (and Not for the Reason That You Probably Are Thinking)

J. Paul Forrester

234

The Genuine Link and the Flag State in Maritime Law

Zaid Mahmoud Aladwan

240

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FERC Promotes Greater Participation of Distributed Energy Resources and Demand Response in Energy Markets

*By Levi McAllister and Patrick R. Pennella**

In this article, the authors explain that recent actions by the Federal Energy Regulatory Commission suggest greater use of decentralized small-scale generation, localized storage, and demand reduction measures as an alternative to large conventional generation resources.

The Federal Energy Regulatory Commission (“FERC” or the “Commission”) has announced two recent actions to promote greater use of distributed energy resources and demand response.

First, FERC has amended regulations on distributed energy resource aggregation in the capacity, energy, and ancillary markets operated by a Regional Transmission Organization (“RTO”) or an Independent System Operator (“ISO”).

Second, and related to its distributed energy resource amendments, FERC is seeking public comment on whether to revise regulations barring RTOs and ISOs from accepting bids of certain demand response aggregations.

FERC defines a distributed energy resource as “any resource located on the distribution system [and] any subsystem thereof or behind a customer meter,” and this may include, for example, “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.” Broadly, these are decentralized small-scale generation resources, storage resources, or energy efficiency enhancements.

FERC defines demand response as “changes in electric usage by end-use customers from their normal consumption patterns in response to changes in the price of electricity” or energy reduction incentive payments. A demand response resource, which can be, among other things, a physical asset, system, or practice, reduces power consumption, thereby freeing up electricity for use by others.

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In Order No. 745 in 2011, the Commission required each RTO and ISO to pay a demand response resource the market price for energy when it can balance supply and demand as an alternative to a generation resource and can dispatch at a cost-effective rate.

DISTRIBUTED ENERGY RESOURCES ORDER

In September 2020, FERC issued Order No. 2222, which removed barriers to the participation of distributed energy resource aggregations in RTO and ISO markets. In that order, FERC found that existing market rules unfairly suppressed participation of distributed energy resources. Order No. 2222 required each RTO or ISO to permit “distributed energy resource aggregators as a type of market participant” and to “allow distributed energy resource aggregations to participate directly in RTO/ISO markets,” except that an RTO or ISO could not “accept bids from a distributed energy resource aggregator if its aggregation includes distributed energy resources that are customers of utilities that distributed 4 million megawatt-hours (MWh) or less in the previous fiscal year.”

In FERC’s March 18 order on rehearing, Order No. 2222-A, the Commission rejected most arguments. The Commission, however, made several substantive changes.

First, FERC set aside its finding that the “participation of demand response in distributed energy resource aggregations is subject to the opt-out and opt-in requirements of Order Nos. 719 and 719-A.” Though demand response is a type of distributed energy resource, FERC specified that Order No. 2222 does not affect existing demand response rules and that participation of demand response in distributed energy resource aggregation was subject to the opt-out and opt-in requirements of Orders Nos. 719 and 719-A.

The opt-out/opt-in provision refers to the prohibition on demand response resources from participating in a distributed energy resource aggregation if the relevant electric retail regulatory authority (“RERRA”) does not opt into permitting demand response participation. FERC’s clarification specifies that the opt-in requirement continues to apply “to aggregations made up *solely* of demand response,” but not where demand response is part of an aggregation of various distributed energy resources.

Second, FERC clarified that it will not exercise jurisdiction over the “interconnections of distributed energy resources, including the interconnections of [qualifying facilities], to distribution facilities for the purpose of participating in RTO/ISO markets exclusively as part of a distributed energy resource aggregation.”

Third, in Order No. 2222-A FERC found it “appropriate for RTOs/ISOs to place narrowly designed restrictions on the RTO/ISO market participation of

distributed energy resources through aggregations, if necessary to prevent double counting of services.” The Commission clarified that “for planning purposes, double counting of services would occur if the same distributed energy resource reduces the amount of a service that an RTO/ISO procures on a forward-looking basis in a certain time period while also acting as a provider of that same service in that same delivery period.”

FERC further added that the “narrowly designed restriction” should avoid preventing aggregation of distributed energy resources unless that “is the only way possible to prevent double counting of services.”

Fourth, Order No. 2222 required each RTO and ISO to require a distribution utility to provide for the “comprehensive[,] non-discriminatory, [and] timely review” of the individual distributed energy resources that compose a distributed energy resource aggregation. FERC clarified that only the utility hosting the distributed energy resource can review the aggregation.

FERC also limited the length of the utility’s review to 60 days, to foster its goal of reducing barriers to distributed energy resource participation in RTO or ISO markets.

Further, Order No. 2222 required information sharing regarding distributed energy resources between the RTO or ISO and the distribution utilities. FERC clarified that information provided by a distribution utility to the RTO or ISO as part of the review process should also be shared with the distributed energy resource aggregator. FERC provided as an example information on whether the resource affects system safety or reliability or is capable of participating in aggregation, thus affording an aggregator the opportunity to supplement or correct information, and increase distributed energy resource participation.

Finally, Order No. 2222 required an RTO or ISO to include potential impacts on system reliability as a criterion in the distributed energy resource review process. FERC clarified that by impacts it was referring to “any incremental impacts from a resource’s participation in a distributed energy resource aggregation that were not previously considered by the distribution utility during the interconnection study process for that resource.”

DEMAND RESPONSE NOTICE OF INQUIRY

In Order No. 2222-A, as discussed above, FERC set aside its finding that the “participation of demand response in distributed energy resource aggregations is subject to the opt-out and opt-in requirements of Order Nos. 719 and 719-A,” and instead found that the opt-in requirement applies only to distributed energy resource aggregations composed solely of demand response resources.

FERC now seeks to examine whether it should revise its opt-in requirement of Order Nos. 719 and 719-A, “specifically, whether RTO/ISO markets would significantly benefit from the increased participation of aggregated demand response resources that are currently barred by RERRAs exercising the Demand Response Opt-Out.” That is, FERC is indicating that it may remove the demand response aggregation opt-in requirement, suggesting that the requirement may be a barrier to competition and harm system reliability.

FERC notes that for other distributed energy resources, it has not created a RERRA opt-in requirement. Further, FERC suggests that emerging technologies permit greater use and efficiencies from demand response resources.

FERC has proposed a series of 12 questions to help it examine the cost and benefits of removing the demand response opt-in requirement and other changes to demand response regulations. Broadly, FERC has asked about how circumstances have changed since adopting Order Nos. 719 and 719-A, benefits of removing the demand response opt-in requirement and the balance between removing barriers and state regulatory authority, and burdens from removing the requirement.

Comments to FERC’s questions were due by June 23, 2021, and reply comments were due by July 23, 2021.

CONCLUSION

At bottom, FERC’s distributed energy resource order on rehearing and its demand response inquiry suggest greater use of decentralized small-scale generation, localized storage, and demand reduction measures as an alternative to large conventional generation resources.