

**BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

PJM Interconnection, L.L.C.

)

ER22-962

**JOINT PETITION FOR LIMITED REHEARING OF THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION AND THE PUBLIC
UTILITIES COMMISSION OF OHIO**

Under Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission or FERC)¹ and section 313 of the Federal Power Act (FPA),² the Pennsylvania Public Utility Commission (PAPUC) and the Public Utilities Commission of Ohio (PUCO) jointly petition for rehearing of the Commission's *Order on Compliance Filing* issued March 1, 2023,³ on PJM's Order 2222⁴ Compliance Filing.⁵

I. STATEMENT OF ISSUES AND SPECIFICATIONS OF ERROR

In accordance with Rule 713(c) of the Commission's Rules of Practice and Procedure,⁶ the Joint Commissions submit the following statement of issues and specifications of error:

¹ 18 C.F.R. § 385.713.

² 16 U.S.C. § 825l.

³ *PJM Interconnection, L.L.C.*, 182 FERC ¶ 61,143 (2023) (March 1 Order).

⁴ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 172 FERC ¶ 61,247 (2020) (Order 2222).

⁵ Order No. 2222 Compliance Filing of PJM Interconnection, L.L.C., Docket No. ER22-962 (February 1, 2022) (Compliance Filing).

⁶ 18 C.F.R. § 385.713(c).

1. **The Commission illegally found in ¶¶ 321-323 of the March 1 Order that PJM has the authority to resolve disputes arising under applicable retail tariffs, rules and regulations of the Relevant Electric Retail Regulatory Authority, and state and local law.** *See e.g., 16 U.S.C. § 824(b)(1); Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators, 172 FERC ¶ 61,247 (2020).*

II. REQUEST FOR REHEARING

A. Background

FERC designed Order 2222 to remove barriers to the participation of distributed energy resources (Component DERs)⁷ in wholesale markets as part of an aggregation of resources. The PAPUC and PUCO (Joint Commissions) respect and support FERC's decision to use its authority over wholesale transactions to require RTOs to allow Component DERs to sell their energy to regional pools. In comments mostly in support of PJM's Compliance Filing, the PAPUC said Order 2222's allowance of new technologies, Component DERs, and demand response in wholesale markets advances the benefits of competition, could improve storm restoration efforts, increases grid reliability, and benefits Pennsylvania's own energy efficiency and conservation

⁷ In Order 2222, FERC defined distributed energy resources as "any resource located on the distribution system, any subsystem thereof or behind a customer meter." Order 2222, ¶ 114. In its Compliance Filing, PJM introduced the terms Component DER to refer to individual resources and DER Aggregation Resources to refer to the collection of individual Component DERs which collectively would participate in PJM markets. A Component DER is defined as "any resource, within the PJM Region, that is located on a distribution system, any subsystem thereof, or behind a customer meter, and is used in a DER Aggregation Resource by a DER Aggregator." See Appendix A, Definitions C-D, Tariff, PJM Compliance Filing. This Petition uses PJM's terminology.

programs.⁸ The PUCO has also supported Order 2222, and commented in favor of the removal of market barriers for DERs, stating that it is appropriate to update tariffs to include new and innovative resources that can enhance the competitiveness of the markets.⁹

Even so, a critical component of successful implementation of Order 2222 is respecting the jurisdictional boundaries of the Commission and the states. This respect provides clearer direction to potential market participants by ensuring the Commission and Relevant Electric Retail Regulatory Authorities (RERRAs) are not working at cross-purposes with different ideas of how to regulate interconnection and dispatch of Component DERs on the distribution grid.

Moreover, throughout Order 2222 and to an extent in the March 1 Order, FERC acknowledges the division of jurisdictional responsibilities between the states and federal government. First, the Commission declined “to exercise [its] jurisdiction over the interconnection of a distributed energy resource to a distribution facility for the purpose of participating in RTO/ISO markets exclusively through a distributed energy resource aggregation”.¹⁰ FERC recognized that state and local regulators play a vital role in the design, operations, power quality, reliability, and system costs related to the distribution system.¹¹

⁸ Comments And Limited Protest Of The Pennsylvania Public Utility Commission To PJM’s Compliance Filing Concerning FERC Order 2222, Docket No. ER22-962, at 4-5 (filed March 31, 2022) (PAPUC Comments).

⁹ Comments of the Public Utilities Commission of Ohio, Docket No. ER22-962, at 2-3 (filed April 1, 2022) (PUCO Comments).

¹⁰ Order 2222, ¶ 97.

¹¹ Order 2222, ¶ 44.

In addition, Order 2222 states that “nothing in this final rule preempts the right of states and local authorities to regulate the safety and reliability of the distribution system and that all distributed energy resources must comply with any applicable interconnection and operating requirements [of state authorities].”¹² Thus, while FERC is mandating RTOs to allow DER Aggregators (DERAs) to bid into wholesale markets, jurisdiction over the interconnection and operation of Component DERs rests with the RERRA.

In this proceeding, the PAPUC has previously emphasized the need to recognize the appropriate jurisdictional division. In comments to PJM’s Compliance Filing, the PAPUC highlighted the areas where the PJM proposed governing documents were appropriately deferential:

- 1.4B(b) provides that disputes over PJM’s proposed pre-registration procedure come before the RERRA, which is appropriate because that relates to non-FERC jurisdictional electric distribution company (EDC) behavior.
- 1.4B(f) provides that disputes over a distribution utility’s override would come before the RERRA, or otherwise would proceed in accordance with state or local law.
- 1.4B(o) provides that state law will exclusively govern the interconnection of Component DERs to distribution facilities.¹³

In particular, these areas all respect the dispute resolution responsibilities which will fall to the states and not PJM or FERC.

The PUCO has also expressed the need for the state’s authority to be respected. In its comments in this docket, the PUCO advocated that state commissions must have the option to exercise their jurisdiction where they find it to be appropriate and lawful. The

¹² Order 2222, ¶ 44.

¹³ PAPUC Comments, at 9-11.

PUCO stated, “[a]ny PJM Tariff or Operating Agreement language that would allow an entity to avoid an applicable PUCO process regarding interpretation of the PUCO’s rules or regulations, or regarding Ohio law that the PUCO is tasked with implementing, would raise concerns for the PUCO.”¹⁴

In the current order, FERC recognizes the appropriate roles and responsibilities of the states and FERC, acting through PJM’s tariff. In paragraph 355 of the March 1 Order, FERC agreed that “RERRA rules and electric distribution company operating procedures concern matters that are outside of the jurisdiction of the Commission.”¹⁵ FERC also agreed in paragraph 356 that disputes related to ongoing operational coordination and overrides by an EDC that arise under “tariffs, agreements, and operating procedures of the electric distribution company, and/or the rules and regulations of any Relevant Electric Retail Regulatory Authority, [must] be addressed in accordance with applicable state or local law” and not by PJM or PJM’s Independent Market Monitor.¹⁶

B. Disputes That Arise Under State Law Or EDC Tariffs Are Properly Decided By States

Despite the clear statements in the March 1 Order that disputes arising under EDC tariffs and state law should be decided under that applicable state law, in paragraphs 321-323, FERC found that PJM’s tariff language disclaiming PJM’s authority over those disputes does not comply with Order 2222. The Commission found that PJM’s proposed phrase that “disputes arising under” EDC or RERRA rules is overbroad.¹⁷ FERC’s

¹⁴ PUCO Comments, at 19-20.

¹⁵ March 1 Order, ¶ 355.

¹⁶ March 1 Order, ¶ 356 (quoting PJM Tariff, § 1.4B(f); Operating Agreement, Schedule 1, § 1.4B(f)).

¹⁷ March 1 Order, ¶ 323.

finding follows a misplaced concern that the “arising under” language may cause PJM-appropriate disputes to be brought to the RERRA instead. Therefore, FERC directs PJM in the March 1 Order to address how PJM will resolve disputes that it determines are within PJM’s authority and subject to its tariff.¹⁸

While we recognize the “arising under” language is quite broad, the Commission’s remedy is not well-targeted. Indeed, the language is broad because Order 2222 delves deeply into the EDC distribution system, a zone squarely within the RERRA’s jurisdiction. Section 201 of the FPA provides the Commission with the authority to regulate wholesale sales of electricity in interstate commerce, but also delineates the limits of FERC’s authority, which does not reach “facilities used in local distribution”.¹⁹ In Order 2003, even as FERC asserted jurisdiction over dual-use facilities both used for local distribution and to facilitate jurisdictional wholesale sales, it also determined that “only the use of the facility for Commission-jurisdictional service is subject to Commission jurisdiction.”²⁰ That is, the jurisdiction to regulate distribution facilities remains with the states, and whenever FERC’s jurisdiction is invoked, it is a narrow exception to the general rule.

FERC does not deny that PJM’s “arising under” language is accurate;²¹ disputes arising under EDC tariffs, RERRA rules, or state or local law should indeed be brought

¹⁸ March 1 Order, ¶ 323.

¹⁹ 16 U.S.C. § 824(b)(1).

²⁰ *California Pac. Elec. Co., LLC*, 133 FERC ¶ 61,018, ¶ 40 (2010) (citing Order 2003, 104 FERC ¶ 61103, ¶ 804 (2003)).

²¹ March 1 Order, ¶ 323 (“[S]tate commissions may adjudicate disputes appropriately within their authority that distributed energy resource aggregators may seek to bring before them”).

under applicable state or local law. Instead, the Commission is concerned that PJM's compliance tariff leaves out specific categories that should be within PJM's dispute resolution authority. The appropriate remedy for FERC's concern then is to require further enumeration within PJM's registration process with a specific dispute resolution process for disputes that are within PJM's purview.

To some extent, FERC's March 1 Order did that, directing PJM to file a new compliance filing "that addresses how PJM will resolve disputes that it determines are within its authority and subject to its tariff."²² Still, FERC overreached by tying this issue to the "arising under" language. While some RERRAs like the Joint Commissions may support the deployment of Component DERs and the offering of those resources into wholesale markets as part of aggregations, ultimately, the operation of Component DERs must comply with the rules of the RERRA and state laws.²³ Disputes arising out of state rules that govern Component DER operation are thus also properly decided by states. PJM's tariff must respect the baseline rule that the responsibility over operation and safety of EDC distribution facilities lies with the states.²⁴ When FERC exercises jurisdiction over a distribution facility used to facilitate a wholesale transaction in interstate commerce, it should only approve targeted areas of PJM's tariff in which PJM is allowed to act in relation to EDCs' operations.²⁵ That targeting must include limiting dispute resolution by PJM to areas within FERC's authority. PJM's original compliance

²² March 1 Order, ¶ 323.

²³ Order 2222, ¶ 44.

²⁴ Order 2003, 104 FERC ¶ 61103, ¶ 804 n. 129 (2003).

²⁵ *California Pac. Elec. Co., LLC*, 133 FERC ¶ 61,018, ¶ 40 (2010).

filing walked that line in its use of the “arising under” language, but FERC’s direction crosses the line into regulating local distribution facilities that is prohibited by the FPA.²⁶

The Commission should therefore revisit paragraphs 321-323 of its March 1 Order. If the Commission desires PJM to be more specific about the dispute resolution process for registration of a DERA at PJM after state processes like interconnection are complete, then the Commission should specifically say so. FERC should withdraw its finding that PJM’s “arising under” language impliedly prohibits the use of PJM’s dispute resolution procedures for some issues within its area of oversight, such as DERA registration.²⁷ The Commission’s implication that PJM can adjudicate disputes arising under state law²⁸ is incorrect and violates the federal-state jurisdictional line.

²⁶ 16 U.S.C. § 824(b)(1).

²⁷ March 1 Order, ¶ 323.

²⁸ FERC also cannot commandeer state law and force a state to delegate its dispute resolution authority to PJM. *C.f.*, *Murphy v. Nat'l Collegiate Athletic Ass'n*, 138 S. Ct. 1461, 1476-1477 (2018).

III. CONCLUSION

For these reasons, the Joint Commissions request that the Commission grant our petition for rehearing of the March 1 Order. We urge the Commission to make the appropriate determinations, adopt our recommendations, and direct PJM to implement them.

Respectfully submitted,

Dave Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Thomas G. Lindgren
Thomas G. Lindgren
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3414
614.644.8768 (telephone)
866.818.6152 (facsimile)
Thomas.Lindgren@OhioAGO.gov

On Behalf of The Public Utilities
Commission of Ohio

/s/ Christian A. McDewell
Christian A. McDewell, Assistant Counsel
Elizabeth H. Barnes, Deputy Chief
Counsel
Renardo L. Hicks, Chief Counsel
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120
Tel: 717-787-5000
cmcdevel@pa.gov

Counsel for the Pennsylvania
Public Utility Commission

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am on this date serving a copy of the foregoing document upon each person designated on the official service list compiled by the Federal Energy Regulatory Commission in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Respectfully submitted,

/s/ Christian A. McDewell
Christian A. McDewell
Counsel for the Pennsylvania
Public Utility Commission
400 North Street
Harrisburg, PA 17120
Tel: (717) 787-5000

/s/ Thomas G. Lindgren
Thomas G. Lindgren
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3414
614.644.8768 (telephone)
866.818.6152 (facsimile)
On Behalf of The Public Utilities
Commission of Ohio

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