



May 29, 2024

VIA E-File

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Secretary's Bureau
PO Box 3265
Harrisburg, PA 17105-3265

**Re: Distributed Energy Resources Participation in Wholesale Markets
Docket No. L-2023-3044115**

Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)

Dear Secretary Chiavetta,

On February 22, 2024, the Public Utility Commission (Commission) issued an Advance Notice of Proposed Rulemaking (ANOPR) Order at Docket L-2023-3044115, which was subsequently published in the *Pennsylvania Bulletin* on March 30, 2024 (See 54 Pa.B. 1668), opening a 60-day public comment period. In response to the Commission's ANOPR, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) submits these brief comments.

The purpose of this ANOPR is for the Commission to examine its role in implementing the Federal Energy Regulatory Commission (FERC)'s Order 2222¹ and, specifically, to determine if

¹ Participation of Distributed Energy Res. Aggregations in Mkts. Operated by Regional Transmission Organizations and Independent System Operators, Order No. 2222, 172 FERC ¶ 61,247 (2020), order on rehearing, Order No. 2222-A, 174 FERC ¶ 61,197, order on rehearing, Order No. 2222-B, 175 FERC ¶ 61,227 (2021).

amendments are needed to existing Commission regulations or policy statements to align with this Order. FERC issued Order 2222 on September 17, 2020, requiring regional transmission organizations (RTOs) to allow distributed energy resources (DERs)² to participate alongside traditional energy resources in wholesale markets through aggregation.

CAUSE-PA provides the following very brief comments, noting significant time and resource constraints in developing comments for this ANOPR. With the unprecedented volume of large-scale, time-constrained litigation pending before the Commission, including but not limited to well over \$2 billion in rate increase proposals, we currently lack the capacity to more fully evaluate and address the numerous complex, nuanced issues for which the Commission requested comment in this ANOPR. We believe it is likely that many other vital stakeholders are facing similar resource constraints that prevent more comprehensive engagement in this important issue. Thus, we strongly encourage the Commission to ensure additional robust engagement with interested parties in developing proposed rules, regulations, and policies necessary to align with FERC Order 222 before advancing a formal proposed rulemaking.

CAUSE-PA's interest in this ANOPR centers on ensuring that energy equity is the primary driving force in all decarbonization policies and programming. DER aggregation and the market(s) created by their adoption have many potential benefits for consumers, but also have the potential to shift utility costs from participants to non-participants which could exacerbate energy insecurity³ for economically vulnerable households that do not have the ability to adopt distributed energy technologies.⁴ Indeed, while distributed energy technology promises to make energy more

² “DERs are small-scale power generation or storage technologies (typically from 1 kW to 10,000 kW) that can provide an alternative to or an enhancement of the traditional electric power system. These can be located on an electric utility’s distribution system, a subsystem of the utility’s distribution system or behind a customer meter.” FERC Order No. 2222 Fact Sheet; found at <https://ferc.gov/media/ferc-order-no-2222-fact-sheet#:~:text=DERs%20are%20small%2Dscale%20power,the%20traditional%20electric%20power%20system>. “The term “DERs” covers a wide variety of resources, including electric battery storage systems, rooftop solar panels, products like smart thermostats that enable one to reduce power usage, energy efficiency measures, thermal energy storage systems such as ice storage, or electric vehicles and their charging equipment. Such DERs may be in your home, business, church or other non-profit organization, community center, local government office, or even a shared solar facility.” FERC Order No. 2222 Explainer: Facilitating Participation in Electricity Markets by Distributed Energy Resources; found at <https://www.ferc.gov/ferc-order-no-2222-explainer-facilitating-participation-electricity-markets-distributed-energy>

³ “Energy insecurity is a multi-dimensional construct that describes the interplay between physical conditions of housing, household energy expenditures and energy-related coping strategies.” See Hernandez, D., “Understanding ‘energy insecurity’ and why it matters to health,” Soc Sci Med. 2016 Oct;167:1-10.

⁴ Low income households already face acute energy insecurity – with over 26.3% of Pennsylvania households reporting in April that they were unable to afford to pay their energy bill at least once in the prior 12 months. See US Census Bureau, Household Pulse Survey: Pennsylvania, Unable to Pay Energy Bill (January 9-February 5, 2024), https://www.census.gov/data-tools/demo/hhp/#/?measures=ENERGYBILL&s_state=00042.

affordable to adopters, the non-direct benefits of DER to the grid are less certain to follow, are difficult to quantify, and are dependent on the regulatory framework deployed. While providing for the aggregation of DERs introduces an opportunity to expand small-scale power generation, improve grid reliability, and increase renewable energy adoption,⁵ aggregation must include appropriate parameters that ensure equitable cost recovery, prevent over-compensation, and protect vulnerable consumer groups from harm.

Low income consumers, tenants, and other uniquely vulnerable consumer groups most often lack the necessary resources and/or face other practical barriers to adoption of distributed energy technology, and should not bear the costs of DER adoption. At the same time, those who are able to adopt DER technology - either on their own or with the assistance of a government or non-profit program - must be shielded from confusing, deceptive, and/or misleading marketing, sales, solicitation, billing, and collections practices which could arise through the creation of a DER aggregation market. Ultimately, the ability for all consumers to benefit equitably from DER adoption depends on the policies and programs governing both compensation for DER generation and associated consumer protections.

The final section of the ANOPR, Section O, addresses equity concerns as a standalone issue. (ANOPR at 45). CAUSE-PA asserts that equity must be the prevailing issue for DER aggregation, accompanying each potential policy or regulatory amendment. It is an unfortunate reality that disadvantaged households and communities often do not derive equal benefits from policy tools and regulations meant to help integrate more distributed energy onto the grid, but they share the cost of deployment through increased rates.⁶

CAUSE-PA notes that the Commission's implementation of Order 2222 presents a unique opportunity to address existing equity concerns, specifically related to net metering and compensation of DER. With the addition of new sources other than solar that could receive net metering benefits, we recommend that - before amendments are made to policy and/or regulation - the Commission open a "Value of DER" docket to comprehensively evaluate the cost and benefit of DERs to the system. The docket should explore both existing and emerging issues related to

⁵ "Virtual power plants, generally considered a connected aggregation of distributed energy resource (DER) technologies, offer deeper integration of renewables and demand flexibility, which in turn offers more Americans cleaner and more affordable power." <https://www.energy.gov/lpo/virtual-power-plants>

⁶ See "5 Equity Considerations of Net Metering." National Academies of Sciences, Engineering, and Medicine. 2023. The Role of Net Metering in the Evolving Electricity System. Washington, DC: The National Academies Press. Available at <https://nap.nationalacademies.org/read/26704/chapter/7#96>

compensation for DER generation, including the possibility of DER owners to derive duplicative subsidies for DERs through net metering and aggregation. A comprehensive Value of DER docket would allow for a more equitably designed compensation and regulatory structure to foster equitable DER deployment through aggregation, without shifting costs to vulnerable customer groups. As an initial step, at the outset of a Value of DER docket, we recommend that the Commission initiate a valuation study conducted by a neutral third party researcher. We believe this step would ultimately enrich stakeholder engagement by helping to create a baseline of information and would, in turn, help ensure the Commission is able to make better informed, data-backed policy decisions for how to equitably implement and regulate DER aggregation in Pennsylvania.⁷

CAUSE-PA additionally notes that equity considerations must include robust consumer protections. We have deep concerns regarding consumer protections related to consumer engagement, participation, education, marketing, sales, pricing, data privacy, billing, and collections with DERAs. As noted, DERAs are complex and require a level of sophistication and knowledge about energy markets that many (or, more likely, *most*) residential consumers do not currently have. Absent creation of a careful regulatory construct establishing robust consumer protection and education, residential consumers could be exposed to predatory practices that could place them at risk of physical or financial harm.

The Commission contemplates the necessity of consumer protections in the context of DERA regulation, and explicitly requests comments on the application of the Unfair Trade Practices and Consumer Protection Law (UTPCPL) to DERAs, and whether / how the Commission should adapt its existing regulations governing competitive electric generation suppliers (EGSs) to address consumer concerns. (ANOPR at 31-35). In response, the Office of Consumer Advocate (OCA) recommended that the Commission seek guidance from the Office of Attorney General, which is responsible for UTPCPL enforcement.⁸ We agree and endorse OCA's recommendation.

⁷ “Unleashing the promise of distributed generation for a more resilient, equitable, and decarbonized electricity system will require a more intentional and integrated approach than traditional net metering policies... As [regulators] update net metering policies, policymakers should consider historical issues of access to distributed generation programs and technologies for low-income communities, and the cost implications for people not participating in net metering.” See National Academies Science Engineering Medicine, Net Metering Practices Should Be Revised to Better Reflect the Value of Integrating Distributed Electricity into the Power Grid, <https://www.nationalacademies.org/news/2023/05/net-metering-practices-should-be-revised-to-better-reflect-the-value-of-integrating-distributed-electricity-generation-into-the-nations-power-grid>

⁸ Comments of OCA at 4-5 (filed May 24, 2024).

However, we note that the complexities inherent with DERAs also call for more explicit and nuanced regulatory constructs to protect consumers from potential harm. While the Commission's EGS regulations may provide a starting point, we note that the Commission's EGS marketing regulations are already in dire need of reform to stop well-documented consumer abuses and predatory practices in the competitive market. Moreover, there is a limit to the applicability of EGS regulations, as there are unique considerations that the Commission must take into account to properly regulate DERAs.

For example, with energy efficiency and demand response measures included among DERs that could be aggregated, it is important to ensure vulnerable consumers do not face nonbypassable usage restrictions or opt-out penalties that could place them at risk of physical or financial harm. As an example, if a smart thermostat is installed in a home, that thermostat should be owned and controlled by the residents of the home. Aggregators should not be able to override a resident's ability to maintain the temperature necessary for health, safety, and comfort to offset demand. Further, low income households receiving subsidized efficiency and conservation measures through a utility or government program, such as through the Low Income Usage Reduction Program (LIURP) or Act 129 programming, should never be *automatically* enrolled with any DERA, regardless of program measures installed. Consumers should always provide fully informed, affirmative consent to participate in an aggregation program that could impact home energy usage. These are only a couple important examples of protections that must be considered as part of DER aggregation policy and regulation.

Moreover, it is critically important that consumers understand what data and information aggregators will use, how their data may be shared with other third parties, how aggregation services will be charged, and/or how those charges are disclosed and/or collected from consumers. We can envision aggregators imposing a range of different fees which could eclipse appreciable benefits – potentially costing consumers more for energy over time. This risk is especially pertinent for low income households and other vulnerable customer groups who often have less flexibility in their usage. At minimum, it is important for the Commission to clearly delineate aggregation services as a “non-basic service charge” to ensure that participation in an aggregation program will never lead to involuntary service termination. We recognize that there is a limit to the Commission's jurisdiction with regard to third party aggregators; however, to the extent the Commission reaches those limits, we encourage the Commission to discuss with the General

Assembly to secure the authority necessary to prevent predatory practices in a future DERA marketplace.

As we noted at the outset of these brief comments, DER aggregation is complex, and it will be imperative for the Commission to institute strong consumer protections to both shield Pennsylvanians from potential harm and to help ensure successful and universally beneficial deployment of DER aggregation.

In closing, CAUSE-PA appreciates the opportunity to comment on matters related to DER aggregation. We strongly urge the Commission to ensure economically vulnerable utility consumers are not adversely impacted by regulatory amendments, policies, and/or programs advanced in implementing Order 2222. We recommend opening a docket for comprehensive study and data collection specifically related to the valuation of DERs prior to issuing proposed policy or regulatory amendments, and we urge the Commission to include robust consumer protections in policy and regulatory amendments. Last, we encourage the Commission to ensure robust stakeholder engagement as it moves forward with crafting a regulatory framework for DER deployment. CAUSE-PA is grateful to the Commission for its careful consideration of these important issues and looks forward to further opportunities for engagement.

Respectfully submitted,

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