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May 29, 2024

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed for filing please find the comments of the Energy Association of Pennsylvania to the Advance Notice of Proposed Rulemaking Order entered on February 22, 2024, at the above-captioned docket. Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink that reads 'Nicole W. Luciano'.

Nicole W. Luciano
Director of Policy

Via email

CC: Christopher F. Van de Verg, Law Bureau
Tiffany L. Tran, Law Bureau
Joseph P. Cardinale, Law Bureau
Karen Thorne, Law Bureau

Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF THE ENERGY ASSOCIATION OF PENNSYLVANIA TO THE
ADVANCE NOTICE OF PROPOSED RULEMAKING ORDER**

I. INTRODUCTION

The Energy Association of Pennsylvania (“EAP” or “Association”) is a trade association representing regulated electric and natural gas distribution utilities operating in Pennsylvania. EAP submits these comments on behalf of its electric distribution company (“EDC”) members in response to the February 22, 2024 Advance Notice of Proposed Rulemaking Order (“ANOPR Order”) Re: Distributed Energy Resources Participation in Wholesale Markets, Docket No. L-2023-3044115. A November 9, 2023 Joint Motion of Pennsylvania Public Utility Commission (“PUC” or “Commission”) Chairman Stephen M. DeFrank and Vice Chair Kimberly Barrow proceeded entry of the instant ANOPR Order (“Joint Motion”).

The Joint Motion stated that Pennsylvania’s regional transmission organization (“RTO”), PJM Interconnection, LLC (“PJM”),¹ is engaged in a compliance process with the Federal Energy Regulatory Commission (“FERC”) concerning FERC Order No. 2222 (“Order 2222”) which requires RTOs to allow for Distributed Energy Resources (“DERs”) to participate in the wholesale energy market through aggregations. A DER is any resource located on the electric distribution system, any subsystem thereof, or behind a customer meter.² Some examples of

¹ PJM is the RTO that coordinates the movement of wholesale electricity in all or parts of 13 states, including Pennsylvania. <https://www.pjm.com/about-pjm>

² FERC Order 2222 ¶ 114.

DERs include electric storage resources, intermittent generation, distributed generation, demand response, energy efficiency, thermal storage, and electric vehicles and their supply equipment.³

The Joint Motion noted that PJM’s stated target was to allow for Distributed Energy Resource Aggregation (“DERA”) participation in the wholesale market for the 2026/2027 Delivery Year.⁴ With that in mind, the Joint Motion directed PUC staff to formally initiate an investigative and rulemaking process to update or create state rules to deploy Virtual Power Plants (“VPPs”) and ensure that Pennsylvania is ready to implement Order 2222 pursuant to PJM guidelines and rules which have yet to be finalized by FERC.⁵ Thereafter, PUC Law Bureau and Bureau of Technical Utility Services staff prepared the instant ANOPR to seek input regarding any changes or additions to Commission regulations, procedures, or policy statements to implement Order 2222. Comments from interested parties are due within sixty (60) days from the Order’s publication in the *Pennsylvania Bulletin*, i.e., May 29, 2024.

II. BACKGROUND

Prior to Order 2222, DERs were unable to participate in wholesale markets due to minimum size requirements as well as certain market qualification and performance standards. Additional costs of participation – such as metering, telemetry, and communications equipment – were a further barrier to wholesale market participation. Order 2222 strives to remove such

³ *Id.*

⁴ PJM made a filing in April 2024 to postpone the implementation of FERC Order 2222 until delivery year 2028-2029; they need a minimum of 24 months to implement new systems, tariff language, manuals etc.

⁵ PJM currently awaits a response from FERC on its September 1, 2023, Order No. 2222 compliance filing and its April 2024 request to extend the effective date of governing documents related to the participation of DER Capacity Aggregation Resources in the capacity markets. Many major components of implementation remain unsettled including metering and telemetry requirements, double-counting avoidance, information and data sharing requirements and participation criteria. Due to this uncertainty, PJM filed a request at FERC to move the effective date of its governing documents related to the participation of DER Capacity Aggregation Resources in the capacity market from July 4, 2024, to July 1, 2025; this change, if accepted, will move eligibility for Planned DER Capacity Aggregation Resources from the 2026/2027 Delivery Year BRA to the 2027/2028 Delivery Year BRA which is scheduled for December 2025. *PJM Interconnection, L.L.C., Order No. 2222 Compliance Filing of PJM, Docket No. ER22-962-005 (Sept. 1, 2023)*. *PJM Interconnection, L.L.C., ER24-1803-000 Implementation of Capacity Market Rules Applicable to DER Capacity Aggregation Resources Under Order No. 2222 (April 22, 2024)*.

barriers to DER participation with the objective of enhancing wholesale market competition and ensuring that wholesale markets provide just and reasonable rates. FERC concluded in Order 2222 that the benefits of DER participation in wholesale markets may include “a better understanding of a DER’s impact on installed capacity requirements and day-ahead energy demand, DER’s ability to locate in load pockets in response to price signals, and DER’s ability to co-locate with load.”⁶

Order 2222 envisions DER participation in the RTO via the services of a DERA, an entity that registers one or more DERs with an RTO such as PJM as an aggregation to enable participation in capacity, energy, and/or ancillary service markets. Aggregation helps individual DERs collectively meet the minimum size and operational requirements to participate in RTOs and enables them to share the commercial and transactional costs.

FERC recognized the continued regulatory rights and obligations of the “relevant electric retail regulatory authority” (“RERRA”), here the PUC, in the context of DER participation in the wholesale market. Nothing in Order 2222 preempts the right of applicable state and local authorities, i.e., the Commission, to regulate the safety and reliability of distribution systems. DERs must comply with applicable state interconnection and operating requirements. Furthermore, FERC provided that pursuant to a RERRA’s jurisdiction over its retail programs, the state or local authority is “able to condition a [DER]’s participation in a retail distributed energy resource program on that resource not also participating in [PJM] markets.” ANOPR at p. 4. With respect to smaller utilities, FERC determined in Order 2222 “that customers of utilities that distributed 4 million MWh or less in the previous fiscal year may not participate in [DER

⁶ ANOPR at p. 3 citing to Order 2222 at ¶4.

Aggregations] unless the [RERRA] affirmatively allows such customers to participate in [DER Aggregations]. *Id.* at p. 4 citing to Order 2222 ¶ 64.

Additionally, to the extent that information related to participation of DERAs comes from or flows through EDCs, Order 2222 requires PJM, as the RTO, to coordinate with distribution utilities and relevant electric retail regulatory authorities [the PUC] to establish protocols for sharing metering and telemetry data, and [directs] that protocols minimize costs and other burdens and address concerns raised with respect to privacy and cybersecurity.” *Id.* at p. 5 citing to Order 2222 ¶ 270. Order 2222 further recognizes that state and local interconnection processes for DERs will serve as a forum “to address and study potential distribution system impacts” and provide the EDC with crucial information to inform its review during the DERA registration process at the RTO, i.e., PJM. *Id.* citing to Order 2222 ¶ 294.⁷

PJM, as the RTO, submitted changes to its tariff, operating agreement, and reliability assurance agreement with FERC to comply with Order 2222. *See*, ANOPR at pp. 6 – 9. As detailed in the ANOPR Order, the distinct roles of PJM, the EDCs, the DERAs, and the PUC are important to achieving successful DERA participation in the PJM wholesale market. *See*, ANOPR at pp. 9 – 12 describing the process followed to allow for participation under the current PJM DERA Participation Model (“DAPM”).⁸ The ANOPR Order further outlines the relevant Pennsylvania statutes and Commission regulations that impact or are impacted by Order 2222.⁹ The ANOPR Order then summarizes the feedback received to date via separate virtual meetings

⁷ The ANOPR also emphasizes language in Order 2222 stating that in no way are state and local regulators prevented from “amending their interconnection processes to address potential distribution impacts that the participation of [DERs] through [DER Aggregation] may cause.” ANOPR at p. 5 citing to Order 2222 ¶ 294.

⁸ PJM tariff revisions establishing the rules for DER Aggregation participation in the wholesale market are referred to as the DER Participation Model (“DAPM”) by PJM.

⁹ The PUC highlighted the impacts of the Electricity Generation and Customer Choice and Competition Act of 1996, 66 Pa. C. S. §§ 2801—2815; Act 129 of 2008, 66 Pa. C. S. §2807(f); the Alternative Energy Portfolio Standards Act, 73 P.S. §§ 1648.1-1648.9; and the PUC’s net-metering and interconnection regulations at 52 Pa. Code §§ 75.1—75.72.

held in December 2023 and February 2024 with EDCs, the DERA community, and ratepayer advocates. In particular, participants in these virtual meetings identified specific issues for the Commission and interested parties to address via this ANOPR process; such issues included: “changes to interconnection rules, changes to metering requirements, cost allocation issues, adjudication of DER registration disputes, EDC overrides of DER dispatch, consumer protection for DER owners, preventing double compensation and double counting of services and electronic data exchange.” *Id.* at p. 19.

III. COMMENTS

EAP’s comments below address the general themes and issues outlined in the ANOPR Order. Regarding the Commission’s more specific questions in each subsection, EAP defers to member company comments. Overall, EAP encourages the Commission to approach implementation of Order 2222 with flexibility, considering the specifics of each EDC’s distribution system, service territory, and customer base as it develops processes, policy, and regulations that facilitate DER participation in the PJM wholesale market via a DERA. EAP asks the Commission to address the various issues incrementally, applying flexible, not prescriptive, solutions so as to be able to resolve issues that surface during implementation and to also be able to adjust processes readily when issues arise after implementation of Order 2222.

EAP believes that implementation of the final FERC-approved PJM DAPM may involve drafting or updating current regulations, revising existing policy orders and/or Commission guidelines, considering revisions to existing EDC tariffs, and resolving disputes as they arise on a case-by-case basis. Implementation of Order 2222 will not be completed by way of a single rulemaking procedure or implementation order.

EAP suggests that following its review of the ANOPR comments, the Commission develop a work plan that identifies and creates a road map for Order 2222 implementation. For

example, EAP believes that existing distribution interconnection rules need to be modified to improve interconnection as it relates to customer-generators pursuing net-metering in accordance with the Alternative Energy Portfolio Standards Act (“AEPS”)¹⁰ and that those regulations also need to be modified to expressly address the interconnection of DERs. *See, discussion infra.*, at Section III. A. And while FERC has yet to approve a final PJM DAPM which arguably impacts resolution of certain of the issues raised in the ANOPR order, the Commission could initiate a rulemaking process to update and modify existing interconnection standards and regulations as it awaits final FERC and PJM orders.

A work plan could identify those topics/issues that can be addressed now by the Commission prior to any final FERC and/or PJM orders and those topics/issues which must await further direction or clarity from FERC and/or PJM. Time spent now to organize a work plan and identify appropriate processes¹¹ to address issues in need of resolution prior to implementation of Order 2222 will benefit the Commission and all stakeholders.

Concurrently, EAP respectfully urges the Commission to assert and, if necessary obtain, authority and jurisdiction over all participants identified in Order 2222. This would include not only the EDCs, but DERs as well as DERAs, with respect to all actions enabling DER participation in the wholesale market which make use of EDC facilities, either directly or indirectly, and/or effect EDC operations. EAP posits that the Commission’s jurisdiction over DERs and DERAs arguably arises from the Pennsylvania Public Utility Code and the Commission’s general authority to oversee the safety and reliability of electric distribution systems. *See generally*, 66 Pa. C.S.A. §§ 501 and 1501. To the extent such legal authority is not

¹⁰ 73 P.S. §§ 1648.1 – 1648.8, as amended by 66 Pa. C. S. §2814 (relating to additional alternative energy sources).

¹¹ Depending on the topic, the Commission may choose to use a workshop or technical conference process to aid in the determination of a solution whereas other issues may be ripe for a rulemaking procedure or resolved by the guidance a policy statement can provide.

clear, EAP supports Commission efforts to obtain clear jurisdiction over DERs and DERAs via legislation. *See discussion infra.*, at Section III. J.

A. Changes to Distribution Interconnection Rules

The PUC seeks comment on whether its existing interconnection regulations for customer-generators, 52 Pa. Code §§ 75.31—40, can be adapted to address interconnection of a component DER participating in a DER aggregation resource with EDC distribution facilities. In particular, the PUC seeks comment on what specific changes could be made to the existing interconnection regulations that could facilitate this modification.

EAP believes it will be necessary for the Commission to expand current interconnection regulations to specifically include interconnection of customer-owned DERs that seek to participate in the PJM wholesale markets via DERAs. Existing rules at 52 Pa. Code §§ 75.31– 40 are applicable only to customer-generators that satisfy certain size requirements and that are “not subject to the interconnection requirements of an RTO.” 52 Pa. Code § 75.31. The scope of Subchapter C “Interconnection Standards”¹² “sets forth the interconnection standards that apply to EDCs which have customer-generators intending to pursue net metering opportunities in accordance with the act.” 52 Pa. Code § 75.21. Existing regulations at Sections 75.31 through 75.40 do not clearly or directly apply to DERs such as electric storage resources, intermittent generation, distributed generation, demand response, energy efficiency, thermal storage, and electric vehicles and their supply equipment.¹³ These regulations also do not reference DERAs and do not apply or provide guidance to a party that arguably has rights to and can create obligations for the energy generated by DER via registration in the PJM market but does not own

¹² 52 Pa. Code §§ 75.21 – 75.40.

¹³ Terms such as “distributed energy resources”, “electric storage assets”, “intermittent generation”, “distributed generation” “demand response”, “energy efficient equipment or measures”, “thermal storage” and “electric vehicles” are not included in the applicable definition section. See 52 Pa. Code § 75.22.

the DER and may not have been the applicant for the initial interconnection with the EDC. EAP believes that a separate rulemaking process to amend and expand the current regulations will be necessary to provide for DER participation in the PJM wholesale markets.

With respect to specific changes and in addition to recommendations offered by its individual EDC members, EAP recommends that the Commission modify regulatory language, practices, and procedures that established the current limits on fees related to interconnection applications. Current fees do not cover EDC costs related to the review of the interconnection application and uncovered costs are then socialized across the rate base. To the extent that DER participation in the wholesale market via DERAs increases the volume of interconnection applications or necessitates an additional review of an interconnection application originally approved for a customer-generator seeking to net-meter and is now being reviewed to participate as a DER component, the failure of the existing fee structure to cover current interconnection costs and the need to socialize those unpaid costs over the rate base will be exacerbated.

EAP recommends an overhaul of the application fee structure that allows each EDC to propose for Commission approval a fee structure which corrects current cost issues and creates a revised fee structure applicable to interconnections for customer-generators intending to pursue net-metering opportunities under AEPS. EAP further requests that those revisions account for application fees that will cover the EDC review costs related to customers with distributed energy resources who seek to participate in the PJM wholesale markets via an agreement with a DERA.

Moreover, EAP urges the Commission to establish at the time of application the purpose of the interconnection, i.e., whether interconnection is requesting to net-meter *or* to participate in the PJM wholesale markets. Identifying the customer goal upfront is critical for several reasons, including the prevention of double compensation, double counting between retail and wholesale

market participation, and even the potential to opportunistically arbitrage, or flip flop, between net-metering and PJM wholesale markets on an hourly basis. *See discussion infra.*, at Section III. G.

B. Changes to Metering Requirements

The PUC seeks comment on whether its existing metering regulations for customer-generators, 52 Pa. Code § 75.14 (relating to meters and metering), can be adapted to facilitate provision of metering and telemetry data consistent with Order 2222 and PJM's DAPM and if so, what changes to regulations would best facilitate this adoption.

In addition to deferring to comments filed by its individual EDC members, EAP believes that it is difficult and premature to address this topic at this stage of Order 2222 implementation. Initially, PJM's DAPM has not been finalized which hinders any analysis of whether the current PUC metering regulations can be adapted to accommodate implementation of Order 2222. While it may be that an amended 52 Pa. Code § 75.14 provides a solution to this issue, it would not be optimum to suggest amended language in a vacuum without knowing the specifics of the PJM model. As suggested above, if the Commission were to develop a work plan that created a priority order and timeline for resolving relevant issues, EAP suggests that this is a topic which would be better to address after the PJM DAPM is final.

C. Cost Allocation Issues for Facilities Allowing the Interconnection of DERs

The PUC seeks comment on whether its existing interconnection and cost allocation regulations for customer-generators, 52 Pa. Code § 75.36(8), 75.38include, and 75.39(e)(4) can be adapted to address interconnection cost allocation among component DERs, DERAs and EDCs consistent with Order 2222 and PJM's DAPM.

Initially, EDCs must receive cost recovery for the expected significant implementation costs, as well as ongoing administrative costs, related to individual component DERs and

participation in the PJM wholesale market via DERAs. All utilities will incur some level of cost relative to updating systems and processes to implement Order 2222. As stated below, EAP also contends that EDCs should be permitted to require individual DERs or DERAs (via their contractual obligations to component DERs) to be responsible for all costs required to interconnect their assets to the electric grid, including any meter reconfigurations. This is consistent with the PUC's existing net-metering regulations that require a customer-generator to pay for modifications to the electric distribution system, interconnection facilities, and distribution upgrades.¹⁴ Further, utilities should have leeway to propose approaches to cost recovery, which may include fees or other charges to DERAs and/or their component DERs, that are consistent with cost-of-service principals and historic rate design practices. *See discussion infra.* at Section III. O.

Finally, as stated for other topics identified in the ANOPR Order, it is difficult to provide much detailed analysis and proposed regulatory language now regarding the modification of existing regulations where, as here, the PJM DAPM is not yet final. EAP defers to and incorporates the comments of its individual EDC members on this topic and asks that the Commission provide additional opportunities for stakeholder input when the PJM DAPM is final.

D. Adjudication of Disputes Regarding the Registration of DERs

The PUC seeks comment on whether its existing application process for net metering customer-generators, 52 Pa. Code § 75.17, or its existing dispute resolution regulations, or both, can or should be adapted to facilitate adjudication of disputes about DERA registration of its

¹⁴ 52 Pa. Code § 75.38(e); 52 Pa. Code § 75.29(e)(4).

component DERs with PJM, and if so, the specific changes that would best facilitate this adaption.

EAP agrees with the conclusions of the ANOPR that active involvement of the PUC, including both formal and informal dispute resolution, will be desirable for addressing issues relating to DERAs. EAP also agrees that 52 Pa. Code § 75.17 may provide a starting point for development of a dispute resolution process to address concerns about DERA registration of component DERs with PJM. It may be that Commission authority to resolve such disputes provides another basis for seeking express authority and jurisdiction over component DERs and DERAs from the General Assembly.

At the same time, EAP suggests that any state-based dispute resolution process will need to consider any dispute resolution process offered by PJM as to avoid duplication and forum shopping. For additional specific suggestions, EAP defers to the comments of its member EDCs.

E. Management of Distribution Utility Overrides of DERs to Maintain Reliability, and Disputes Arising Therefrom

The PUC seeks comment on whether and how its regulations can or should be changed to address EDC overrides of DERAs or component DER operation.

EDCs must retain discretion to determine when and how to override the physical operation of component DERs or the physical operation of a DER aggregation resource on their distribution systems. This discretion is a critical and necessary tool for utilities to have and exercise to meet their statutory obligations to maintain a safe and reliable electric grid in their service territories. EAP contends that this discretion should include not only override capabilities, but also the technical interconnection requirements specific to a utility's systems as well as the ability to recover costs associated with interconnection (e.g., additional meters or other devices). Order 2222 also reinforces utility discretion to override both a DER aggregation

resource and component DERs when necessary; EAP requests that Commission guidance, rules, and regulation uphold the EDCs' discretion in this regard.¹⁵ Moreover, if an EDC overrides DER aggregation resources to preserve system integrity, while those resources are participating in wholesale markets causing the aggregators to incur penalties, the EDC should not be required to pay or reimburse the aggregator for such penalties.

As with many of the topics identified in the ANOPR Order, EAP believes the PUC should address the issues raised but, at this early stage of the Order 2222 implementation process, it is difficult to offer how – e.g., regulations, a policy statement or less formal guidance – and it is difficult to propose specific language. As stated earlier, EAP suggests that following the review of comments to the ANOPR Order a possible next step would be the development of a work plan and approximate timeline for the various tasks/processes that precede implementation of Order 2222. *See discussion supra.* at pp. 6 – 7.

F. Protection of DER Owners from Unfair Trade Practices or Excessive Risk in the Wholesale Market

The Commission seeks comment on whether the Pennsylvania Unfair Trade Practices and Consumer Protection Law (“UTPCPL”) applies to the DERA-component DER relationship and whether and how the PUC’s current electric generation supplier (“EGS”) regulations can or should be adapted to address consumer protection in this space.

Generally, the UTPCPL prohibits “[u]nfair methods of competition or practices in the conduct of any trade or commerce” covered by the statute.¹⁶ Although the UTPCPL may provide the Commission with some oversight to prevent fraud and misrepresentation, this oversight may not be sufficient to equate to consumer protections in the Commission’s licensing regulations. At

¹⁵ As outlined in the ANOPR, PJM’s updated tariff rules indicate “An EDC may override the physical operation of a DER aggregation resource, or individual component DERs, for the purposes of maintaining a safe and reliable operation of distribution facilities.” ANOPR at p. 10.

¹⁶ 73 P.S. § 201-3.

a minimum, authority to license or register DERAs similar to the current Commission processes applicable to suppliers may provide jurisdiction for the Commission to oversee DERAs and their relationship with DER consumers.¹⁷ As explained below in Section III. J., EAP supports the Commission seeking jurisdiction over DERAs to ensure that Pennsylvania consumers are protected.

G. Prevention of Double Compensation or Double Counting Between Retail and Wholesale Market Participation, Including Rules Governing DER Owners' Ability to Switch Between Retail and Wholesale Market Participation

The PUC seeks comment on whether its existing regulations on compensation for net metering customer-generators, 52 Pa. Code § 75.13, could or should be amended to incorporate reasonable restrictions on double counting of services provided by a component DER in wholesale and retail markets, on duplicative compensation for the same service, or on both and if so, what specific changes would best accomplish this goal.

As noted in the ANOPR Order, Order 2222 recognizes that a state regulatory authority can condition DER participation in the state retail program by requiring that the same DER resource not participate in the wholesale market. ANOPR Order at p. 4. EAP believes the Commission should exercise its authority and prohibit a DER from participating in the retail market if that DER has entered into an agreement with a DERA, thereby preventing the DER from receiving double compensation.¹⁸ With respect to whether this could or should be achieved by amending the existing regulation set forth at 52 Pa. Code § 75.13, EAP defers to specific suggestions offered by its member EDCs.

¹⁷ Neither EAP nor its EDC members support a scenario in which EDCs are responsible for policing the relationship between DERAs and component DERs detailed in Order 2222.

¹⁸ Pennsylvania's net-metering program compensates customers for energy, capacity, and ancillary services which could result in double compensation regardless of what type of program a DER participates in at the wholesale level.

Concurrently, EAP notes that identifying impermissible duplicative compensation for the same resource operating in both the retail and wholesale markets can be difficult when it involves demand-side management (“DSM”) programs. Resources participating in DSM programs may be responding to events triggered by distribution needs as well as separate events called to meet wholesale market needs and it is possible for such events to occur simultaneously. EAP maintains that in such circumstances identifying impermissible double counting may not be straightforward and may require a more nuanced evaluation specific to the retail DSM program. EAP asks that the Commission allow for consideration of certain, specific circumstances, such as the DSM example described above, in promulgating a regulation that seeks to prevent double compensation or double counting for a DER resource that might, but for the prohibition, have participated in both the retail and wholesale markets.

Likewise, it is prudent for the Commission to limit “switching” between net metering and participation in the wholesale market as a DERA resource to prevent potential “gaming” that can occur when a resource switches back and forth between wholesale aggregation and retail net metering programs. EAP contends that the Commission should structure regulations to protect against arbitrage, be it seasonal arbitrage, i.e., switching to the wholesale market during periods of seasonably high wholesale prices and then switching back to the retail market during periods of seasonably low wholesale prices, or hourly arbitrage. EAP suggests that when a DER resource enrolls with a DERA to participate in PJM wholesale markets, Commission regulations require the resource to participate a minimum of one year prior to switching to a retail program. Further, switching will entail an additional review on the part of the EDC which adds additional support for EAP’s suggestion that DERs be limited to switching once per calendar year.

EAP suggests that amending existing regulations to establish rules prohibiting double counting and/or double compensation regarding DER participation in both the retail and

wholesale markets is a task that can be addressed now without waiting for the final approval of a PJM DAPM.

H. Any Necessary Data Exchange Revisions

The PUC seeks comment on whether it should encourage or impose electronic data interchange (“EDI”) and/or other data exchange protocols between and among EDCs, EGSs, DERAs, and component DERs to facilitate implementation of FERC Order 2222.

EAP encourages the use of EDI and/or other data exchange protocols yet cautions against creating prescriptive requirements or dictating a particular protocol. First, it is not yet clear from PJM what data and the level of information that will need to be exchanged. Second, it will be important to allow for the use of common exchange protocols as between related EDCs which operate in other states within the PJM footprint. EAP recommends that Electronic Data Exchange Working Group (“EDEWG”) address this topic once there is sufficient information regarding the data that will be exchanged.

I. Small Utility Opt-in Procedures

FERC created an “opt-in mechanism” for smaller EDCs, recognizing that Order 2222 may place a disproportionate burden on these companies. Order 2222 directs the RERRAs (i.e., the Commission) to determine whether to allow customers of these smaller EDCs to participate in DERAs. The Commission, therefore, seeks comment on potential procedures for small utilities to “opt-in” and permit their retail customers to participate in DERAs and any attendant changes necessary to the PUC’s regulations or policies to facilitate the opt-in.

EAP suggests that the Commission use existing procedural vehicles to address any requests by smaller EDCs to participate in DERAs. Specifically, the utility that desires to allow participation by its retail customers in DERAs can submit a petition under Section 5.41 of the

Commission’s regulations setting forth the request.¹⁹ As part of the petition, the EDC can explain the basis for the decision. The EDC can also explain any waivers or limitations that would be appropriate in its specific territory, such as limitations on the size or nature of the DERAs that are needed due to technical or size considerations. Interested parties would have the ability to submit responsive pleadings prior to the Commission ruling on the EDC’s request.²⁰ For example, under Pennsylvania law EDCs with fewer than 10,000 customers are not required to install smart meters.²¹ In addition, the smaller EDCs may incur relatively substantial costs to implement Order 2222, some of which may be paid by customers who do not benefit unless appropriate cost allocation rules are adopted.

J. Potential PUC Oversight of DERAs

The PUC seeks comment on whether the Commission should assert jurisdiction to regulate DERAs, and if so, what requirements should be imposed on DERAs.

It is critical that the PUC outlines clear roles, responsibilities, rules, and requirements for all participants in and affected by Order 2222, including individual DERs, DERAs, individual EDCs, the PUC itself, and PJM. Clearly communicated expectations and “rules of the road” will help avoid issues and facilitate resolution of any disputes that arise. This necessarily includes PUC jurisdiction to oversee the activities of DERAs.

Initially, EAP maintains that EDCs should have no role in policing DERAs and their contracts or agreements with component DERs. EDCs do not have the necessary resources to resolve or adjudicate disputes between DERAs and component DERs who are customers of the

¹⁹ 52 Pa. Code § 5.41.

²⁰ Because the decision to allow DERAs rests with the EDC, if the Commission modifies the EDC’s request then the EDC should have the option to withdraw the petition.

²¹ 66 Pa. C.S. § 2807(f)(6).

EDCs. In addition, EDCs may not be viewed as fair or unbiased by the DERAs or the EDC customers seeking to enter into an agreement with a DERA to sell electricity into a PJM market.

Conversely, Order 2222 provides the PUC, as a RERRA, with the ability to assume various roles regarding participation of aggregated DERs in the RTO/ISO markets.²² As part of those roles, EAP strongly suggests that the PUC seek to establish jurisdiction over DERAs, either as necessary and proper to its existing authority granted by the General Assembly or by way of new statutory authority.

Although the Commission recently determined that it would not classify a Conservation Service Provider (“CSPs”) as an EGS under Pennsylvania law based on the existing statutory language,²³ the Commission should consider alternatives to assert jurisdiction over DERAs. DERAs will generally be combining multiple retail electric consumers with component DERs into their wholesale market offerings. Unless PJM or FERC is prepared to monitor those relationships to ensure that customer privacy and protection concerns are met, the PUC should step into this jurisdictional void. PUC licensing or registration, as is done for energy suppliers currently, may be the appropriate process to ensure that the Commission maintains control over DERAs and the attendant customer impacts.

K. Cybersecurity Considerations

The PUC seeks comment on whether it should impose cybersecurity standards or requirements on component DERs, DERAs, or EDCs consistent with Order 222 and PJM’s DAPM and any necessary changes to PUC policy or regulations that would be necessary.

Cybersecurity concerns remain paramount as requests from both customer-generators and DERs under Order 2222 seeking to connect to the power grid increase in number. EAP maintains

²² Order 2222, ¶¶ 314 – 324.

²³ See, License Application of Enerwise Global Technologies, LLC d/b/a CPower for Approval to Offer, Render, Furnish or Supply Electricity or Electric Generations Services, Docket No. A-2019-3009271 (entered Oct. 7, 2021).

the Commission should carefully consider cybersecurity implications of DERAs, including those related to data sharing that may be required to implement Order 2222. DERAs should be subject to, at a minimum, the same PUC cybersecurity requirements applicable to EDCs. The PUC should retain or obtain authority to determine whether DERAs meet these standards and, if not, how to ensure compliance or remedy threats.

At the same time, EAP underscores that addressing cybersecurity concerns at a state level involves a recognition that federal cybersecurity rules and standards are paramount and that current Commission rules require that utilities have a plan in place but do not impose prescriptive state-based requirements. EAP and its EDC members seek to continue such an approach in the context of implementing Order 2222 in Pennsylvania. EAP suggests that a further discussion aimed at identifying the specific cybersecurity risks posed by the component DER/DERA relationship, by their connection to and use of EDC distribution system facilities, and by any data exchange protocol would be an important step in determining whether existing rules are adequate or in need of modification.

L. Distribution Level Benefits

The PUC seeks comments on the “attendant benefits for competition, efficiency and reliability at the wholesale level” associated with DERA participation in the PJM wholesale market that may lend themselves to beneficial impacts at the distribution level, including “system planning and addressing contingencies.” ANOPR at p. 44.

Whether or not a DER resource confers a grid benefit is highly dependent on its location on the distribution grid, fuel source intermittence, as well as the timing of its energy exports. Some DERs may alleviate a locational capacity constraint, while others may place an additional strain on the grid by creating low-load conditions or reversing energy flows. The grid impact of a non-dispatchable DER, e.g., rooftop solar, would not be affected by its participation in a DERA,

and the grid impact of a dispatchable DER would be dependent on the dispatch schedule determined by PJM. Thus, the value of the grid benefits will depend on the locational and market circumstances, making it difficult to quantify benefits derived from an aggregation that could be dispersed across the entire distribution system. Moreover, EDCs may have or may establish grid benefit programs tailored to component DERs.

Based on these concerns, EAP recommends that the Commission avoid quantifying normalized grid-level benefits for DERAs and assume that, to the extent there are grid benefits from DERAs, those benefits are locational and temporal and not distributed evenly across the distribution system.

M. EDCs Acting as DERAs

The PUC seeks comment on whether and how it should mitigate the conflicts of interest that may arise from an EDC participating in wholesale markets as a DERA and whether and which changes may be necessary to the PUC's regulations and policies would be necessary to facilitate such mitigation.

Initially, EAP believes that EDCs should neither be required nor prohibited from acting as DERAs under Order 2222. At this early stage of VPP implementation, when PJM, the PUC, EDCs, DERs, and DERAs, along with other stakeholders, are developing the rules and practices necessary to implement Order 2222 and have yet to gain the experience that helps to identify the best practices, EAP urges the Commission to avoid a preemptive prohibition on EDC participation in the wholesale market as a DERA. EAP requests that the PUC approach this topic with a broad, flexible approach, identifying potential conflicts and providing guidance, while at the same time planning to revisit this topic as experience with the benefits of VPPs and circumstance in which EDCs have participated as a DERA grows.

N. Billing Issues

The ANOPR contends that “existing billing structures are not sufficient to deliver to a customer who owns a participating DER a synopsis of what happened in both the wholesale and retail markets.” ANOPR at 45. With this in mind, the PUC seeks comment on whether and how it could make the billing relationships between EDC customers, DERAs, and EDCs transparent to the customer and whether and what specific changes would need to be made to PUC policies and regulations.

First and foremost, EDCs do not anticipate having a role in the financial transaction agreed to by the DER and the DERA and do not agree that it is the EDC obligation to supply a “consolidated bill” reflecting the financial transaction between the DERA and its component DERs. It is, however, within the EDC’s discretion to agree to undertake such a role. EAP defers to its EDC members on whether they would undertake such a role, the content of any necessary agreement with a DERA and its component DERs, and the specifics of the bill content.

Conversely, if a requirement is imposed on the EDC and costs arise attributable to changes to its billing systems to accommodate any such requirements, it would ideally be the DERs and DERAs that cover those costs.

O. Equity Concerns

The ANOPR seeks comments on how to identify and address potential equity concerns associated with the expected proliferation of DERAs in Pennsylvania in the coming years.

EAP believes the primary equity concern at this juncture relates to preventing cost shifting between those customers who participate in DERAs and those who do not. Primarily, any attendant costs should be cost-of-service based²⁴; that is, those who benefit from the costs should be responsible for paying those costs. Furthermore, such equity issues are best addressed

²⁴ See discussion *supra*, Section III. C.

in other proceedings – such as a base rate case or a default service proceeding – and not explicitly or separately addressed in any new DER/DERA related regulations or amendments to existing regulations to facilitate implementation of Order 2222. DER- and DERA-related costs should follow established and traditional rate design and cost-of-service principles.

IV. CONCLUSION

EAP appreciates the Commission’s use of an advanced notice of proposed rulemaking to gather information on issues that require guidance and/or resolution as the Commission proceeds to implement Order 2222 following the finalization and approval from FERC of PJM rules and a proposed DER Participation Model.

Implementing Order 2222 will likely be achieved by a variety of regulatory processes, i.e., rulemakings, policy statements, as well as through EDC-specific filings. EAP’s comments address the various topics generally, deferring to its members to answer specific question, identify nuances, or pose specific solutions. EAP proposes the Commission seek flexible approaches to resolve the various issues raised, maintain EDC discretion with respect to resolving operational issues that will arise via the growth of DERAs, and revise and expand current net metering and interconnection standards to create a pathway for DER interconnection to the distribution grid. EAP also strongly supports Commission jurisdiction over and ability to regulate DERAs whether via existing statutory authority or by way of new legislation.

Finally, EAP suggests that the Commission develop a work plan to share with interested parties that identifies topics that can be addressed now, prior to the resolution of issues between FERC and PJM, and those that must be clarified and resolved first at the RTO level. Such a work plan could establish a preliminary timeline, suggest procedures applicable to the resolution of topics, and seek further input from stakeholders. EAP believes that a publicly shared work plan

will help both PUC staff and stakeholders organize their resources and be prepared to address topics individually.

Respectfully submitted,



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