UNITED STATES OF AMERICA

FEDERAL ENERGY REGULATORY COMMISSION

Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators	)))	Docket Nos. RM16-23-000 AD16-20-000

MOTION TO INTERVENE AND COMMENTS OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Pursuant to Rules 211 and 214 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure,[1] the November 17, 2016 Notice of Proposed Rulemaking ("NOPR"),[2] and the December 20, 2016 Notice of Extension of Time issued in the above captioned dockets, the National Association of Regulatory Utility Commissioners ("NARUC") submits this motion to intervene and comments. In this NOPR, FERC is proposing to amend its regulations under its Federal Power Act authority[3] to remove barriers to the participation of electric storage resources and distributed energy resource ("DER") aggregations in the capacity, energy, and ancillary service markets operated by regional transmission organizations ("RTOs") and independent system operators ("ISOs") ("organized wholesale electric markets").

I. COMMUNICATIONS

All pleadings, correspondence, and other communications related to this proceeding should be addressed to the following person:

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[1] 18 C.F.R. §§ 385.211, 385.214 (2016).

[2] "Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators," 81 Fed. Reg. 86,522 (Nov. 30, 2016) (Docket Nos. RM16-23 and AD16-20).

[3] 16 U.S.C. 824e (2012).

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II. MOTION TO INTERVENE

NARUC is the national organization of the State commissions responsible for economic and safety regulation of the retail operations of utilities. NARUC's members have the obligation under State law to ensure the establishment and maintenance of such energy utility services as may be required by the public convenience and necessity, as well as ensuring that those services are provided at just and reasonable rates. NARUC's members include the government agencies in the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands charged with regulating the rates and terms and conditions of service associated with the intrastate operations of electric, natural gas, water, and telephone utilities. Both Congress[4] and the federal courts[5] have long recognized NARUC as the proper party to represent the collective interests of State regulatory commissions.

This NOPR has a clear impact on NARUC's member State commissions. State regulatory commissions have the responsibility for resource adequacy and have ratemaking

[4] *See* 47 U.S.C. § 410(c) (1971) (Congress designated NARUC to nominate members of Federal-State Joint Boards to consider issues of concern to both the Federal Communications Commission and State regulators with respect to universal service, separations, and related concerns); Cf., 47 U.S.C. § 254 (1996) (describing functions of the Joint Federal-State Board on Universal Service). Cf. *NARUC, et al. v. ICC*, 41 F.3d 721 (D.C. Cir 1994) (where the Court explains "…Carriers, to get the cards, applied to…[NARUC], an interstate umbrella organization that, as envisioned by Congress, played a role in drafting the regulations that the ICC issued to create the 'bingo card' system").

[5] *See United States v. Southern Motor Carrier Rate Conference, Inc.*, 467 F. Supp. 471 (N.D. Ga. 1979), aff'd 672 F.2d 469 (5th Cir. 1982), aff'd en banc on reh'g, 702 F.2d 532 (5th Cir. 1983), rev'd on other grounds, 471 U.S. 48 (1985).

authority over the utilities they regulate. This NOPR affects the types of resources that can participate in the organized wholesale electric markets, which can affect resource adequacy. The NOPR also is proposing to change the access distributed energy resources have to the organized wholesale electric markets. Any action FERC takes in this proceeding necessarily will either influence or directly impact NARUC member commissions.

III. COMMENTS

In the NOPR, FERC is proposing reforms "to remove barriers to the participation of electric storage resources[6] and [DERs][7] in the organized wholesale electric markets."[8] NARUC as an organization and many of its individual members have spent a great deal of time and effort examining issues of DER compensation and NARUC recognizes the importance of this issue.[9] NARUC generally supports FERC's efforts to address barriers to the use of energy storage devices and aggregated DERs that seek to participate in wholesale markets, provided that States retain the authority to determine whether to allow aggregated resources located on the distribution grid to participate and that system reliability is not adversely impacted. NARUC's comments will focus primarily on FERC's proposals that require RTOs/ISOs to revise their

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6 "We define an electric storage resource as a resource capable of receiving electric energy from the grid and storing it for later injection of electricity back to the grid regardless of where the resource is located on the electrical system. These resources include all types of electric storage technologies, regardless of their size, storage medium (e.g., batteries, flywheels, compressed air, pumped-hydro, etc.), or whether located on the interstate grid or on a distribution system." NOPR at P 1, n1.

7 "We define distributed energy resources as a source or sink of power that is located on the distribution system, any subsystem thereof, or behind a customer meter. These resources may include, but are not limited to, electric storage resources, distributed generation, thermal storage, and electric vehicles and their supply equipment." NOPR at P 1, n2.

8 NOPR at P 1.

9 NARUC Manual on Distributed Energy Resources Rate Design and Compensation (2016), available at: http://pubs.naruc.org/pub/19FDF48B-AA57-5160-DBA1-BE2E9C2F7EA0.

tariffs to allow DER aggregators to participate directly in the organized wholesale electric markets. Specifically, NARUC's comments will address federal-State jurisdictional issues, costs and cost recovery, and metering.

A. Federal-State Jurisdictional Issues

With regard to the proposals in this NOPR, the jurisdictional boundaries between the States and FERC need to be addressed and clarified. Though States have a variety of market structures, laws, and policies, all States are responsible for ensuring reliable service and just and reasonable rates for retail consumers. It is crucial that State authority remains intact under any final rule issued based on this NOPR. NARUC member States desire the opportunity to be proactive partners to assist FERC in assuring that any final rule does not encroach on State jurisdiction over distribution utilities, retail metering, distributed energy resources, retail customers, and rates charged to retail customers. NARUC requests that, at a minimum, FERC provide a forum where State concerns can be fully and properly vetted prior to finalizing any rule in order to ensure that the proper balance of jurisdictional roles between the States and FERC is maintained.

To maintain this balance and NARUC support of the proposal for the participation of DER aggregators in the RTO/ISO markets, NARUC requests FERC to clarify that it will require prohibition from aggregator participation in the markets for all DERs, not just demand response where state laws or regulations prohibit such participation. This is the same prohibition FERC required in its Order 719 where it permitted limitation of aggregator participation where "the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate."[10] NARUC is pleased that FERC is proposing that the "market participation agreement for distributed energy resource aggregators should not preclude distribution utilities, cooperatives, or municipalities from aggregating distributed energy resources on their systems or even microgrids from participating in the organized wholesale electric markets as a distributed energy resource aggregation."[11] For States that do not want third-party aggregators, authorizing distribution utilities to act as aggregators allows States to provide oversight of the terms and conditions of their relationship with DER providers and customers, while allowing participation in the RTO/ISO markets.

Assuming that the final rule allows States to opt-out of third-party DER aggregation, for States that do participate, NARUC requests that FERC limit the final rule to providing no more than broad policy direction. NARUC's request is that details be left to be worked out during the implementation phase. Under this request, FERC should specify that RTOs/ISOs work with the States on the details during implementation.

NARUC appreciates the NOPR's proposed prohibition on aggregated DERs participating simultaneously in retail compensation programs, such as net-metering, or stand-alone wholesale demand response programs, in order to preclude duplication of compensation.[12] However, NARUC requests that this issue receive additional study and scrutiny as there may be scenarios under which a given storage device could provide different, non-simultaneous services at both the retail and the wholesale level. Under such a scenario, flexibility to allow DERs to be compensated in more than one way might be appropriate.

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10 NOPR at P 157 & n.238; Order No. 719, 125 FERC ¶ 61,071 at P 154.
11 NOPR at P 158.
12 NOPR at P 134.

The NOPR raises reliability questions and NARUC is pleased that FERC is seeking comment on these issues;[13] however, the North American Electric Reliability Corporation should be given time to determine whether and how reliability standards should be expanded or changed as a result of the proposals in this NOPR. We request that FERC provide time for NERC input and also request that the costs related to maintaining reliability be identified.

B. Costs and Cost Recovery

NARUC requests that more information be developed addressing the cost of the NOPR proposals and how those costs would be recovered. NARUC is pleased that FERC is seeking comments on the associated costs for the proposed participation model for electric storage resources and how those costs could be minimized.[14] NARUC requests that FERC investigate specifically the cost of any necessary metering and telemetry hardware and software requirements that would be needed by the RTOs/ISOs to facilitate the participation of aggregated DER in the wholesale markets as noted in the proposal.[15] NARUC requests that FERC collect information on the cost of the systems that would be needed for coordination between third-party aggregators, distribution utilities and RTOs/ISOs.[16]

NARUC seeks clarification on how costs for the proposed changes would be allocated or recovered. NARUC is concerned that all of the implementation costs might be borne by retail consumers. States that want to move forward with DER aggregation seek a rule that provides them with flexibility to directly address cost allocation issues.

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[13] NOPR at PP 52, 140-141, 155.
[14] NOPR at P 32.
[15] NOPR at P 151.
[16] NOPR at P 153.

C. Metering

FERC properly requests comments as to whether metering and accounting practices should be established in the RTO/ISO tariffs to facilitate the implementation of DER aggregation and participation of energy storage, but the discussion on metering and accounting is more complex than envisioned in the NOPR.[17] For example, it is far from clear that a storage device located behind a retail meter would not need its own measurement device or if such a device could distinguish between wholesale and retail uses.[18]

NARUC supports FERC's request for comments on whether it is possible to determine the end use for energy used to charge an electric storage resource under existing metering requirements.[19] The NOPR cites to comments filed by the Independent Energy Producers Association and the Minnesota Energy Storage Alliance in this docket as suggesting that "metering and accounting practices can be designed to delineate between wholesale and retail activities" from a single device.[20] Those cited comments raise, but do not resolve this issue. It is not clear what technology is envisioned, and NARUC requests that FERC provide more information on this issue before the rule is finalized.

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[17] NOPR at P 102; P 151.

[18] It is questionable whether it is possible, either technically or as a matter of policy, for a single electric meter to sort between electrons, with some being used for wholesale purposes and some being used for retail purposes. NOPR at P 99, *See Federal Power Commission v. Florida Power & Light Co*., 404 U.S. 453, 469 (1972) (upholding the Federal Power Commission's determination that electrons sold by Florida Power & Light Company ("FP&L") to Florida Power Corporation ("FPC") at a bus bar were comingled with electrons sold by FPC in interstate commerce to Georgia, and, therefore, FP&L's wholesale sales were in interstate commerce and subject to federal jurisdiction).

[19] NOPR at P 102.

[20] NOPR at P 99 & n.183; P 102 & n.185.

IV. CONCLUSION

NARUC respectfully requests that FERC consider the above comments in this proceeding.

Respectfully submitted,

/s/ Jennifer M. Murphy

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Dated: February 13, 2017

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC: February 13, 2017

Respectfully submitted:

/s/ Jennifer M. Murphy