

June 10, 2019

The Honorable Bobby Rush
Subcommittee on Energy
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Fred Upton
Subcommittee on Energy
House Energy and Commerce Committee
2125 Rayburn House Office Building
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Dear Chairman Rush and Ranking Member Upton:

I am writing on behalf of America's consumer-owned, not-for-profit electric cooperatives to respectfully request you to urge the Federal Energy Regulatory Commission (the Commission) to respect state and local regulatory authority when "behind-the-meter" and other distributed energy resources (DERs) located on local utility distribution systems are aggregated for purposes of participating in wholesale electricity markets. I am concerned that the Commission may adopt rules on third-party aggregation of DERs that would further expand Commission regulation under the Federal Power Act into areas that the Act leaves to states and localities. I hope you will agree with the importance of respecting state and local jurisdiction to protect consumers' access to safe, reliable, and affordable electric service in the communities our members serve.

The Commission is considering a proposal to enable third-party aggregators to bid DER aggregations into the wholesale electricity markets administered by independent system operators (ISOs) and regional transmission organizations (RTOs) under the Commission's jurisdiction. Because DER aggregation by third parties poses extremely local technical, economic, and policy issues, the National Rural Electric Cooperative Association (NRECA) believes that the "relevant electric retail regulatory authority"—which may be the state public utility commission or the local governing board of a consumer-owned cooperative—is best positioned to decide whether to authorize third-party aggregators to transact with retail consumers. A Commission order that expressly reserves that authority to the relevant electric retail regulatory authority would also better reflect the allocation of federal and state jurisdiction laid out in the Federal Power Act.

I am concerned that the Commission may not allow for local decision-making on these questions. In February 2018, the Commission issued Order No. 841, which requires ISOs and RTOs to amend their wholesale market rules to better enable participation by electric storage resources, including storage located on a local utility distribution system or behind the retail customer meter. Yet Order No. 841 does not adopt the language that the Commission previously used when it provided for aggregations of retail customers to participate in RTO and ISO wholesale markets as demand response resources. That language (in Commission Order Nos. 719 and 719-A) expressly allows the relevant electric retail regulatory authority to decide whether to allow demand-response aggregators to participate in wholesale markets.

In May 2019, the Commission issued Order No. 841-A, which explicitly denies requests by NRECA and other parties that the Commission include such language in its electric storage rule. In response, the Commission wrote that it was not required to follow the precedent of Order Nos. 719 and 719-A, and that it would not do so as a matter of policy—ostensibly because only a few states have already adopted programs governing electric storage resources. Rather than leave room for local

decision-making on the best ways to use electric storage for the benefit of consumers and local communities, the Commission declared that under Order No. 841, “states cannot directly prohibit electric storage resources from participating in the wholesale market” and the owner of a storage resource “has a choice between participating in the retail market or wholesale market” and “states may not take away that choice by broadly prohibiting all retail customers from participating in RTO/ISO markets.”

The Commission has established a separate proceeding (Docket No. RM18-9-000) to consider similar proposed rule changes to requiring RTOs and ISOs to enable third-party aggregators to bid DER aggregations into wholesale markets. The Commission held a technical conference on April 10–11, 2018, and received supplemental written comments to gather more information before taking final action on this proposal. As amply explained by witnesses at that technical conference and in the written comments, the industry must address many complex technical questions and make substantial investments in supporting infrastructure before third-party DER aggregators can participate in wholesale markets. Such participation will require RTOs and ISOs to coordinate with local distribution utilities in ways never before needed. The ability of local utilities to continue to provide safe, reliable, and affordable electric service to their communities could be diminished. In some states and communities, it may make sense to move forward addressing these questions and making the needed investments; in others, it may not, at least not yet. The key point is to allow local policymakers, not the Commission, to make these critical decisions.

For this reason, NRECA is urging the Commission to follow the wise precedent it laid for demand-response aggregations, and not for electric storage resources, in fashioning its final rule for DER aggregations. We strongly believe that this is the best long-term course to enabling these emerging technologies to benefit the consumers we serve, and we ask you for your support.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Matheson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jim Matheson
CEO
National Rural Electric Cooperative Association

cc: Greg Walden
Frank Pallone, Jr.