



March 21, 2018

Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission

E-filed

Re: Docket Nos. RM16-23-000 and AD16-20-000

Secretary Bose,

Attached please find an amended version of the Motion for Clarification of the Organization of MISO States filed originally filed on March 19, 2018. The OMS members that participated in the vote on page 6 of the document.

Please contact me at [tanya@misostates.org](mailto:tanya@misostates.org) or (515) 207-3551 if there are any questions.

Sincerely,

*Tanya Paslawski*

Tanya Paslawski  
Executive Director  
Organization of MISO States

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**UNITED STATES OF AMERICA BEFORE  
THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Electric Storage Participation in Markets Operated )	RM-16-23-000
by Regional Transmission Organizations and )	
Independent System Operators )	
)	
Electric Storage Participation in Regions with )	AD16-20-000
Organized Wholesale Markets )	

**MOTION FOR CLARIFICATION OF THE ORGANIZATION OF MISO STATES**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §385.212, the Organization of MISO States (“OMS”) submits its Motion for Clarification in the above-captioned docket.

The Commission has been officially evaluating participation of evolving electric storage device technologies in wholesale markets going back to 2015. As these resources have become more cost-effective and flexible, the question of how to fully recognize their unique operating characteristics has been discussed. In November of 2016, the Commission issued a Notice of Proposed Rulemaking (“NOPR”) on integration of energy storage resources (“ESR”) in wholesale markets and treatment of aggregated distributed energy resources. A Final Rule (“Rule”) on treatment of ESRs was issued February 15, 2018.<sup>1</sup>

The OMS supports the continued deployment of new technologies across the electric grid in a safe, reliable, and cost-effective way that provides benefits to end use customers, including storage resources. Indeed, many of the OMS members have initiatives to do just that at the state and local level to ensure the right policies and rules are in place for distribution

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<sup>1</sup> *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, 83 Fed. Reg. 9580 (Mar. 6, 2018), 162 FERC ¶ 61, 127 (2018) (“Rule”).

utilities to prepare for the future of the electric system. The Rule provides necessary direction on many aspects of participation of electric storage resources in the wholesale market and the OMS supports the Commission's time and attention to this important matter. The OMS also appreciates the Commission's acknowledgment that regional differences may necessitate unique approaches to implementation among the RTOs/ISOs. However, as written, some components of the rule leave room for interpretation that could lead to confusion and adverse impacts on implementation. For this reason, the OMS seeks clarifications on the matters detailed below.

**I. Though the Commission Declined to Grant a Blanket Ability for States to Decide Whether Distribution-Connected ESRs Participate in the Wholesale Market, Regional Differences Should be Respected**

The OMS, noting the importance of the issues under consideration in the NOPR, requested that the Commission undertake its efforts to integrate ESRs and Distributed Energy Resource ("DER") Aggregations into wholesale markets "with the condition that applicable state and local laws, and applicable orders and rules of Relevant Electric Retail Regulatory Authorities (RERRA), are clearly acknowledged and observed" in its NOPR Comments.<sup>2</sup> The OMS has explained the importance of federal policies that acknowledge the responsibility of the state and local regulators in ensuring resource adequacy and reliability and the potential impact of different wholesale market rules in several venues before the Commission.<sup>3</sup> The OMS further noted in this docket that, "If state and local laws are followed, and RTOs coordinate with RERRAs regarding potential retail and wholesale conflicts..., this rule has the potential to increase market accessibility for energy storage and smaller distributed resources, as well as

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<sup>2</sup> *Comments of the Organization of MISO States*, Docket Nos. RM16-23-000 and AD16-20-000, pp 1-2 (Feb, 13, 2017) ("OMS Comments").

<sup>3</sup> *Id. Protest of The Organization of MISO States*, Docket No. EL17-75-000, pp 1-5, (July 19, 2017).

increase customer engagement.”

The Commission addressed specific policy requests in this regard for ESR in the Rule from other participants, stating,

[W]e are not persuaded to grant the MISO Transmission Owners’ and DTE Electric/Consumers Energy’s request that the Commission allow states to decide whether electric storage resources in their state that are located behind the retail meter or on the distribution system are permitted to participate in the RTO/ISO markets through the electric storage resource participation model.<sup>4</sup>

In support for this finding, the Commission cited its recent Order on Petition for Declaratory Order.<sup>5</sup> In that order, the Commission cited the distinction between wholesale energy efficiency resources and wholesale demand response resources, noting, “[u]nlike demand response resources, [energy efficiency resources] are not likely to present the same operational and day-to-day planning complexity.”<sup>6</sup> This distinction is significant in the treatment of ESRs. ESRs have the ability to, and in some instances already do, act as demand response resources. Further, the potential moment-to-moment changes in utilization of these resources are certainly more in line with demand response than energy efficiency, which makes retail regulator involvement even more critical.

As stated in previous OMS comments, planning and operation of the distribution system by vertically-integrated utilities can be greatly impacted by third-party resources without the requisite transparency.<sup>7</sup> The potential for operational impacts as ESRs ramp up and down and resource procurement that could exceed what is necessary is heightened if the utilities and state and local regulators lack the ability to influence what is interconnected. In order to address these

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<sup>4</sup> Rule at P 35.

<sup>5</sup> *Advanced Energy Economy*, 161 FERC ¶ 61,245 (2017).

<sup>6</sup> *Id.* at P 63.

<sup>7</sup> *Protest of The Organization of MISO States*, Docket No. EL17-75-000, pp 7-11, (July 19, 2017). *Comments of the Organization of MISO States*, Docket No. RM10-17-000, pp 2-5, (May 13, 2010).

complexities and respect regional differences, the Commission should clarify that an RTO/ISO may request, at the behest of its stakeholders, tariff provisions that recognize a unique regional situation that requires additional oversight by retail regulators of resources connected to the distribution system that participate in wholesale markets.

## **II. Resources that Do Not Comply with State and Local Rules and Policies are Not “Contractually Permitted” and Therefore Do Not Qualify as an ESR**

In explaining its definition of electric storage resources, the Commission clarified that “capable of... later injection of electric energy back to the grid,” requires that a resource is physically capable of injecting energy onto the grid and is “contractually permitted to do so” by the interconnection agreement with the distribution utility.<sup>8</sup> The rules and policies related to interconnection of distributed resources, which include electric storage resources, are in a state of evolution within retail jurisdictions across the MISO footprint and throughout the country. The applicability of “contractually permitted” could be interpreted to be narrow or very broad.

In the Rule, the Commission appropriately emphasized the “vital” role of state and local regulators in the development and operation of ESRs, noting specifically “retail services and matters related to the distribution system, including design, operations, power quality, reliability and system costs” as well as, “nothing in this Final Rule is intended to affect or implicate the responsibilities of distributions utilities to maintain the safety and reliability of the distribution system or their use of electric storage resources on their systems.”<sup>9</sup> These are the core responsibilities of state and local regulators and distribution utilities and this acknowledgment is essential and well-taken. Absent the unfettered ability to ensure these functions are being conducted properly, there could be adverse impacts on planning and day-to-day operations of the

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<sup>8</sup> Rule at P 33.

<sup>9</sup> Rule at P 36.

distribution system that result in over-procurement of capacity or reliability problems.

In the NOPR, the Commission stated that an aggregation of DER would be required to attest that they are in compliance with “the tariffs and operating procedures of the distribution utilities and the rules and regulations of any other relevant regulatory authority.”<sup>10</sup> Though this precise language is not included in the Rule, “contractually permitted” can be interpreted to include the rules surrounding operation and an interconnection to the distribution system. Or, the language in the Rule could be argued to address only technical interconnection rules. Without greater certainty, the tariffs crafted to implement the Rule could leave the door open for an RTO/ISO’s tariff to be in violation of state and local law.

As such, the Commission should clarify that “contractually permitted” requires compliance with applicable rules and policies for each distribution utility that may be established now or in the future by a state or local regulator and that authority to participate in a retail program is not deemed authority to participate in a wholesale market. Further, the Commission should clarify that nothing in the Rule is intended to impact existing rules related to interconnection or operation of resources connected to the distribution system.

### **III. The RTO/ISO May be Required, as Proposed in the NOPR, to Verify that an Electric Storage Resource is Contractually Permitted to Participate in the Wholesale Market**

As noted above, the Commission recognized the importance of making sure there is agreement between the ESR and the distribution utility that interconnection has been completed properly and that, with the clarification requested above, all applicable rules and policies have been observed. To ensure a resource cannot bypass these requirements and still participate in the

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<sup>10</sup> *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 81 Fed. Reg. 86,522 (proposed Nov. 30, 2016), FERC Stats. & Regs. ¶ 32,718, P 157 & n.238 (2016) (“NOPR”).

wholesale market, a process should be in place to confirm compliance. Since the RTO/ISO is the entity that will receive the request to participate in the wholesale market, it is the appropriate party to take on the “gate keeper” role.

The Commission made just such a suggestion in the NOPR as it relates to reviewing the eligibility of DER aggregations:

we propose that each RTO/ISO revise its tariff to provide for coordination among itself, a distributed energy resource aggregator, and the relevant distribution utility or utilities when a distributed energy resource aggregator registers a new distributed energy resource... we propose that this coordination provide the relevant distribution utility or utilities the opportunity to report such information to the RTO/ISO for its consideration prior to the RTO/ISO allowing the new or modified distributed energy resource aggregation to participate.<sup>11</sup>

Though aggregations were not included in the Rule, the necessity that the RTO verify eligibility of an ESR to participate with the distribution utility, and interested retail regulatory authority as applicable, in advance of accepting a wholesale market participant is equally as important. As such, the OMS asks the Commission to clarify that that RTO/ISO may adopt tariff provisions that requires compliance with applicable rules as confirmed by the distribution utility and retail regulatory authority before an asset can be authorized to participate in the wholesale market.

#### **IV. Conclusion**

For the reasons stated above, the OMS urges the Commission to provide additional clarity to the items identified in order to make the implementation process more efficient.

The Illinois Commerce Commission abstains from this Motion. The Manitoba Public Utilities Board and Montana Public Service Commission did not participate in the vote. The Indiana Office of Utility Consumer Counselor joins as an Associate Member.

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<sup>11</sup> NOPR at P 154.

Respectfully Submitted,

*Tanya Paslawski*

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Dated: March 21, 2018

CERTIFICATE OF SERVICE

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

Dated this 21st day of March 2018.

*Tanya Paslawski*