



April 16, 2018

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

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

We are writing on behalf of America's consumer-owned, not-for-profit electric utilities 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) are aggregated for purposes of participating in wholesale electricity markets. We are concerned that the Commission may adopt rules on third-party aggregation of DERs that would further expand Commission regulation into areas that have traditionally been jurisdictional to states and localities under the Federal Power Act. We 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 now 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 American Public Power Association (APPA) and National Rural Electric Cooperative Association (NRECA) believe that the "relevant electric retail regulatory authority"—which may be the state public utility commission or the local governing board of a consumer-owned utility—is best positioned to decide whether to authorize third-party aggregators to transact with local retail consumers. Expressly reserving 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.

In February 2018, the Commission issued Order No. 841, which requires ISOs and RTOs to amend their wholesale market rules to better enable electric storage resources to participate. Order No. 841 also established a separate proceeding to consider similar rule changes to enable third-party aggregators to bid DER aggregations into wholesale markets. The Commission held a technical conference on April 10–11 to gather more information before taking final action on this proposal (Commission Docket No. RM18-9-000).

As amply explained by witnesses at that technical conference, 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 communities and regions, it may make sense to move forward addressing these questions and making the needed investments; in others, it may not, at least not yet.

Although Order No. 841 does not address DER aggregators themselves, it does adopt rules governing wholesale market participation by “behind-the-meter” and other electric storage resources on local utility distribution systems that might be aggregated for this purpose. Order No. 841 does not adopt language that the Commission used when it previously provided for the participation of demand response aggregators in ISO and RTO markets (in Commission Order No. 719). That language expressly allows the relevant electric retail regulatory authority to decide whether such aggregators would be allowed to participate in wholesale markets.

APPA and NRECA are urging the Commission to follow that wise precedent in fashioning its rules for electric storage resources and DER aggregators. For this reason, we have requested rehearing of Order No. 841. We will continue to advocate that approach in the Commission’s final rule on DER aggregation. 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,



Susan N. Kelly
President & CEO
American Public Power Association



Jim Matheson
CEO
National Rural Electric Cooperative Association