

EER Problem Statement: Superseded and Premature

6/7/17 MIC Meeting

on Behalf of the Advanced Energy Economy (“AEE”)

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Several Stakeholders Properly Raised Jurisdictional Concerns at the 5/3/17 MIC

- No RERRA has asserted jurisdiction over EERs.
- The East Kentucky Power Cooperative Application was filed with the Kentucky Public Service Commission in Case No. 2017-00129 on March 10, 2017.
- To date, the Kentucky Commission has not acted on the Application.
- The EER Problem Statement incorrectly assumes that an RERRA would somehow be entitled to assert jurisdiction over EERs.

Recent Developments Have Superseded the EER Problem Statement

- On June 2, 2017, AEE filed a Petition for a Declaratory Order with FERC, which requested FERC to clarify that:
 - FERC has exclusive jurisdiction under the Federal Power Act over the rates, terms, and conditions under which Wholesale EERs are sold in wholesale electricity markets;
 - an RERRA may not bar, restrict, or otherwise condition the participation of Wholesale EERs in wholesale electricity markets, unless the Commission expressly adopts rules or regulations giving states and retail regulators such authority; and
 - Order No. 719 does not authorize an RERRA to exercise an “opt out” and bar or restrict the sale into the wholesale electricity markets of Wholesale EERs originating in their state or local area; and
 - It is improper to use an RTO/ISO stakeholder process to develop tariff provisions to allow an RERRA to limit or restrict the participation of Wholesale EERs in the wholesale markets.

The PJM Stakeholder Process is Premature

- No RERRA has asserted jurisdiction over EERs.
- Until FERC issues an order regarding the Petition for a Declaratory Order, it would be pointless for PJM Stakeholders to spend resources on tariff language that may never be implemented.
- If FERC determines that RERRAs have jurisdiction over EERs, then there will be ample time for an RERRA to make a Section 206 filing to amend the PJM tariff.
- The EER Problem Statement is premature and the issues have been superseded by the AEE Petition.

The Federal Power Act Grants FERC Exclusive Jurisdiction Over EER Participation in PJM

- *FERC v. EPSA* held that FERC has exclusive authority over participation of load management activities in wholesale markets - - despite any potential impact on retail electricity rates -- if the resource directly impacts wholesale competitive markets.
- FERC voluntarily delegated authority over DRs to RERRAs in Order No. 719.
- FERC expressly excluded EERs from the Order No. 719 delegation to RERRAs.
 - *EERs are “valuable resources . . . however, the scope of [Order No. 719] is limited to removing barriers to comparable treatment of demand response resources in the organized markets.”* Paragraph 276 of Order No. 719.
- It is incongruous to suggest that RERRAs somehow should have any jurisdiction or similar authority over EERs, given the lack of nexus with or impact on retail electric services regulated by RERRAs.

EER Tariff Changes Would Harm Competitive Markets

- Competition requires **consistent** and **predictable** market rules:
- “Competition means that decisions about whether to enter the market, to exit the market and to remain in the market are made by suppliers based on market fundamentals. Suppliers must believe that the market fundamentals will determine the success or failure of their investment or they will not invest, the market will not sustain adequate supply and the federal regulatory approach will fail.” (Emphasis added) (3/16/17 Comments of PJM’s IMM in Illinois proceeding).
- Order No. 719 mandates that RTOs: (1) be inclusive; (2) be fair in balancing diverse interests; (3) represent minority positions; and (4) be responsive.
- If market rules are changed for only one segment of the market, competition is harmed.
- *Will PJM’s next Problem Statement suggest that RERRAs should be given jurisdiction over: energy storage or solar rooftop generation or . . .??*
- **Potential Balkanization of wholesale energy market** is inconsistent with reliability.

Consumers would be harmed by any Proposed EER Tariff changes

- Consistent Tariff provisions benefit EERs and other capacity resources by encouraging the uniform regional development of valuable capacity resources.
- Granting RERRAs the ability to restrict the commitment of EERs in the PJM wholesale capacity markets would harm consumers.
- Reducing the amount of capacity supply in market results in higher consumer costs.
- Potentially conflicting and/or inconsistent State EER programs:
 - Would inhibit development of EERs.
 - Would restrict the ability of consumers to take advantage of purchasing more affordable energy efficient products.

Observations

- To date, no RERRA has asserted jurisdiction over EERs.
- The AEE Petition for Declaratory Order seeks to confirm FERC's exclusive jurisdiction over EERs and has superseded the Problem Statement.
- While FERC considers the AEE Petition for Declaratory Order, it would be a waste of resources to pursue the EER Problem Statement.
- If the EER Problem Statement is ever needed, then an RERRA should make a Section 206 filing; not PJM.
- The EER Problem Statement should not be approved.