



DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM21-14-000]

Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organizations and Independent System Operators

AGENCY: Federal Energy Regulatory Commission.

ACTION: Withdrawal of notice of inquiry and termination of rulemaking proceeding.

SUMMARY: The Commission withdraws a notice of inquiry, which sought comment on whether to revise the Commission's regulations that require a Regional Transmission Organization or Independent System Operator not to accept bids from an aggregator of retail customers that aggregates the demand response of the customers of utilities that distributed more than 4 million megawatt-hours in the previous fiscal year, where the relevant electric retail regulatory authority prohibits such customers' demand response to be bid into organized markets by an aggregator of retail customers.

DATES: This withdrawal will become effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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SUPPLEMENTARY INFORMATION:

1. On March 18, 2021, the Commission issued a notice of inquiry (NOI) in this proceeding. For the reasons that we set forth below, we exercise our discretion to withdraw the NOI and terminate this rulemaking proceeding.

I. Background

2. In the NOI, as a preliminary step, the Commission sought comment on whether to revise its regulations that require a Regional Transmission Organization (RTO) or Independent System Operator (ISO) (RTO/ISO) not to accept bids from an aggregator of retail customers (ARC) that aggregates the demand response of the customers of utilities that distributed more than 4 million megawatt-hours (MWh) in the previous fiscal year, where the relevant electric retail regulatory authority (RERRA) prohibits such customers' demand response to be bid into organized markets by an ARC (Demand Response Opt-Out).¹

3. In issuing the NOI, the Commission stated that it had been more than a decade since it had established the Demand Response Opt-Out in Order Nos. 719 and 719-A.² It noted that, since that time, there have been significant legal, policy, and technological developments that may cause it to reconsider the Demand Response Opt-Out. The

¹ See 18 CFR 35.28(g)(1)(iii) (2025).

² *Wholesale Competition in Regions with Organized Elec. Mkts.*, Order No. 719, 125 FERC ¶ 61,071 (2008), *order on reh'g*, Order No. 719-A, 128 FERC ¶ 61,059, *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

Commission therefore sought comment on whether to revise the Commission's regulations to remove the Demand Response Opt-Out from its regulations.

II. Comments³

4. Several commentators urged the Commission to eliminate the Demand Response Opt-Out.⁴ Among other arguments, nearly all of these commenters state that the landscape for demand response and experience with demand response has changed significantly enough to warrant a reexamination of the Demand Response Opt-Out.⁵ However, other commenters opposed the removal of the Demand Response Opt-Out,⁶ and many argued that the demand response landscape has not changed significantly

³ On March 28, 2022, the Mississippi Public Service Commission filed a motion to lodge their initial comments and reply comments submitted in Docket No. EL21-12-000 in the instant proceeding, which were joined by the Louisiana Public Service Commission. We dismiss the motion because, as discussed below, we are terminating this proceeding.

⁴ Such commenters include: Association of Businesses Advocating Tariff Equity; Advance Energy Economy; Armada Power, LLC; Advanced Energy Management Alliance; Electricity Consumers Resource Council; Voltus, Inc.; Google; Industrial Energy Consumers of America; Illinois Commerce Commission; American Forest & Paper Association, PJM Industrial Customer Coalition, and Coalition of MISO Transmission Customers; Midwest Energy Consumers Group; Environmental Law and Policy Center, Natural Resources Defense Council, Sierra Club, and Sustainable FERC Project; R Street Institute; California Air Resources Board, the Maine Office of Public Advocate, and the Attorneys General of Maryland, Massachusetts, and Rhode Island; Ted Thomas, Chairman of the Arkansas Public Service Commission.

⁵ See Advance Energy Economy Initial Comments at 1-3; Environmental Law and Policy Center, Natural Resources Defense Council, Sierra Club, and Sustainable FERC Project Initial Comments at 1-4; R Street Institute Initial Comments at 1, 3.

⁶ Such commenters include: American Electric Power Service Corporation; American Public Power Association and the National Rural Electric Cooperative Association; DTE Electric Company and Consumers Energy Company; Edison Electric Institute; Entergy Services, LLC; Indiana Utility Regulatory Commission; Kansas Corporation Commission; Louisiana Public Service Commission and the Mississippi Public Service Commission; MISO; MISO Transmission Owners; Public Service Commission of the State of Missouri; National Association of Regulatory Utility Commissioners; North Carolina Utilities Commission; Organization of MISO States; and Southern Pioneer Electric Company.

enough to warrant the Commission's reexamination of the opt-out, as the original reasoning of Order No. 719 is still valid today.⁷

III. Discussion

5. Upon further consideration and after review of the comments that the Commission received in response to the NOI, we withdraw the NOI and terminate this rulemaking proceeding. We appreciate the feedback that the Commission received in response to the NOI. After careful consideration of the record, we agree with commenters that raised concerns regarding the removal of the Demand Response Opt-Out, stating that the demand response landscape has not changed significantly enough to warrant such action by the Commission at this time. We also note the strong opposition to removing the state opt-out expressed by state organizations such as the National Association of Regulatory Utility Commissioners (NARUC) and regional state regulatory associations. For these reasons, and to eliminate any uncertainty as to whether the Commission still intends to move forward with this proposal, the Commission exercises its discretion to withdraw the NOI and terminate this rulemaking proceeding. While withdrawing the NOI, we recognize the value that demand response can bring to the markets and encourage the development of demand response programs within the relevant regulatory structures. Further, in response to the dissent, we do not believe that terminating the instant proceeding eliminates options for interconnecting flexible large loads quickly and cost-effectively, and we clarify that our action today in no way prejudices the outcome of the

⁷ See Entergy Services, LLC Initial Comments at 1-3; Louisiana Public Service Commission and the Mississippi Public Service Commission Initial Comments at 1-3; Public Service Commission of the State of Missouri Initial Comments at 3-4, 12-21.

pending proceeding on the Interconnection of Large Loads to the Interstate Transmission System.⁸

⁸ *Interconnection of Large Loads to the Interstate Transmission System*, Advance Notice of Proposed Rulemaking (Oct. 23, 2025) (Docket No. RM26-4-000).

The Commission orders:

The notice of inquiry is hereby withdrawn and Docket No. RM21-14-000 is hereby terminated.

By direction of the Commission. Commissioner Rosner is dissenting with a separate statement attached.

Commissioner Chang is concurring with a separate statement attached.

Issued: April 16, 2026.

Carlos D. Clay,

Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Participation of Aggregators of Retail Demand
Response Customers in Markets Operated by Regional
Transmission Organizations and Independent System
Operators

Docket No. RM21-14-000

(Issued April 16, 2026)

ROSNER, Commissioner, *dissenting*:

1. I dissent from today's order because it limits consideration of options at a time when I believe we need every tool in the toolbox to meet the electricity demand growth our country is experiencing. My primary motivation for writing separately is not to say whether my colleagues are right or wrong to close this dormant proceeding, but instead to elevate the issue of demand response and the important optionality it offers for quickly connecting new customers to the grid and balancing the affordability issues that are front of mind.

2. The electricity system is at a turning point. New electric customers can individually use as much energy as a city. There are two primary ways to meet this growth and power these new, large customers. One path is to enable faster and cheaper grid integration by offering the option to use load flexibility or behind the meter generation, which can reduce impacts on the transmission system, require significantly less infrastructure, and lower costs. The other path is to rely on only the status quo, which can be time-intensive, require significant new infrastructure, and increase costs. While I believe strongly in building out needed energy infrastructure, we must also ensure that all options, including demand response, are available.

3. I believe the Commission should consider whether demand response⁹ provided by customers that individually consume hundreds of megawatts or more is best enabled through a patchwork of programs or by a single RTO/ISO-wide program. With the benefit of hindsight, it is obvious that the Commission was not envisioning large retail customers like data centers when it first established the demand response opt-out in 2008.¹⁰ Nor could the Commission have been aware of how technologies that allow large loads to deliver meaningful grid flexibility with minimal impacts on the end-use customer

⁹ I note that the Commission considers both load flexibility and behind-the-meter resources that do not inject to be demand response, so maintaining the current opt-out presents a barrier to both approaches. *See Elec. Storage Participation in Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, Order No. 841, 162 FERC ¶ 61,127, at P 32 (2018), *order on reh'g*, Order No. 841-A, 167 FERC ¶ 61,154 (2019), *aff'd sub nom. Nat'l Ass'n of Regul. Util. Comm'rs v. FERC*, 964 F.3d 1177 (D.C. Cir. 2020) (*NARUC v. FERC*) (“[W]e have previously found that behind-the-meter resources that do not inject electric energy onto the grid are considered demand response.”).

¹⁰ *See* Order No. 719, 125 FERC ¶ 61,071, at PP 154-56 (2008).

would proliferate.¹¹ Moreover, in the intervening years, courts have affirmed the Commission's exclusive authority to determine who may participate in wholesale markets.¹²

4. Every day, we see more evidence that both load flexibility and bring your own generation are essential to efficiently integrating new large loads like data centers.¹³ I would have preferred to probe whether it would be appropriate to revive this proceeding in a way that is forward-looking and tailored to the needs of the grid in 2026. Similarly, I would like to gather further record on how the perspectives of our state regulator colleagues may have evolved since 2021. I have extraordinary respect for their perspectives, in particular, given that they regulate the retail rates ultimately charged to large load customers and have significant experience integrating large loads.¹⁴

5. All of this said, I want to emphasize that I share my fellow Commissioners' desire to close dormant proceedings. Leaving dormant regulatory proceedings open for years increases regulatory uncertainty and makes investing in new energy resources riskier and more expensive. That is a real cost that I agree this Commission must consider. But meeting the current moment also demands that we give full consideration to load flexibility, and I look forward to working with my colleagues on this topic as the Commission embarks upon the reforms needed to ensure the timely and orderly interconnection of large loads to the transmission system.¹⁵

¹¹ See, e.g., Philip Colangelo et al., *Turning AI Data Centers into Grid-Interactive Assets: Results from a Field Demonstration in Phoenix, Arizona* (2025), <https://arxiv.org/abs/2507.00909> (“Conducted at a 256-GPU cluster running representative AI workloads within a commercial, hyperscale cloud data center in Phoenix, Arizona, the trial achieved a 25% reduction in cluster power usage for three hours during peak grid events while maintaining AI quality of service (QoS) guarantees.”).

¹² See *NARUC v. FERC*, 964 F.3d at 1187 (“[B]ecause FERC has the exclusive authority to determine who may participate in the wholesale markets, the Supremacy Clause . . . requires that States not interfere.”); see also *FERC v. Elec. Power Supply Ass’n*, 577 U.S. 260, 278 (2016) (“[W]e now approve, a common-sense construction of the FPA’s language, limiting FERC’s ‘affecting’ jurisdiction to rules or practices that ‘directly affect the [wholesale] rate.’ . . . [T]he rules governing wholesale demand response programs meet that standard with room to spare.” (footnotes omitted)).

¹³ See, e.g., *PJM Interconnection, L.L.C.*, 193 FERC ¶ 61,217, at P 77 (2025) (“[O]ffering non-capacity backed transmission service on a permanent basis would allow PJM to capture the benefits of co-located facilities, serving the same amount of total load at lower cost, with less transmission infrastructure and fewer capacity resources.”); Carlo Brancucci et al., *Flexible Data Centers: A Faster, More Affordable Path to Power* (2025), <https://www.camus.energy/flexible-data-center-report> (finding that flexible data centers can connect 3-5 years faster, mitigate new system buildout, and shift remaining costs onto the data center); Ryan Hledik et al., *The Untapped Grid: How Better Utilization of the Power System Can Improve Energy Affordability*, Brattle (2026), <https://www.brattle.com/wp-content/uploads/2026/03/The-Untapped-Grid-Mar-2026.pdf> (finding that improving system utilization accelerates speed to market for new loads, avoids shifting costs to other consumers, and mitigates stranded asset risks).

¹⁴ As of March 2026, 20 states had approved at least one large load tariff, and another nine states had pending large load tariffs. See Edison Electric Institute, Comments, Docket No. RM26-4-000, at 2 (filed Mar. 12, 2026).

¹⁵ See *Interconnection of Large Loads to the Interstate Transmission Sys.*, 195 FERC ¶ 61,045 (2026) (Order Regarding Intent to Act).

For these reasons, I respectfully dissent.

David Rosner
Commissioner

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(Issued April 16, 2026)

CHANG, Commissioner, *concurring*:

1. The Commission’s order today closes a Notice of Inquiry (NOI) on removing the so-called “Demand Response Opt-Out,” which allows state regulators to place limitations on the participation of third-party demand response aggregators in wholesale markets. The Demand Response Opt-Out was included in Order No. 719 to balance the competing interests of opening wholesale markets to demand response and respecting state and local regulatory concerns relating to the operation of existing retail demand response programs, regulatory burdens, and jurisdictional challenges.¹ While the Demand-Response Opt-Out may need to be re-examined in the future, maintaining the status quo strikes the right balance today.² Thus, I am persuaded that the Commission should close this NOI.

2. However, demand-side resources are underrepresented in the wholesale markets, and I write separately to emphasize constructive steps that the Commission, states, market operators, and demand response providers can take to improve demand-side participation in wholesale markets.

3. Additional demand response, including from grid-interactive buildings, flexible large loads, and industrial customers, has the potential to significantly help meet the country’s load growth and resource adequacy challenges.³ But despite a clear reliability

¹ *Wholesale Competition in Regions with Organized Elec. Mkts.*, Order No. 719, 125 FERC ¶ 61,071, at PP 154-56 (2008), *order on reh’g*, Order No. 719-A, 128 FERC ¶ 61,059, *order on reh’g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

² While referred to as an “opt out,” Order No. 719 does not create a binary choice for state regulators with regard to the participation of third-party demand response aggregators in wholesale markets. Instead, Order No. 719 allows states to place conditions on participation of third-party aggregators, which may extend to disallowing participation for some or all customer classes. Some states that have chosen to “opt out” in fact do allow third-party demand response aggregation, but subject those programs to state regulations; or they may specify the customer classes that may take part in third-party aggregation programs. *See, e.g., In the Matter of the Establishment of a Working Case Re: FERC Order No. 2222 Re: Participation of Distributed Energy Resource Aggregators in Markets Operated by Regional Trans. Organizations and Indep. Sys. Operators*, Docket No. EW-2021-0267 (Missouri Pub. Serv. Comm’n Oct. 12, 2023) (allowing third-party aggregators to bid demand response into wholesale markets for commercial and industrial customers with demand of at least 100 kW); Indiana Util. Reg. Comm’ Initial Comments at 9 (describing the ability of third party aggregators to participate in wholesale market through a retail tariff).

³ *See* U.S. Dept. of Energy, *A National Roadmap for Grid-Interactive Efficient Buildings* (May 17, 2021), <https://gebroadmap.lbl.gov/A%20National%20Roadmap%20for%20GEBS%20-%20Final.pdf>;

imperative *and* strong economic signals from high market prices, the amount of demand response participating in wholesale markets is limited today. In the PJM Interconnection, L.L.C. (PJM) market, the last capacity auction cleared half of the amount of demand response compared to the 2014/2015 delivery period.⁴ Even with the issuance of Order No. 745,⁵ Commission-jurisdictional markets reflect very little economic demand response participation in the energy and ancillary services markets.

4. To increase demand response participation, the Commission, state regulators, and market operators need to collaborate on market designs and participation models that balance: 1) practical limitations on customers' ability and willingness to curtail demand, and 2) confidence that system operators can rely on demand response resources to respond quickly and predictably when called. This means that state and federal regulators as well as market operators need to engage more to understand and resolve friction that might arise when demand-side resources are integrated into market structures. Such frictions may involve end users' metering requirements, parameters around billing periods, or frequency of calls on customers to curtail their load.

5. I am heartened by the development of new retail demand response proposals and programs across various states,⁶ including in states that have placed limitations on the wholesale market participation of third-party aggregators.⁷ I look forward to seeing them integrated into the wholesale markets to maximize their value for the whole system.

Nicholas Institute for Energy, Environment, & Sustainability, *Rethinking Load Growth: Assessing the Potential for Integration of Large Flexible Loads in US Power Systems* (Feb. 2025), <https://nicholasinstitute.duke.edu/publications/rethinking-load-growth>; U.S. Dept. of Energy, *Demand Response in Industrial Facilities* (2022), https://betterbuildingssolutioncenter.energy.gov/sites/default/files/attachments/Demand%20Response%20in%20Industrial%20Facilities_Final.pdf.

⁴ Compare PJM, *2014/2015 RPM Base Residual Auction Results*, <https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/20110513-2014-15-base-residual-auction-report.pdf> with PJM, *2027/2028 Base Residual Auction Results*, <https://www.pjm.com/-/media/DotCom/markets-ops/rpm/rpm-auction-info/2027-2028/2027-2028-bra-report.pdf>.

⁵ Order No. 745 established rules governing demand response participation in organized wholesale energy markets, including that demand response resources will be compensated at prevailing locational marginal prices, subject to certain conditions. *Demand Response Compensation in Organized Wholesale Energy Mkts.*, Order No. 745, 134 FERC ¶ 61,187, *order on reh'g & clarification*, Order No. 745-A, 137 FERC ¶ 61,215 (2011), *reh'g denied*, Order No. 745-B, 138 FERC ¶ 61,148 (2012), *vacated sub nom. Elec. Power Supply Ass'n v. FERC*, 753 F.3d 216 (D.C. Cir. 2014), *rev'd & remanded sub nom. FERC v. Elec. Power Supply Ass'n*, 136 S.Ct. 760 (2016).

⁶ For example, several states have announced virtual power plants, including a program in Virginia targeting a capacity of 450 MW. See Utility Dive, *Virginia utility-scale VPP pilot mandate is first amid national push* (May 12, 2025), <https://www.utilitydive.com/news/virginia-leads-with-utility-scale-vpp-pilot-amid-national-push/747770/>.

⁷ For example, Google has committed to utility-run demand response programs in Indiana, Arkansas and Minnesota, which place restrictions on the ability of third party aggregators to participate in wholesale markets. Google, *A new milestone for smart, affordable electricity growth* (Mar. 19, 2026), <https://blog.google/innovation-and-ai/infrastructure-and-cloud/global-network/demand-response-data-center-milestone/>.

Further, I will continue to look for opportunities – whether in proceedings before the Commission or other forums – to better realize the potential contributions from demand-side resources, while working collaboratively with our state colleagues to support their deployment.

For these reasons, I respectfully concur.

A handwritten signature in black ink, appearing to read "Judy Chang", with a long horizontal flourish extending to the right.

Judy W. Chang

Commissioner

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