



Distribution Standard of Conduct

A Reference Guide for Electric Retail Regulators

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Glossary

Chief Compliance Officer (CCO)

Distribution Service Provider officer with a working knowledge of the company, its structure, and its operations to serve as chief compliance officer with responsibilities that include ensuring compliance with the Distribution Standards of Conduct and the governing regulatory policies and procedures relating to such.

Customer Information

Customer-specific information that the Distribution Service Provider acquired or developed in the course of providing electric distribution services; it includes, but is not limited to, information that relates to the quantity, time of use, type and location of electric service, information contained in electric service bills, and other data specific to a Distribution Service Provider's customer.

DER Aggregator

The Federal Energy Regulatory Commission (FERC) defines a DER Aggregator as "the entity that aggregates one or more DERs for purposes of participation in the capacity, energy and/or ancillary service markets of the regional transmission organizations (RTOs) and/or independent system operators (ISOs)."

Distributed Energy Resource (DER)

FERC defines a distributed energy resource as "any resource located on the distribution system, any subsystem thereof or behind a customer meter." FERC clarified that "these resources may include, but are not limited to, resources that are in front of and behind the customer meter, electric storage resources, intermittent generation, distributed generation, demand response, energy efficiency, thermal storage, and electric vehicles and their supply equipment. This definition is technology-neutral, thereby ensuring that any resource that is technically capable of providing wholesale services through aggregation is eligible to do so."

Distribution Customer

Any eligible customer, or designated agent, that can or does execute a distribution service agreement or can or does receive distribution service, including all persons who have pending requests for distribution service including interconnection.

Distribution Function Information

All information relating to Distribution Functions, including information about available distribution capability, price, curtailments, ancillary services, and the like regarding any distribution system.

Distribution Function Personnel

Employee, contractor, consultant, or agent of a Distribution Service Provider who actively and personally engages on a day-to-day basis in Distribution Functions.

Distribution Functions

The planning, engineering, directing, organizing, or carrying out of day-to-day distribution operations, including routine and emergency switching, processing of distribution service and interconnection requests, and grid maintenance and construction.

Distribution Service

The transporting of electric power over and through various Distribution Service Provider's facilities for delivery to or from a distribution customer or grid-connected distributed resource.

Distribution Service Provider

Any utility that owns, operates, or controls facilities used for the distribution of electric energy.

FERC Order No. 2222

FERC Order No. 2222 instructs RTOs and ISOs to allow DER aggregations to participate directly in the wholesale markets and establish a new category of market participants, namely DER Aggregators.

Marketing Function

Sale for resale or submission of offers to sell electric energy or capacity, ancillary and other grid services (including Demand management), virtual transactions, or financial or physical distribution rights, including bundled sales of electric energy made by Providers of Last Resort (POLRs).

Marketing Function Personnel

Employee, contractor, consultant, or agent of a Distribution Service Provider, or of an affiliate or third-party partner of a Distribution Service Provider, who actively and personally engages on a day-to-day basis in Marketing Functions.

Regulatory Authority

Regulatory Authority refers to the Relevant Electric Retail Regulatory Authority (RERRA) as described in FERC Order No. 2222.

Introduction

There is a growing need for state and other retail Regulatory Authorities to consider enhancing existing Distribution Service Provider rules to address the need for greater open access and non-discriminatory distribution operations in the utilization of distributed energy resources (DERs). This is being driven in large part by (a) the use of DERs for bulk power and distribution services and (b) Federal Energy Regulatory Commission (FERC) Order No. 2222 recognition of the state regulatory governance responsibilities over Distribution Service Providers and DERs.

FERC's wholesale market changes are expanding opportunities for individual and aggregated DERs that may lead to potential conflicts of interest for utility distribution operations between DER Aggregators and distribution utility DER programs. There are several proposed process and operational aspects in FERC Order No. 2222 compliance plans filed by regional transmission organizations (RTOs)/independent system operators (ISOs), discussed below, that would benefit from removing potential conflicts of interest from the utility Distribution Function. As such, Regulatory Authority governance would benefit from consideration of adapting FERC's Open Access Transmission Tariff (OATT)¹ requirements related to the Standard of Conduct, specifically, the development of a Distribution Standard of Conduct (DSoC) to ensure non-discriminatory access and operations in the provision of DER services.

The purpose of this report is to inform the development of a DSoC for a jurisdictional Distribution Service Provider (i.e., utility) to ensure open access to distribution services and information to customers and third parties (e.g., independent project developers and aggregators). Specifically, this paper addresses key considerations for regulated Distribution Service Providers that interconnect customer and independent DERs, utilize customer and/or DER aggregations for grid services, and/or conduct distribution transactions with an internal marketing organization or partner or an affiliate that engages in electricity Marketing Functions.

Marketing Functions, as discussed in this paper, refer to the provision of wholesale and distributed energy and grid services. This document focuses on the additional considerations for a Distribution Service Provider beyond typical standard-offer distribution service obligations for new customer load, DER interconnection rules, and affiliate rules. This DSoC report also considers the potential need to separate competing interests within the Distribution Service Provider—between the Distribution Functions and Marketing Functions.

These DSoC guidelines recognize that each jurisdiction and specific Distribution Service Provider has unique needs and challenges. As such, local regulations will vary across the country. In addition, certain operations or communications between the Distribution Service Provider and its Marketing Function, or affiliates and partners, may be necessary to:

- Provide standard-offer electric service pursuant to applicable jurisdictional statutes and rules;
- Suspend or restore service in response to emergency conditions;
- Provide tariffed electric services to any customer; or
- Provide applicable DER programs and tariffs.

¹ <https://www.ferc.gov/power-sales-and-markets/open-access-transmission-tariff-oatt-reform>

FERC Order No. 2222 Context

FERC Order No. 2222 identifies that Relevant Electric Retail Regulatory Authorities (RERRAs, retail regulators) have the role and opportunity to govern distribution-related issues arising from the interconnection and provision of bulk power services by DERs. FERC instructs *“each RTO/ISO to specify in its tariff, as part of the market rules on coordination between the RTO/ISO, the distributed energy resource aggregator, and the distribution utility, how each RTO/ISO will accommodate and incorporate voluntary relevant electric retail regulatory authority involvement in coordinating the participation of aggregated distributed energy resources in RTO/ISO markets.”*²

FERC also notes *“that possible roles and responsibilities of relevant electric retail regulatory authorities in coordinating the participation of distributed energy resource aggregations in RTO/ISO markets may include, but are not limited to: developing interconnection agreements and rules; developing local rules to ensure distribution system safety and reliability, data sharing, and/or metering and telemetry requirements; overseeing distribution utility review of distributed energy resource participation in aggregations; establishing rules for multi-use applications; and resolving disputes between distributed energy resource aggregators and distribution utilities over issues such as access to individual distributed energy resource data.”*

Additionally, FERC requires each RTO/ISO to incorporate in its tariff *“a standard market participation agreement that defines the distributed energy resource aggregator’s role and responsibilities and its relationship with the RTO/ISO this market participation agreement must include an attestation that the distributed energy resource aggregator’s aggregation is compliant with the tariffs and operating procedures of the distribution utilities and the rules and regulations of any relevant electric retail regulatory authority.”*³

A. RTO/ISO Compliance Proposals

RTO/ISO Order 2222 compliance proposals include specific potential Regulatory Authority governance aspects to consider, including several processes, rules, and adjudication of:

- Distribution interconnection of wholesale front-of-the-meter resources and participating behind-the-meter DERs;
- Adjudicating disputes in the wholesale market registration process between the DER Aggregator and the Distribution Service Provider;
- Reconciliation of DER multiuse participation and compensation at retail and wholesale;
- Governance of the operational relationship between the distribution utility, the DER Aggregator, and the component DER for purposes of physically dispatching DER Aggregation Resources and/or the component DER therein; and
- Governance of the conditions under which a Distribution Service Provider may override an ISO’s dispatch for purposes of preserving distribution system reliability and the ability to adjudicate disputes arising under that oversight.

As an example, PJM’s⁴ proposed compliance filing identified several key areas for consideration, including the following (PJM language in italics). Similar roles for retail regulators are identified in the other FERC Order No. 2222 compliance filings.

² FERC Order No. 2222, p. 245

³ FERC Order No. 2222, p. 264

⁴ PJM, Order No. 2222 Compliance Filing of PJM Interconnection, L.L.C., February 2022

- During the registration process, the responsibility for physically operating the Component DER within a DER Aggregation Resource and/or dispatching the DER Aggregation Resource will be assigned to the electric distribution company, the DER Aggregator, or another entity, in accordance with any applicable tariffs, agreements, and operating procedures of the electric distribution company, and/or the rules and regulations of any Relevant Electric Retail Regulatory Authority.
- Evidence of approval to interconnect, including but not limited to a finalized interconnection agreement, with the applicable Component DER, in accordance with any applicable tariffs, agreements, and operating procedures of the electric distribution company, and/or the rules and regulations of any Relevant Electric Retail Regulatory Authority, to the distribution system for identified megawatts, and identification of participation in an electric distribution company program that recognizes grid withdrawals and/or injections, including but not limited to a net energy metering program.
- PJM will not define how a distribution utility will override a DER Aggregation Resource or underlying Component DER, and the distribution utility can use their defined procedures and processes to do so. If a utility determines that overrides are necessary to maintain distribution safety, reliability, and power quality, they should have a documented explanation as to the reason for action for auditing purposes.
- In light of the Commission's [FERC] disclamation of jurisdiction over the physical interconnection of Component DER, and the DER Aggregator's mandatory attestation that they are and will remain in full compliance with local rules in their DAPSA, PJM believes that its proposed language provides the necessary latitude to the DER Aggregator, the distribution utility, and the RERRA, to specify with whom the responsibility for physical operation lies, and acknowledges whatever reasonable arrangement the parties agree to.
- PJM will require telemetry values for a DER Aggregation Resource, but will not require telemetry at the individual Component DER level. Instead, the telemetry values can either be an aggregate of telemetry from the individual Component DER, or calculated values for resource operations.
- RERRA option to directly influence and oversee the operational relationship between the distribution utility, the DER Aggregator, and the Component DER, for purposes of physically dispatching DER Aggregation Resources and the Component DER therein.
- RERRA option to oversee the conditions under which a distribution utility may override PJM's dispatch for purposes of preserving distribution system reliability and will have exclusive jurisdiction to adjudicate disputes arising under that oversight.
- DER Aggregators will still be responsible for fulfilling market obligations and will not be excused from penalties or deviations resulting from distribution utility override.

PJM also noted in its compliance filing that its stakeholder body raised the need to address potential conflicts of interest between distribution utilities and DER Aggregators. This is because FERC affirmed that *“market participation agreements for distributed energy resource aggregators should not preclude distribution utilities, cooperatives, or municipalities from aggregating distributed energy resources on their systems or even microgrids from participating in the RTO/ISO markets as a distributed energy resource aggregation.”*⁵

⁵ FERC Order No. 2222, p. 257

Open Distribution Access

The majority of U.S.-regulated utilities already are under existing applicable retail electric standard offer service, interconnection, and affiliate rules that enable access to distribution service. However, with the expansion of DER aggregation and the provision of wholesale services under FERC Order No. 2222 and for distribution grid services, it may be necessary to consider additional open access requirements for distribution utilities. It is recognized that each retail regulatory jurisdiction has a unique set of existing applicable rules. Some jurisdictions, such as New York, began to consider additional codes of conduct regarding DERs.⁶ However, it may be necessary to expand the scope of such codes given the wider use of DER services by wholesale markets and distribution utilities. As such, the principles and example guidelines provided in this paper are intended to facilitate consideration as to whether additional requirements may be necessary to achieve the respective objectives.

The following four categories to consider are adapted from the transmission standard of conduct associated with FERC's OATT.⁷ These are summarized below and discussed in more detail in the following sections.

- **Non-Discrimination.** A Distribution Service Provider should treat all distribution customers, affiliated and unaffiliated, on a non-discriminatory basis and should not make or grant any undue preference or advantage to any person or subject any person to any undue prejudice or disadvantage with respect to distribution service.
- **Independent Functioning.** A Distribution Service Provider's Distribution Function personnel should operate and make decisions independently of its Marketing Function personnel, unless permitted by the jurisdictional regulation.
- **No Conduit.** A Distribution Service Provider and its personnel, contractors, consultants, and agents are prohibited from disclosing, or using a conduit to disclose, non-public Distribution Function information to the Distribution Service Provider's Marketing Function personnel.
- **Transparency.** A Distribution Service Provider should provide equal access to public Distribution Function information to all its Distribution Function customers, affiliated and unaffiliated, as defined by jurisdictional regulation.

B. Non-Discrimination

In many cases, Distribution Service Providers already have statutory and/or regulatory rules requiring universal access, including interconnection of DERs, that do not allow discrimination. However, as the use of DER services expands under both FERC Order No. 2222 and retail regulation, there are additional aspects to consider to ensure non-discrimination. The following is an example of principles that may be considered in the development of additional non-discrimination guidelines.

Non-Discrimination Guidelines

Distribution Service Providers are obligated to provide fair and impartial treatment to all distribution customers, including prospective DER customers, in conducting any Distribution Functions. The basic list of obligations in the provision of distribution services, or related information, includes:

- Distribution Service Providers should apply all tariff provisions relating to the sale or purchase of distribution services, if the tariff provisions do not permit the use of discretion.
- Distribution Service Providers should apply all tariff provisions relating to the sale or purchase of

⁶ New York Public Service Commission, Order Setting Standards for Codes of Conduct, September 15, 2016

⁷ FERC Order No. 717, Standards of Conduct for Transmission Providers

distribution service in a fair and impartial manner that treats all distribution customers in a non-discriminatory manner if the tariff provisions permit the use of discretion.

- Distribution Service Providers may not, through their tariffs or otherwise, give undue preference to any customer, internal organization, or external entity in matters relating to the sale or purchase of distribution services or grid services (including, but not limited to, issues of price, curtailments, scheduling, and priority of dispatch).
- Distribution Service Providers should provide all electric suppliers access to their distribution system in a non-discriminatory manner. If a Distribution Service Provider offers supply, capacity, services, or information to its marketing and/or generation entities, affiliates, or partners, it should contemporaneously make the offering available to all electric Distribution Service Provider customers, except as statute or regulation allows.
- Distribution Service Providers should process requests for similar services in the same manner and within the same time for its generation entities, affiliates, or partners, and for all other electric suppliers and their respective customers, and should not give preference of any kind to its marketing and generation entities, affiliates, and partners or their customers.

C. Independent Functioning

Given that distribution utilities may directly develop or contract for DER aggregations, there is the potential for a conflict of interest to arise when evaluating independent DER or DER aggregation participation and operation in wholesale markets and/or distribution grid services. It may be beneficial as the scale of DER services increases to consider creating a functional separation of “marketing” (i.e., utility and affiliate customer programs and DER services provision) functions from distribution grid planning and operations. This is similar to the functional separation between transmission operations and market functions that transmission-owning utilities already comply with under the FERC OATT. The following are examples of principles that may be considered in the development of additional non-discrimination guidelines.

Independent Functioning Guidelines

Except as permitted in this part or otherwise permitted by Regulatory Authority order, a Distribution Service Provider’s Distribution Function personnel should operate independently of its Marketing Function personnel. The separation of functions includes:

- Distribution Service Providers should be prohibited from permitting their Marketing Function personnel to:
 - Conduct Distribution Functions; or
 - Have access to the system control center or similar facilities used for distribution operations that differs in any way from the access available to other distribution customers, inclusive of DER developers and aggregators.
- Distribution Service Providers should be prohibited from permitting their Distribution Function personnel to conduct Marketing Functions.
- Distribution Service Providers may share administrative (e.g., accounting, human resources) or information technology personnel with their marketing organization. Careful consideration should be given regarding how shared administrative personnel may support or interact with day-to-day activities associated with either Marketing Functions or Distribution Functions.

Prohibition on Preferential Access to Control Centers

Marketing Function personnel should not have preferential access over that of other distribution customers to a Distribution Service Provider’s system control centers or similar facilities used for

Distribution Functions. Distribution Service Providers' system control centers, distribution planning departments, distribution engineering departments, and distribution dispatch centers should be located in facilities that are physically separate from the facilities where Marketing Function personnel work.

Information Security Systems

It is also important to consider the need for separate access to information and communication systems supporting Distribution Functions and Marketing Functions. This includes automated and manual information security administration tools, which should be employed to prevent unauthorized systems access. In addition, a Distribution Service Provider should functionally separate its internal network for the Distribution Function from its intranet locations to which Marketing Function personnel have access.

D. No Conduit

In addition to functional separation, there is a corresponding need to avoid the exchange of non-public grid planning and/or operational information between utility employees and contractors that may disadvantage non-utility DER aggregation. The following "no conduit" guidelines are also adapted from utility transmission standard of conduct compliance filings.⁸

No Conduit Guidelines

Distribution Service Providers should be prohibited from using anyone as a conduit for the disclosure of non-public Distribution Function information to its Marketing Function personnel.

- Distribution Function personnel, contractors, consultants, or agents should be prohibited from disclosing to utility Marketing Function personnel any non-public Distribution Function information that is not at the same time available to the general public without restriction.
- Other utility personnel, contractors, consultants, or agents should be prohibited from serving as conduits for the disclosure of such information to Marketing Function personnel.

Meeting Controls

Meeting organizers have a responsibility to avoid violations of the independent functioning requirement described above when conducting meetings. Prior to organizing any meeting at which Marketing or Distribution Functions may be discussed, the meeting organizer should determine whether Marketing and/or Distribution Function personnel would be attending the meeting.

- If both Marketing and Distribution Function personnel are invited to attend the meeting, the meeting organizer should verify whether Marketing or Distribution Functions will be discussed.
- If Marketing or Distribution Functions will be the sole topic of the meeting, the meeting organizer should exclude from the list of invitees any personnel performing the opposite function. For example:
 - Meetings to discuss employee benefits could include both Marketing and Distribution Function personnel.
 - Meetings to discuss solely the utility's Marketing Functions should not include Distribution Function personnel.
- If Distribution Functions will be discussed for a portion of the meeting, the meeting organizer should start the meeting with a DSoC warning and ensure that no Marketing Function personnel are present while Distribution Functions are discussed.

⁸ Otter Tail Power Company, FERC Standards of Conduct Implementation Plan, Version 2.4. January 1, 2023

Transparency

Distribution open access for DER aggregation is fundamental to the expanded utilization of DERs for wholesale and distribution benefits. A key aspect is a transparent process for customers, DER aggregator, other stakeholders, and the Regulatory Authority to ensure compliance with regulatory requirements. Additionally, the Regulatory Authority has associated open-access governance responsibilities that should be supported.

Transparency Guidelines

Distribution Service Providers should post written procedures regarding the implementation of their DSoC on their public website. Additionally, there is important organizational information that provides clarity on the No Conduit principle in practice. As such, the following information adapted from FERC's SoC⁹ should be considered for posting on the Distribution Service Provider's public website:

- A complete list of the facilities shared by any of the Distribution Service Provider's Distribution Function personnel and Marketing Function personnel. The list should include the types of facilities shared and the addresses of the facilities.
- Names and addresses of all of the Distribution Service Provider's affiliates, partner organizations, and/or contractors that employ or retain Marketing Function personnel.

The following information should be provided to the Regulatory Authority:

- The job titles and job descriptions of its Distribution Function personnel.
- Notices regarding any transfer of a Distribution Function employee to a position as a Marketing Function employee or any transfer of a Marketing Function employee to a position as a Distribution Function employee. No such job transfer should be used to circumvent a DSoC. The information posted should include:
 - The name of the transferring employee,
 - The respective titles held while performing each function (i.e., as a Distribution Function employee and as a Marketing Function employee), and
 - The effective date of the transfer.

Disclosures

In the event that non-public Distribution Function information is disclosed to Marketing Function personnel under the No Conduit exclusions above, the personnel making such disclosure should make and retain a record of the exchange, except in emergency circumstances in which case a record should be made of the exchange as soon as practicable after the fact and reported to the Regulatory Authority.

If a Distribution Service Provider discloses non-public distribution or customer information or any other information that a Regulatory Authority has determined is subject to limited dissemination, the Distribution Service Provider should immediately post a notice on its website that the information was disclosed, except in emergency circumstances in which case the notice should be posted as soon as practicable after the fact.

A Distribution Service Provider should promptly post on its public website notice of each waiver of a tariff provision that it grants in favor of its Marketing Function, affiliate, or contractor unless such waiver has been approved by the Regulatory Authority. The Distribution Service Provider should also maintain a log of all waivers and should make it available to the Regulatory Authority upon request.

⁹ FERC Order No. 717

F. Exclusions

A number of practical exclusions should be considered to ensure effective customer service and distribution operations. The following list of exclusions is proposed:

- **Exclusion for Marketing Affiliate Distribution Requests.** A Distribution Service Provider may disclose non-public distribution information to its marketing organization or an affiliate or partner if it relates solely to that entity's specific request for distribution service. The transaction-specific exemption includes communications related to distribution service agreements, specific interconnections, and new infrastructure needed for the specific request.
- **Exclusion for Customer Consent Regarding Market Information.** A Distribution Service Provider may disclose a distribution customer's non-public information to Marketing Function personnel or affiliate or partner when the unaffiliated distribution customer from whom the information was obtained has voluntarily consented in writing to such disclosure.
- **Exclusion for Reliability Standards Compliance.** Non-public Distribution Function information pertaining to compliance with reliability standards approved by applicable statute and/or regulation may be shared with Marketing Function personnel provided that such information sharing is limited to legitimate business needs to facilitate compliance with reliability standards.
- **Exclusion for Emergency Operations.** Non-public Distribution Function information necessary to maintain or restore operation of the distribution system, generating units, or storage systems, or data that may affect the dispatch of DERs, may be shared with Marketing Function personnel. During these circumstances, personnel engaged in distribution system operations or reliability functions should take whatever steps are necessary to maintain system reliability during an emergency, notwithstanding that this could otherwise constitute a violation of the DSoC.

G. Compliance Procedures

The Regulatory Authority would have governance responsibility over the conduct of the Distribution Service Providers in compliance with any additional open-access requirements as outlined above. In support of effective compliance and oversight, a set of compliance procedures should be considered that may expand existing open-access compliance requirements for Distribution Service Providers. The following aspects are offered for consideration.

Compliance Plan

A Distribution Service Provider should be in full compliance with a DSoC on the date ordered by the applicable Regulatory Authority. This would be evidenced by a Distribution Service Provider filing with the Regulatory Authority, for review and approval, a compliance plan demonstrating that there are adequate procedures in place that adhere to the DSoC and ensure access to its distribution and distribution facilities is provided on a nondiscriminatory basis.

The Distribution Service Provider's compliance plan should demonstrate both compliance measures and written procedures implemented by the Distribution Service Provider to ensure that DSoC requirements are observed by its Distribution Function personnel, its Marketing Function personnel, and those of any affiliates and contractors. The compliance plan should identify the chief compliance officer (CCO), who will be responsible for DSoC compliance. The Distribution Service Provider should also post the name of the CCO and provide their contact information on its public website.

Training

The Distribution Service Provider should distribute the written procedures to all its Distribution Function personnel, Marketing Function personnel, officers, directors, supervisory personnel, and any other

personnel and contractors likely to become privy to Distribution Function information. The Distribution Service Provider should also provide annual training on the DSoC to all the Distribution Function and Marketing Function personnel, including contractors. The Distribution Service Provider should provide training on the DSoC to new personnel in these functions, promptly upon their employment. The Distribution Service Provider should require each employee who has taken the training to certify electronically or in writing that they completed the training.

Reporting

Distribution Function information to be reported and posted to the Distribution Service Provider's public website includes:

- Distribution service information and tariffs;
- Distribution information regarding grid services opportunities, including available procurements, tariffs, and programs;
- Available distribution capability information (e.g., hosting capacity);
- DER interconnection requirements, process flow, application, and status information;
- Relevant distribution engineering standards;
- Information related to the status of distribution service requests;
- Outage information, including planned or unplanned outages, expected outage duration, and number of customers affected; and
- DER curtailment information, including resource type and capacity curtailed.

Recordkeeping

A Distribution Service Provider should maintain contemporaneous records documenting all tariffed and non-tariffed transactions with its Marketing Function and/or affiliates or contractors, including, but not limited to, all waivers of tariff or contract provisions and any DSoC exceptions that can be perceived as discriminatory. The records should reflect, at a minimum, the name of the other party to the transaction or information exchange, a description of the waiver or exception, and the time period, terms, and conditions of any waiver. The Distribution Service Provider should maintain such records for a period of time determined by the applicable Regulatory Authority or another government agency. The Distribution Service Provider should make such records available for review by the Regulatory Authority and others designated by the Regulatory Authority upon reasonable notice. All records maintained should also conform to all applicable regulations.

Enforcement Proceedings

If a Regulatory Authority has reason to believe a DSoC violation has occurred, either based on its own assessment or a complaint received, it should investigate. A Regulatory Authority should have the power to investigate after notice and opportunity for a public hearing. If it finds a violation occurred, it should be able to enter any orders as may be in the public interest to appropriately enforce the DSoC within the Regulatory Authority's statutory authority.

Conclusion

Most regulated utilities in the United States are already required to provide open, non-discriminatory access to distribution services under existing statutes and rules. However, the expanding use of DERs by the distribution utilities themselves, customers, and independent aggregators is creating a new set of access issues to consider. This is especially important in those jurisdictions that will involve the

implementation of FERC Order No. 2222.

FERC Order No. 2222 creates new requirements for Distribution Service Providers in the evaluation of eligibility and technical ability for wholesale market participation. Additionally, Order No. 2222 recognizes that distribution system conditions may require the distribution operator to curtail certain DER aggregation from market participation. In each of these cases, it is essential that Distribution Service Providers make decisions in a transparent, non-discriminatory fashion. A DSoC, as discussed, may be beneficial to ensure open access and effective governance that complements the anticipated new responsibilities that Regulatory Authorities have under the various proposed Order 2222 compliance filings.

Regulatory Authorities in areas implementing Order No. 2222 are encouraged to revisit their existing rules regarding distribution access and interconnection and any affiliate rules. Upon review, it may be necessary to consider additional requirements as outlined above based on FERC's OATT. In many cases, utilities within wholesale markets complying with Order No. 2222 will already comply with the OATT's standard of conduct.¹⁰ As such, the expansion of additional open-access requirements for distribution may not be overly burdensome.

We recommend starting now to evaluate the need for additional open-access requirements, such as a DSoC, as most of the Order 2222 compliance plans propose implementation by 2026. Open-access considerations should be addressed as part of the overall Regulatory Authority's evaluation of the new potential governance roles identified by Order No. 2222 and the respective ISO/RTO compliance filings.

¹⁰ Another example is: San Diego Gas & Electric Company, FERC Standards of Conduct Procedures & Compliance Plan, 2022