

**ORIGINAL**

STATE OF INDIANA

Commissioner	Yes	No	Not Participating
Huston	√		
Bennett	√		
Freeman	√		
Veleta	√		
Ziegner			√

**INDIANA UTILITY REGULATORY COMMISSION**

**IN THE MATTER OF THE INDIANA UTILITY )  
REGULATORY COMMISSION’S INVESTIGATION ) CAUSE NO. 46043  
INTO THE PUBLIC UTILITY STATUS OF )  
DISTRIBUTED ENERGY RESOURCE ) APPROVED: APR 17 2024  
AGGREGATORS )**

**ORDER OF THE COMMISSION**

**Presiding Officers:**

**James F. Huston, Chairman**

**Loraine L. Seyfried, Chief Administrative Law Judge**

On September 17, 2020, the Federal Energy Regulatory Commission (“FERC”) issued Order 2222<sup>1</sup> (“Order 2222”), revising its rules and requiring regional transmission organizations (“RTOs”) to allow participation of distributed energy resources (“DERs”) in the wholesale electricity markets through DER aggregators and aggregations.<sup>2</sup> FERC’s rule revision is intended to enable DERs to participate alongside traditional resources in RTO wholesale electricity markets through aggregations, with the DER aggregator serving as the aggregation’s wholesale market participant, allowing several types of DERs to aggregate in order to satisfy minimum size and performance requirements that each individual DER might not be able to meet on its own.

In 2022, Ind. Code ch. 8-1-40.1 was enacted, explicitly providing the Indiana Utility Regulatory Commission (“Commission”) with general rulemaking authority to implement Order 2222 and allowing the Commission to amend its interconnection and net metering rules as may be necessary to implement Order 2222.<sup>3</sup> Thus, the Commission may develop a rule or rules to ensure appropriate participation of the DER aggregators in the wholesale markets as envisioned by Order 2222. However, Ind. Code ch. 8-1-40.1 does not define a “public utility” or address the public utility status of a DER aggregator. Therefore, to facilitate rule development, the Commission finds it appropriate to initiate this investigation to review and consider the public utility status of a DER aggregator.<sup>4</sup>

**1. Commission Jurisdiction and Notice.** The Commission is authorized under Ind. Code § 8-1-2-58 to summarily initiate an investigation into all matters relating to any public utility. If the Commission becomes satisfied that sufficient grounds exist to warrant a hearing pertinent to the matters investigated, Ind. Code § 8-1-2-59 requires the public utility involved be furnished a statement notifying it of the matters under investigation. In addition to the foregoing statutory provisions, the Indiana Court of Appeals has specifically found that inherent in this grant of power is the implicit power and authority to “do that which is necessary to effectuate the regulatory scheme.” *S. E. Ind. Nat. Gas v. Ingram*, 617 N.E.2d 943, 948 (Ind. Ct. App. 1993). The Commission also has the authority to determine whether a

<sup>1</sup> 172 FERC ¶ 61,247

<sup>2</sup> 18 CFR 35.28, adding paragraphs (b)(10)-(11) and (g)(12)(i)-(iv)

<sup>3</sup> Ind. Code §§ 8-1-40.1-4 and -5

<sup>4</sup> Such determination will govern how and who the Commission regulates in any wholesale market participation rule to be developed.

person or entity is a public utility under Indiana law. *Hidden Valley Lake Property Owners Assoc. v. HVL Utilities, Inc.*, 408 N.E.2d 622, 629 (Ind. App. 1980). Accordingly, the Commission has jurisdiction to conduct this investigation.

The Commission finds that notice of this investigation should be provided to all known potential DER aggregators and Indiana’s jurisdictional rate-regulated electric utilities. Accordingly, notice of this investigation shall be provided to those entities that have participated in the Commission’s roundtable meetings concerning implementation of Order 2222.

**2. Commission Testimonial Staff and Parties.** As this investigation will consider the public utility status of DER aggregators, and in accordance with Ind. Code § 8-1-2-51, we find that consideration and determination of this issue can be done most effectively through the designation of Commission testimonial staff with representation by the Commission’s Office of General Counsel. The Commission designates Ren Norman, Senior Utility Analyst in the Research, Policy, and Planning Division, as testimonial staff.

The Indiana Office of Utility Consumer Counselor also should be included as a party and participate in this proceeding pursuant to Ind. Code § 8-1-1-5 and Ind. Code ch. 8-1-1.1. In addition, the Commission encourages those with a substantial interest in the subject matter of this investigation, including potential DER aggregators, to seek intervention in accordance with 170 IAC 1-1.1-11.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. An investigation is commenced to allow the Commission to consider the public utility status of DER aggregators.
2. A preliminary hearing and prehearing conference to determine a procedural schedule for this investigation is scheduled for 1:30 p.m. on May 22, 2024 in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana.
3. This Order shall be effective on and after the date of its approval.

**HUSTON, BENNETT, FREEMAN, AND VELETA CONCUR; ZIEGNER ABSENT:**

**APPROVED: APR 17 2024**

**I hereby certify that the above is a true and correct copy of the Order as approved.**

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**Dana Kosco**  
**Secretary of the Commission**