

United States Senate
WASHINGTON, DC 20510

May 7, 2019

The Honorable Neil Chatterjee
Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators, Docket No. RM18-9-000 (notice of proposed rulemaking)

Dear Chairman Chatterjee:

As you are aware, in February 2018, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 841) that requires Commission-regulated regional transmission organizations (RTOs) and independent system operators (ISOs) to have wholesale market rules that allow the participation of electric storage resources. Concurrently, the Commission established a separate rulemaking (Commission Docket No. RM18-9-000) to consider rule changes to encourage participation in these wholesale markets by aggregators of distributed energy resources (DERs). Further, the Commission held a conference and received written comments before taking final action on this proposal. We write to express our concerns and to urge you to preserve state and local authorities over distribution utilities with respect to DER aggregators.

The Commission's proposal defines DERs as "any source or sink of power that is located on a distribution system, any subsystem thereof, or behind a customer meter, including electric storage resources, distributed generation, thermal storage, or electric vehicles and their supply equipment." While we understand that the Commission has exclusive jurisdiction to regulate wholesale sales of electricity, we share the concerns of state regulators, public power and rural utility providers that the final rule could have a negative effect on state and local authorities' ability to regulate retail and distribution service. Therefore, we respectfully encourage the Commission not to adopt any final rule that would authorize the aggregation of such resources by entities other than the local distribution utility without authorization by the appropriate state or local regulator. Doing so would break with precedent and expand Commission regulation into areas that are jurisdictional to states and localities under the Federal Power Act.

Before third-party DER aggregators can participate in wholesale markets, industry must address many complex technical questions and make substantial investments in supporting infrastructure. As such, RTOs and ISOs would need to coordinate with local distribution utilities in new ways, and local utilities would need to take action to protect their ability to continue to provide safe, reliable, and affordable electric services to the communities they serve. For this reason and others, we believe that the “relevant electric retail regulatory authority,” be it 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 DER aggregators to transact with retail consumers.

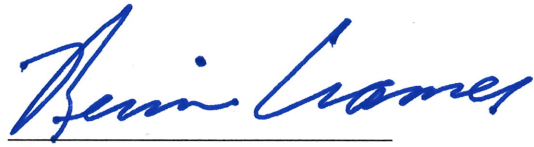
We urge you to ensure that in any final rule in the pending DER aggregation rulemaking you preserve the authority of state and local authorities over distribution utilities with respect to DER aggregators. Although Order No. 841 does not address DER aggregators themselves, it does adopt rules governing wholesale market participation by “behind-the-meter” and other electric storage resources on local utility distribution systems that might be aggregated for this purpose under the Commission’s pending proposal. Order No. 841, however, does not adopt language like that in Commission Orders 719 and 719-A enabling the “relevant electric retail regulatory authority” to decide these important questions.

Thank you for considering our request and we look forward to your response regarding the aforementioned precedent when creating rules for electric storage resources and DER aggregators.

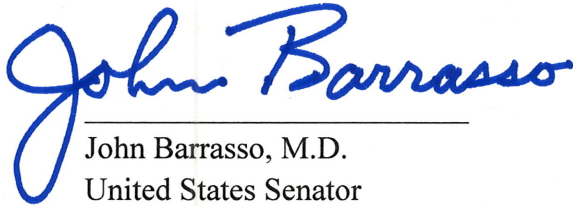
Sincerely,



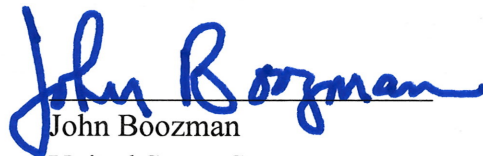
John Hoeven
United States Senator



Kevin Cramer
United States Senator



John Barrasso, M.D.
United States Senator



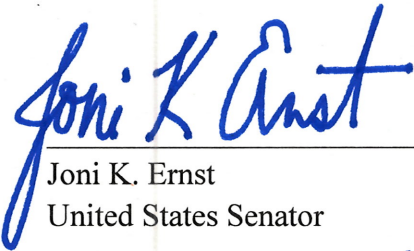
John Boozman
United States Senator



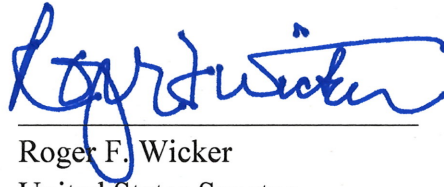
Lisa Murkowski
United States Senator



Michael B. Enzi
United States Senator



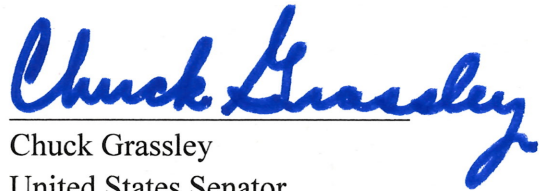
Joni K. Ernst
United States Senator



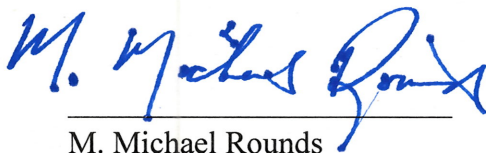
Roger F. Wicker
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Shelley Moore Capito
United States Senator



Chuck Grassley
United States Senator



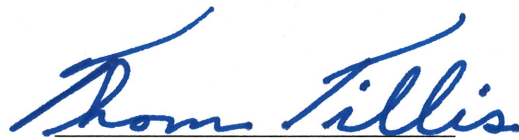
M. Michael Rounds
United States Senator



Steve Daines
United States Senator



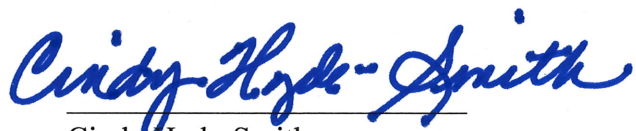
John Thune
United States Senator



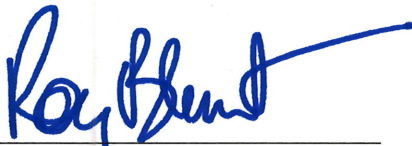
Thom Tillis
United States Senator



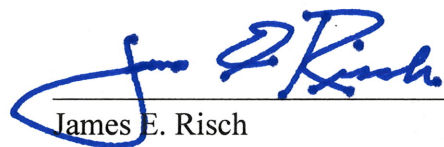
Mike Crapo
United States Senator



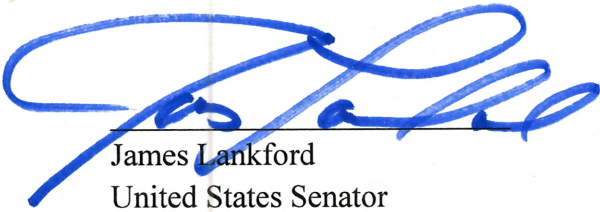
Cindy Hyde-Smith
United States Senator



Roy Blunt
United States Senator



James E. Risch
United States Senator



James Lankford
United States Senator



Deb Fischer
United States Senator



James M. Inhofe
United States Senator



Bill Cassidy, M.D.
United States Senator

cc:

Commissioner Cheryl A. LaFleur
Commissioner Richard Glick
Commissioner Bernard L. McNamee