**NAESB EXECUTIVE COMMITTEE**

# COMMENTS OF SOUTHERN CALIFORNIA EDISON COMPANY ON THE BASE CONTRACT FOR SALE AND PURCHASE OF DISTRIBUTION SERVICES FROM DER AGGREGATIONS

Pursuant to the September 12, 2024 Press Release, Southern California Edison Company ("SCE") welcomes the opportunity to submit comments to the Executive Committee of the North American Energy Standards Board ("NAESB") on the Base Contract for Sale and Purchase of Distribution Services from DER Aggregations ("DSC").[1] The DSC is a model contract that allows for Distribution Service Providers ("DSPs") to sell "Distribution Services" to "Distribution System Operators" ("DSOs"). The problem is that Distribution Services encompasses two entirely different sets of products. Given the definition of Distribution Services, the DSC is a contract for both: 1) wholesale sales of Federal Energy Regulatory Commission ("FERC")-jurisdictional products; and 2) sales of state/local-jurisdictional products intended to enhance a distribution system. SCE understands that it was NAESB's intent **only** to address the latter sales, which may explain why the DSC appears to pay no heed to the jurisdiction of FERC or to the foundational model behind regional transmission organizations and independent system operators ("RTOs/ISOs").[2]

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[1] The DSC is labelled "WEQ/RMQ BPS Recommendation – R24001 – Attachment 1."

[2] Given the discussion in the NAESB Press Release of Order No. 2222, and the general absence of DER aggregation programs outside of RTOs/ISOs, SCE assume that the DSC is intended for DSOs and DSPs in RTOs/ISOs. The issue of use of the DSC by DSOs/DSPs in non-RTO/ISO regions is mentioned in Section III. Additionally, for simplicity, DSOs are assumed to state-regulated in the remainder of the Comments.

SCE recognize that the Department of Energy ("DOE") initiated a set of projects, one of which was to have NAESB draft the DSC. But the DSC was not intended to be a contract for wholesale sales subject to FERC's jurisdiction. FERC's jurisdiction[3] over wholesale sales of certain products is not limited to resources located on the bulk power system, but extends even to certain products sold from distribution-connected resources located behind a retail meter.[4] The DSC seem to equate its defined term "Distribution Services" with non-wholesale (and thus, non-FERC-jurisdictional sales). *See* Section I. The result is a DSC that is broad in scope, encompassing sales of FERC-jurisdictional products, rather than being focused, as evidently intended, only on sales of non-wholesale, non-FERC-jurisdictional products. *See* Section II. As a result, the DSC undermines Order No. 2222.[5] *Id.* The DSC should be narrowed considerably to address sales of "grid distribution services" that could not be sold to RTOs/ISOs under Order No. 2222, but only to DSOs, and which sales would not be subject to FERC jurisdiction. *See* Section III.

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[3] For simplicity, these comments assume a DSP is not a qualifying facility ("QF"), as defined by the Public Utility Regulatory Policies Act ("PURPA"), or a state or local government entity exempt from FERC regulation under Federal Power Act ("FPA") Section 201(f). There is no evidence that the DSC was intended as a contract solely for use by QFs or governmental entities.

[4] FERC regulations and policies such as its PURPA regulations, Order No. 2222, and FERC's position on net energy metering, mitigate the impacts of such reach, allowing retail customers and distributed energy resources ("DERs") to sell products at wholesale subject to minimal or no federal regulation.

[5] *Participation of Distributed Energy Res. Aggregations in Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, Order No. 2222, 172 FERC ¶ 61,247 (2020), *order on reh'g*, Order No. 2222-A, 174 FERC ¶ 61,197, *order on reh'g*, Order No. 2222-B, 175 FERC ¶ 61,227 (2021).

## I. THE DSC WAS NEVER INTENDED TO ADDRESS SALES OF WHOLESALE/FERC-JURISDICTIONAL PDODUCTS

As discussed in NAESB's February 5, 2024 Press Release, at the request of the DOE, NAESB held a kick-off meeting for the development of a standardized model contract to facilitate the acquisition of distribution services from DER aggregations (i.e., DSPs). The request was supportive of the DOE's activities to work with the electric industry to identify challenges and proactively address grid transformation issues as part of the DOE's Distribution Grid Transformation Program ("DOE Distribution Program"). The key document related to the DOE Distribution Program's model contract is the November 2023 DOE paper entitled "Standard Distribution Services Contract" ("Standard DSC Paper"). This document, which outlined the purpose of what would become the DSC, stated:

> This paper focuses on the distribution services contract between an electric distribution utility (utility) and an aggregator. **As such, this paper does not address wholesale market tariffs/contracts**, contracting between aggregators and customers, or contracts between utilities and DER program administrators.[6]

Emphasis added. The document also stated "[t]his distribution services contract (DSC) is an agreement between the distribution utility and aggregators for the provision of **distribution grid services**." Emphasis added.[7] In sum, DOE indicated quite clearly to

[6] Standard DSC Paper at 4.

[7] The definition of distribution grid services was not contained in the Standard DSC Paper itself. Another DOE document, "Bulk Power, Distribution, and Grid Edge Services Definitions," dated November 2023 ("DOE Definitions Paper"), indicated that the DOE

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NAESB that it was looking for a contract that: 1) would not include any wholesale sales (which are, by definition, made in wholesale markets); and 2) would be for "distribution gird services."[8] A kick-off call confirmed that the DSC was not for FERC-jurisdictional products. Thus, the term "distribution grid services" as used herein refers to products that FERC would not assert jurisdiction over if sold to a DSO because their purpose is to enhance distribution system operations, reliability, or resilience.

When NAESB held its kick-off call on the DSC, the undersigned and several other persons with FERC regulatory expertise participated in the call. The draft documents available prior to the call included sales of energy and other services by a DER Aggregator (called a DSP under the DSC) to a DSO.[9] I.e., the caveat that the DSC would **not** be for wholesale markets (and thus not for sales of FERC-jurisdictional products) had already been violated. Several call-in participants clarified any sales of energy would be at wholesale and that FERC jurisdiction extended to wholesale sales made by DERs or

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understood that various products were associated with the Bulk Power System and others with Distribution Systems, or both systems.

[8] Given that the DOE Definitions Paper and the DSC do not mention demand response and the maturity of the demand response markets (both DSO programs and RTO/ISO programs), SCE assumes that the DSC is not intended to replace any existing contracts for the sale of demand response by DSPs to DSOs, where aggregation of demand response is permitted. Whether DSPs can aggregate demand response to participate in state-jurisdictional programs, is a state matter. Whether states must allow DSPs to aggregate DERs to participate in FERC-jurisdictional demand response programs is an open issue at FERC. *See* FERC Docket No. ER21-14.

[9] SCE uses "DSP" and "DSO" rather than more familiar terms, to reflect the DSC terminology. However, these comments use DER, rather than "Resource" (the equivalent term in the DSC for distributed energy resources) to refer to distributed energy resources.

DSPs to DSOs.[10] **The participants in the first meeting appeared to be in agreement that FERC-jurisdictional products were not intended to be sold under the contract being drafted**. This consensus caused the undersigned, and presumably others, to decide they had no reason to participate in the NAESB DSC-drafting process.

Now, many months later, a DSC has emerged that is unquestionably for wholesale sales of products that are FERC-jurisdictional when sold by a DSP to a DSO as well as for sales of non-FERC-jurisdictional "distribution grid services." In short, the jurisdictional warnings were not heeded. There was evidently a misunderstanding that if products are produced by DERs, aggregated by a DSP, and sold to a DSO, no wholesale sale occurs (and no FERC jurisdiction could attach). In short, the DSC is written as if "what happens on the distribution system stays on the distribution system."

Given that the DOE's Standard DSC Paper indicated that wholesale markets were not to be covered by the DSC, it appears that the drafters failed to recognize that the concept of "wholesale" has nothing to do with "distribution." A wholesale sale simply means a sale for resale. FPA Section 201(d) states that the term "sale of electric energy at wholesale" … "means a sale of electric energy to any person for resale." Wholesale sales (whether bilateral or to an ISO/RTO) occur in wholesale markets. FERC's jurisdiction over energy and related products has nothing to do with the location of the

[10] Under Order No. 2222, DERs in a DER Aggregation are exempted from FERC regulation because the DER Aggregator takes on such responsibility. In contrast, a DER not in an aggregation selling at wholesale would be regulated by FERC. Again, for simplicity, a DER/DSP is assumed not to be a QF, but even QF DERs/DSPs making wholesale sales are still regulated by FERC for certain purposes.

source of the product or whether the wholesale customer is an ISO/RTO. Indeed, if energy from resources located on the distribution system were not subject to FERC jurisdiction when sold at wholesale, the **entire** jurisdictional basis for FERC Order No. 2222 and the part of Order No. 841 allowing for distributed storage market participation would crumble.[11] This erroneous notion – that "Distribution Services" and "wholesale" – are exclusive categories permeates the DSC, which never even mentions FERC.

SCE would like to believe that this mistake was innocent, as FERC jurisdiction is a complex and confusing topic.[12] The only alternative narrative is that there is an intentional desire to limit the scope of FERC jurisdiction. Those who would prefer to limit FERC jurisdiction, such that FERC cannot regulate any wholesale activity on the distribution system,[13] or who argue that load contractually served by DERs does not rely on the transmission grid or balancing area operator, could destroy the economics of RTOs and ISOs.[14] Insisting **everything** "behind" transmission-distribution substations is subject to a state regulatory scheme and everything "beyond" such substations subject to

[11] If such sales were not sales for resale subject to FERC jurisdiction, the state commissions that opposed DER participation in both programs could have just disallowed such sales by DERs, as the sales would be state-jurisdictional.

[12] As reflected in FERC Docket No. ER24-1177, the Maine PUC recently accepted a wholesale distribution rate schedule before realizing that such service was FERC-jurisdictional, requiring the utility to refile the wholesale distribution rate schedule at FERC.

[13] Some use the concept of interstate versus intrastate commerce to argue that FERC jurisdiction should be considerably more narrow, but FERC precedent does not reflect this narrow reading.

[14] Indeed, from the very inception of the CAISO, SCE witnessed first hand as Enron tried to twist utility-filed wholesale distribution tariffs into a tool that customers could use to evade paying for any CAISO services. *Pacific Gas and Elec. Co.,* 100 FERC ¶ 61,156, *reh'g denied*, 101 FERC ¶ 61,151 (2002).

the FERC regulatory regime, is a recipe for chaos. Such a view of FERC jurisdiction could be both a death knell for RTOs/ISOs and would require the unwinding of decades worth of FERC-filed contracts and tariffs.

## II. THE DSC IS NOT LIMITED TO DISTRIBUTION GRID SERVICES BUT INCLUDES WITHIN ITS SCOPE WHOLESALE SALES OF FERC-JURISDICTIONAL PRODUCTS

### A. Background on the DSC

The DS Contract is a vehicle for sales from DSPs to DSOs.[15] A DSO is virtually always a state-regulated monopolist, being the one and only entity that provides what the industry refers to as "distribution service" [16] i.e., the service of delivering energy over its distribution facilities to or from wholesale and retail customers connected to its distribution facilities. Of course, distribution service is sometimes sold at wholesale and thus is not always state-jurisdictional,[17] illustrating the fundamental flaw in the DSC, which assumed the mere label "Distribution Service" equaled "not wholesale" and/or "not FERC-jurisdictional."

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[15] The DSC appropriately defines DSO as "any utility that owns, operates, or controls facilities used for the distribution of electric energy." That said, DSO is more routinely referred to in the industry by the following terms, not by the term DSO: electric distribution company, utility distribution company, distribution utility, distribution provider, distribution owner, or local distribution company. In fact, DSO, to the extent used in the industry today, often refers to an entity that does not exist yet, an **independent** entity that operates the distribution system of a distribution system owner.

[16] When lower-cased, "distribution service" will refer to what the industry calls distribution service and not Distribution Services as defined in the DSC, which is a host of services not one of which is "distribution service," as the industry commonly uses the term.

[17] As discussed above, the Maine PUC just recently agreed with this proposition about thirty years after FERC first claimed jurisdiction over wholesale distribution service in *Tex-La Elec. Co-op, Inc.*, 67 FERC ¶ 61,019 (1994).

Because only DSOs deliver product(s) on distribution systems, the DSC's definition of DSP – "aggregator or third-party that is Delivering the Distribution Services to a DSO from one or more Resources" – is confusing. The DSP is not "delivering" a product, as the word deliver is commonly understood in the electric industry.[18] Rather, DSPs are selling products that they aggregate, as that is the role of an aggregator.[19]

Under the DSC, DSPs may sell "Distribution Services" to DSOs, which are defined as:

> the services offered by the Seller to the Buyer as further defined by the parties in the Transaction Confirmation. Examples include, but are not limited to, blackstart, voltage-reactive power, distribution capacity, energy, frequency response, power quality regulation, reserve, resilience, or voltage management.

It is unclear if the services listed are called Distribution Services for **any** other reason than the DERs producing the products would be located on a DSO's distribution system. Again, it appears that there may have been a mistaken belief that calling something "distribution" equates to "non-wholesale" and that FERC jurisdiction is thus avoided.

In order to best illustrate the overlap between services that are FERC-jurisdictional when sold at wholesale (i.e., from a DSP to a DSO), an Appendix A has been included defining the products that appear in the DSC and those that appear in FERC's Electric

[18] "Deliver" is circularly defined in the DSC as a "Seller's delivery to Buyer of the DSC Capability as agreed to by the parties in a transaction."

[19] *See EnergyConnect, Inc.,* 130 FERC ¶ 61,031 at PP 1, 29 (2010); Order No. 2222 at P 40.

Quarterly Report Data Dictionary.[20] Unfortunately, some of the DSC's product names are rather vague, as they are all undefined, but SCE has matched the product names, as best as it could, to a DOE-defined product (using the DOE Definitions Paper), and then used the DOE definitions of the same or similar terms. The result shows that, at best, four[21] of ten listed Distribution Services, could correctly be categorized as distribution grid services and would be appropriate for a contract where the intent was no wholesale, FERC-jurisdictional sales.

### B. FERC Has Consistently Ruled that a Sale by a DER to a DSO or by a DSP to a DSO Is Wholesale, FERC-Jurisdictional Sale, Such that Sales of Most of the "Distribution Services" to a DSO Would Fall Under FERC's Jurisdiction

As Section II.A.1 makes evident, many of the products for sale under the DSC are products whose sale FERC identifies as subject to its jurisdiction when sold at wholesale. Case law supporting the reach of FERC jurisdiction over wholesale sales is discussed below.

[20] The EQR Data Dictionary is posted by FERC at: https://www.ferc.gov/power-sales-and-markets/electric-quarterly-reports-eqr.

[21] The four products are (Distribution) Voltage Reactive Power; Distribution Capacity; Power Quality Regulation; and Resilience. Note that the product name "Distribution Voltage Reactive Power" is vague. Transmission Providers/Owners routinely charge other DSOs for **not** maintaining power factor and that charge is FERC-jurisdictional. *E.g., Duke Energy Corp*., 96 FERC ¶ 63,004 (2001) (order approving settlement amending power factor penalty); *Delmarva Power & Light Co*., 110 FERC ¶ 61,186 at P 12 (2005) (holding that Delmarva must arrange for reactive capability to meet the reactive requirements of its system and may do so by making power factor agreements with loads connected to its system). If a DSP were to provide reactive power at wholesale, it would likely be a FERC-jurisdictional product.

### *a. SunEdison* (Behind the Retail Meter DERs)

In *Sun Edison,*[22] the Commission was asked about its jurisdiction over sales from leased rooftop net metering resources (i.e., DERs) to a DSO when a net metering program existed. FERC ruled that FERC jurisdiction would arise when a DER operating under a state net metering program produces more power than it consumes over the relevant billing period.[23] Specifically, FERC stated: "Only if the end-use customer participating in the net metering program produces more energy than it needs over the applicable billing period, and thus is considered to have made a net sale of energy to a utility over the applicable billing period, has the Commission asserted jurisdiction."[24] The fact that the seller was located behind the retail meter did not impact the jurisdictional analysis, as the sale was wholesale.

### b. *Cal Pub. Util. Comm'n* (Distribution Connected DERs)

FERC has also rejected the argument that sales of power that take place over the state-regulated local distribution system are exempt from its jurisdiction.[25] In *Cal. Pub. Util. Comm'n*, a municipal utility argued that:

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[22] *Sun Edison LLC*, 129 FERC ¶ 61,146 (2009) (relying on *MidAmerican Energy Co.*, 94 FERC ¶ 61,340).

[23] *Id*. at PP 18-19. FERC also clarified that in many cases, such sale would be made by a QF exempt from FPA regulation. *Id.* at P 18. "If the entity making a net sale is a QF that has been exempted from section 205 of the FPA by section 292.601 of our regulations, no filing under the FPA is necessary to permit the net sale; however, if the entity is either not a QF or is a QF that is not exempted from section 205 of the FPA by section 292.601 of our regulations, a filing under the FPA is necessary to permit the sale."

[24] *Id*. at P 18.

[25] *Cal. Pub. Util. Comm'n*, 132 FERC ¶ 61,047 at PP 71-72 (2010), *subsequent history omitted.*

> [D]istribution-level facilities and distribution-level feed-in tariffs do not implicate [FERC] jurisdiction because FPA section 201(b)(1) explicitly excludes from [FERC] jurisdiction facilities used in local distribution and any unbundled retail service occurring over those facilities. [The municipal utility] also argues that sales of power under distribution-level feed-in tariffs cannot be interstate commerce because the power sold does not enter the bulk transmission system or interstate commerce, but remains on the state-regulated distribution system.[26]

FERC rejected that argument outright, finding that:

> The FPA grants [FERC] exclusive jurisdiction to regulate sales for resale of electric energy and transmission in interstate commerce by public utilities. [FERC's] FPA authority to regulate sales for resale of electric energy and transmission in interstate commerce by public utilities is not dependent on the location of generation or transmission facilities, but rather on the definition of, as particularly relevant here, wholesale sales contained in the FPA.[27]

### c. Order No. 2222 (DER Aggregators)

In Order No. 2222, FERC addressed jurisdiction over sales by DER Aggregators/DSPs, albeit to RTOs and ISOs. It held "sales of electric energy by distributed energy resource aggregators for purposes of participating in an RTO/ISO market are wholesale sales subject to the Commission's jurisdiction."[28] In noting an exception to this rule of wholesale sales being FERC-jurisdictional in Order No. 2222, FERC cited *only* net metering cases.[29] SCE and other utilities sought a clarification of

[26] *Id*. at P 56 (footnote omitted).

[27] *Id*. at P 72 (citation omitted).

[28] Order No. 2222 at P 40.

[29] *Id*. n.89 ("We note that injections of electric energy to the grid do not necessarily trigger the Commission's jurisdiction. *See Sun Edison LLC*, 129 FERC ¶ 61,146 (2009), *reh'g*

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Order No. 2222 to reaffirm that **any** wholesale sale (sale for resale) of electricity**, by any entity,** whether behind a retail meter or in front of a retail meter, is a sale for resale in interstate commerce, subject to FERC jurisdiction and regulation (unless the seller is exempt from FPA rate regulation under PURPA or under FPA Section 201(f).[30] The clarification was granted.[31]

### C. RTOs/ISOs (and Balancing Authority Areas Generally) Are Operated in a Manner Such that the Location of the Provider or User of Wholesale Products is Irrelevant

The DSC's implicit position that a product and jurisdiction over its sale at wholesale should be defined solely based on the location of its production or consumption undermines the purpose of RTOs/ISOs, as well as Order No. 2222, and other FERC orders. FERC explained in Order No. 2222 that "if distributed energy resources are not able to participate in wholesale markets, it could result in system overbuild, inaccurate wholesale price formation, and lack of visibility into system conditions."[32] FERC found that the "reliability, transparency, and market-related benefits

granted on other grounds, 131 FERC ¶ 61,213 (2010) (the Commission's jurisdiction would arise only when a facility operating under a state net metering program produces more power than it consumes over the relevant netting period); *MidAmerican Energy Co.,* 94 FERC ¶ 61,340 (2001).").

[30] *Cal. Indep. Sys. Operator Corp.*, Petition for Clarification of S. Cal. Edison Co., Pac. Gas & Elec. Co., & San Diego Gas & Elec. Co., FERC Docket. No. ER21-2455-002, at 2 (filed July 15, 2022).

[31] *Cal. Indep. Sys. Operator Corp*., 181 FERC ¶ 61,035 at P 8 (2022).

[32] Order No. 2222 at P 21.

of removing barriers to the participation of distributed energy resource aggregators in RTO/ISO markets are significant."[33]

As to the intertwined nature of distribution and transmission systems, a FERC Administrative Law judge cogently explained:

> The ISO is responsible for ensuring that there are adequate resources to serve the loads located on both the transmission and distribution systems. Tr. 222 (Mara). The ISO is also responsible for all reliability needs and Ancillary Services for the distribution system; even those that are completely radial in nature. Tr. 222-23 (Mara). To fulfill these responsibilities, among others, the ISO must use the ISO Grid in acquiring capacity and energy to balance loads and satisfy reliability requirements, regardless of whether the load is served off of transmission facilities or off of the Companies' distribution facilities. Tr. 235-36 (Mara). Even if a small generator located on the distribution system trips, the problem would be instantaneously resolved by the ISO's automated generation control. Tr. 229-30 (Mara). In light of this, Enron asserts that the ISO does not need to know about the hypothetical distribution-only transactions which Enron proposes. Tr. 226-27 (Carroll/Mara). The technical fallacy of such an argument is self-evident.[34]

This paragraph concisely explains why the distribution system cannot be treated for most purposes as a separate system from the transmission system in terms of grid operations.

The DSC's approach of defining a product as a "Distribution Service" is meaningless when the DSC's concept of Distribution Service does not reflect the reality of electric system operations and the ability of DERs to provide wholesale, FERC-jurisdictional products, whether directly or through a DSP. The definition is the central

[33] *Id*. at P 60.

[34] *Pacific Gas and Electric Co.*, 88 FERC ¶ 63,007 (1999) (subsequent history omitted).

flaw in the DSC, if the true intent of NAESB and the DOE was to craft a model contract for sales of non-wholesale and non-FERC-jurisdictional products by DSPs to DSOs.

## III. THE DSC SHOULD BE NARROWED SUCH THAT SALES OF FERC-JURISDICTIONAL PRODUCTS ARE EXCLUDED

The primary reason for the adoption of Order No. 2222 was to provide opportunities for DERs, through DSPs, to sell any FERC-jurisdictional products they were capable of selling into RTO/ISO markets. FERC explained that "distributed energy resources tend to be too small to meet the minimum size requirements to participate in the RTO/ISO markets on a stand-alone basis, and may be unable to meet certain qualification and performance requirements because of the operational constraints they may have as small resources."[35] FERC sought to remedy the fact that DERs "that are technically capable of providing some services on their own or through aggregation are precluded from competing with resources that are already participating in the RTO/ISO markets."[36] In short, Order No. 2222 was designed the solve the problem of DERs that wanted to, but could not, sell their FERC-jurisdictional products, by adopting aggregation rules. Under this approach, the RTOs/ISOs would be the direct buyers, the DSOs intermediary buyers, and retail customers would consume the products. DSPs presumably want to sell their FERC-jurisdictional products to the highest bidder, which is best achieved by bidding into a centralized market, the RTO/ISO.[37] SCE thus questions

[35] Order No. 222 at P 2.

[36] *Id*. at P 3.

[37] Although it does not appear the DSC was crafted for DSOs/DSPs not in RTOs/ISOs, the SCE are unaware of any interest in DSOs buying products from DSPs, given the vast

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why the DSC needs to exist at all. It appears duplicative of Order No. 2222, only with higher transaction costs for both buyers and sellers.

Assuming the DSC is little more than a means for DSPs to sell FERC-jurisdictional products outside of Order No. 2222, this also raises the question of whether there is any harm in it. One concern with the DSC is that it may confuse unsophisticated DSPs. Having the imprimatur of NAESB and the DOE is quite troubling; in particular, DSPs may not understand that selling wholesale energy and ancillary services can involve a highly complex regulatory scheme, including regulation as a public utility by FERC. The ramifications for DSPs could be quite severe if they fail to abide by FERC regulation, even if they only need QF status for their wholesale sales to be lawful. If the DSC is not amended to be limited to non-FERC-jurisdictional sales, various provisions that are common in FERC-jurisdictional contracts should be added.

In order for the DSC not to address wholesale markets and/or FERC-jurisdictional sales, the definition of "Distribution Services" would have to be limited to only products that are grid distribution services, i.e., products that enhance the operation of a local distribution system by a DSO. This is SCE's preferred solution; to narrow the DSC scope, to reflect the original intent. SCE has no objection to a tailored, narrowed DSC. It recognizes that Order No. 2222 does not prohibit DSPs from participating in what FERC

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complexities of DER aggregation, which complexity is reflected in the DSC itself. Transmission Providers outside of RTOs/ISOs may be unwilling to allow aggregation absent a FERC mandate.

refers to as "wholesale and retail" markets.[38] FERC explained "that the reforms we adopt here are consistent with the Commission's determination that a single distributed energy resource can participate in both retail and wholesale programs and be compensated in each for providing 'distinctly different services.'"[39] That said, the need for a more narrow DSC may be somewhat premature. Order No. 2222 has proven how incredibly complex and costly adopting DER Aggregation is for the industry and viability remains an issue. Whether states will allow DSPs to sell an array of products to DSOs under a model contract such as the DSC, rather than under detailed, program-specific tariffs, remains an open question.

## IV. CONCLUSION

The DSC is rooted in an erroneously narrow view of FERC jurisdiction and wholesale markets such that it is not the contract that was intended to result from the NAESB process. It thus seems imperative that the issue of whether the DSC was intended to be used for sales of FERC- **and** state-jurisdictional products be resolved and, if so, two contracts be developed, with one fully recognizing FERC jurisdiction. Selling

[38] "Retail market" is an unusual term in that it implies sales would occur from an aggregator **directly** to a retail customer. In many states, the sale of a retail electric product would turn the seller into a state-regulated utility. Retail power sales also may have Public Utility Holding Company Act ramifications. More typically, states have programs, under which DERs/DSPs can provide products to DSOs that involve no sales (net metering) or sales exempt under PURPA from significant FERC regulation. That said, some such programs, including PURPA, involve primarily wholesale sales. In any case, the term "state programs" is more accurate than "retail markets."

[39] *Id.* at P 164. State regulatory authorities continue to have authority to condition participation in their DER/DSP state programs on those entities **not** also participating in RTO/ISO markets. *Id*. at P 162.

FERC- and state-jurisdictional products under a single contract adds complexity and confusion over contractual jurisdiction. The alternative, narrowing the DSC scope to sales of grid distribution services may prove to be an unproductive exercise, but SCE does not seek to hinder NAESB's efforts.

Respectfully submitted,

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## Products as Defined by FERC and DOE

| FERC Product | FERC Definition | DSC Products | DOE Definition (BPS or Distribution)[40] | Same Service |
|---|---|---|---|---|
| **FERC-Jurisdictional Products when Sold by a DSP to DSO (I.e., at Wholesale)** | | | | |
| Black Start Service | Service available after a system-wide blackout where a generator participates in system restoration activities without the availability of an outside electric supply (Ancillary Service). | Blackstart | Black-Start**:** The ability to energize a bus, meeting the transmission operator's restoration plan needs for real and reactive power capability, frequency, and voltage control (and that has been included in the transmission operator's restoration plan). (BPS) | Yes |
| Energy | A quantity of electricity that is sold or transmitted over a period of time. | Energy | Energy: The generation or use of electric power by a device over a period of time, expressed in kilowatt-hours (kWh), megawatt-hours (MWh), or gigawatt-hours (GWh) as transported across a transmission system. (BPS)<br><br>The production or use of electric power by a device over a period of time, expressed in kilowatt-hours (kWh) or megawatt-hours (MWh), as transported within a distribution system. (Distribution System) | Yes (Energy is a single product when sold at wholesale, regardless of where flows) |
| Primary Frequency Response | Service provided as a stand-by resource to support autonomous, pre-programmed changes in output to rapidly arrest large changes in frequency until dispatched resources can take over. | Frequency Response | Primary Frequency Response: Automatic and autonomous response to frequency variations through a generator's droop parameter and governor response, or energy injection by grid following inverters, or response by load. (BPS) | Yes (assuming DSC referring to Primary Frequency Response) |

[40] The DOE Definitions Paper classified services as relating to the Bulk Power System ("BPS") or "Distribution System" or the "Edge." The only Edge product was Energy, which is a single product no matter where produced.

| FERC Product | FERC Definition | DSC Products | DOE Definition (BPS or Distribution)[40] | Same Service |
|---|---|---|---|---|
| Reactive Supply & Voltage Control | Production or absorption of reactive power to maintain voltage levels on transmission systems (Ancillary Service). | Voltage Reactive Power | Reactive Control and Voltage Support: The ability to control leading and lagging reactive power on the system to maintain appropriate voltage levels and acceptable voltage bandwidths, to maximize efficient transfer of real power to the load under normal and contingency conditions, and to provide for operational flexibility under normal and abnormal conditions. (BPS) | Yes |
| Regulation & Frequency Response | Service providing for continuous balancing of resources (generation and interchange) with load, and for maintaining scheduled interconnection frequency by committing on-line generation where output is raised or lowered and by other non-generation resources capable of providing this service as necessary to follow the moment-by-moment changes in load (Ancillary Service). | Reserve | Regulating Reserve: Regulation service provides for the management of the minute-to-minute differences between load and resources and to correct for unintended fluctuations in generator output to comply with the North American Electric Reliability Corporation's (NERC's) Real-Power Balancing Control Performance Standards (BAL-001-1, BAL- 001-2). (BPS) | Likely, as unclear if DSC is referring to all reserve products. |
| Spinning Reserves | Unloaded synchronized generating capacity that is immediately responsive to system frequency and that is capable of being loaded in a short time period or non-generation resources capable of providing this service (Ancillary Service). | Reserve | Operating Reserve Spinning: Spinning reserve is the capability of resources synchronized to the system and fully available to serve load within the Disturbance Recovery Period following the contingency event; or load fully removable from the system within the Disturbance Recovery Period following the contingency event. (BPS) | Likely, as unclear if DSC is referring to all reserve products. |

| FERC Product | FERC Definition | DSC Products | DOE Definition (BPS or Distribution)[40] | Same Service |
|---|---|---|---|---|
| Supplemental Reserves | Service needed to serve load in the event of a system contingency, available with greater delay than SPINNING RESERVE. This service may be provided by generating units that are on-line but unloaded, by quick-start generation, or by interruptible load or other non-generation resources capable of providing this service (Ancillary Service). | Reserve | Operating Reserve Non-Spinning: Non-spinning reserves are energy-producing resources that are offline but can respond to dispatch instructions. (BPS) | Likely, as unclear if DSC is referring to all reserve products. |
| **Distribution Grid Services (Not FERC-Jurisdictional)** | | | | |
| N/A | | Voltage Reactive Power | Distribution Voltage Reactive Power: The ability to control leading and lagging reactive power on the system to maintain appropriate voltage levels and acceptable voltage bandwidths (ANSI C84.1), to maximize efficient transfer of real power to the load under normal and contingency conditions, and to provide for operational flexibility under normal and abnormal conditions. (Distribution) | No |
| N/A | | Distribution Capacity | Distribution Capacity: A non-wires alternative (NWA) supply and/or a load-modifying service that provides as required via reduction or increase of power or load that is capable of reliably and consistently reducing net loading on desired distribution infrastructure. (Distribution) | No |
| N/A | | Power Quality Regulation | Power Quality: Services that satisfy power quality requirements regarding flicker and harmonics should be within acceptable levels. (Distribution) | No |

| FERC Product | FERC Definition | DSC Products | DOE Definition (BPS or Distribution)[40] | Same Service |
|---|---|---|---|---|
| N/A | | Resilience | Resilience: Supply-based services capable of improving local distribution resilience and reliability within a microgrid. This service may also involve fast reconnection and availability of excess reserves to reduce demand when restoring customers' abnormal configurations. (Distribution) | No |