



# FERC ORDER 2222 & DER POLICY AND IMPLEMENTATION REPORT

January 2025

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## CURRENT NEWS AND NEW DEVELOPMENTS

*Summary of the latest developments in FERC Order 2222 and DER policy implementation*

FERC and Several states took action on distributed energy resource (DER) policy, the implementation of virtual power plants (VPPs), and FERC Order 2222 in the last several months. A summary of the actions is listed below.

*RTO/ISO Order 2222 Implementation:*

- FERC issued an order on MISO's second FERC Order 2222 compliance filing at FERC's January 2025 Open Meeting. FERC generally accepted most of MISO's proposed implementation, particularly MISO's intended implementation date in 2029. FERC rejected the adaptation of MISO's DRR Type I demand response program for DER aggregations and directed MISO to refile and required additional compliance on the development of operational coordination communication pathways. [[LINK](#)]
- MISO continues to conduct its DER Task Force (DERTF). During a January 9, 2025, DERTF meeting, the group extended the end date of the group, heard results from a survey on Order 2222 implementation conducted by the Organization of MISO states, and reviewed plans for an Order 2222 Coordination Conference that will occur on February 18, 2025. [[LINK](#)]

### *State FERC Order 2222 Implementation:*

- On December 18, 2024, the Indiana Utility Regulatory Commission (IURC) closed Cause No. 46043, in the matter of the IURC’s Investigation into the Public Utility Status of Distributed Energy Resource Aggregators. The IURC closed this investigation without making a finding as to the public utility status of DER aggregators as a class, noting that determination of an entity’s public utility status is fact-specific to the entity, and further, that determining whether all DER aggregators are public utilities is not a necessary step to accomplish the purpose of its investigation. The IURC will move ahead with the rulemaking required by Ind. Code ch. 8-1-40.1, which requires the Commission to adopt rules it deems necessary to implement FERC Order No. 2222 . [\[LINK\]](#)
- The Staff of the New Jersey Board of Public Utilities (NJBPU) held a Technical Conference on January 17, 2025, to address implementation issues related to FERC Order 2222. Presenters and panelists discussed: 1) PJM’s Order 2222 Compliance Filing; 2) operational processes for DER aggregations; 3) technical issues such as telemetry, metering, and cybersecurity; 4) potential cost impacts on ratepayers. The NJDPU is taking post-technical conference comments through January 31, 2025. [\[LINK\]](#)

### *Other DER Policy Developments:*

- The City of New Orleans opened Docket UD-24-02 in late October 2024 to investigate opportunities to expand access to DERs, battery storage and related facilities, including consideration of changes to Entergy-New Orleans policies, funding mechanisms, and establishing a vendor-neutral program to facilitate these goals. The procedural schedule anticipates submission of a record to the Council for consideration by August 22, 2025. [\[LINK\]](#)
- The Commonwealth of Massachusetts passed sweeping legislation in November 2024. While not exclusively focused on DERs, the legislation addresses several DER-related topics, including: 1) provisions that promote expansion of EV charging infrastructure, as well as providing incentives for EV purchases; 2) expanding advanced metering infrastructure and requiring a meter data repository (as well as authorizing meter socket adapters to make it easier to install home EV chargers and heat pumps without electric upgrades); 3) directing the Department of Public Utilities (DPU) to explore expanding access to solar net crediting; 4) streamlining siting and permitting for solar and storage. [\[LINK\]](#)
- The Staff of the Commonwealth of Virginia issued a report on January 21, 2025, in Case No. PUR-2023-00069, relating to revisions to the Commission’s regulations governing interconnection of small electrical generators and storage. Staff has developed several recommendations for rule modifications related to interconnection study timelines, how DERs are defined, DER performance standards, cybersecurity, and other interconnection-related topics. [\[LINK\]](#)
- The U.S. Department of Energy updated its Commercial Liftoff report on virtual power plants (VPPs) in early January 2025. The updated report reemphasized the critical need for resources like VPPs

to meet growing demand, and documents over 75 examples of actions that are being taken to deploy VPPs. [[LINK](#)]

## KEY ISSUES ANALYSIS

### Governance

A fundamental issue associated with FERC Order 2222<sup>1</sup> implementation at the state level is the governance of DER aggregations, i.e., who sets the rules governing their operation and has oversight. While FERC Order 2222 directed that DER aggregations must have the capability to participate in wholesale electric markets, the Order did not address retail regulation of DER aggregations. This discussion will summarize the underlying jurisdictional split between state and federal jurisdictions, review the key areas of governance, and review the range of possible state regulatory approaches available, from delegation to RTOs/ISOs to full oversight.

At its root, during the implementation of FERC Order 2222, states will need to examine whether changes to rules or tariffs may be necessary to ensure safe and adequate distribution service, protect consumers and fairly allocate costs as DER aggregators and retail customers participate in the organized wholesale markets.

A good framework for considering state regulator governance options was created by Lawrence Berkeley National Laboratory (LBNL) in its report advising the Missouri Commission.<sup>2</sup> LBNL categorized the options before state regulators into three tiers. Actions in Tier I may be able to be implemented without significant changes and rely on the use of existing processes, such as rules associated with demand response aggregation. On the other hand, many actions in Tier III often require more significant changes including the involvement of additional parties through stakeholder engagement or legislative action. Tier II actions do not require significant changes or major regulatory/legislative processes but typically require some regulatory activity and possible investigations. Tiers I, II and III can be roughly characterized as “walk,” “jog,” and “run.” Each of the state governance issues discussed below will be examined with this three tier framework.

Before each of the issues are discussed below, it is important to place state jurisdiction of DER aggregations within the legal framework set forth in FERC Order 2222 and earlier court decisions. The

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<sup>1</sup> Final Rule, Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators, Docket No. RM18-9-000, 172 FERC ¶ 61247 (September 17, 2020) (FERC Order 2222) <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=020A059C-66E2-5005-8110-C31FAFC91712>.

<sup>2</sup> Lawrence Berkeley National Laboratory, *Regulation of Third-Party Aggregation in the MISO and SPP Footprints* (LBNL Aggregation Report), prepared for the Missouri Public Service Commission, April 2023.

following discussion reviews the current legal framework associated with the participation of DER aggregations in wholesale markets.

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### *FERC's Jurisdiction Over DER Aggregations*

Jurisdictional issues underlie the regulatory choices available to state regulators. According to the legal framework set by the U.S. Supreme Court's 2006 *FERC v. EPSA* decision<sup>3</sup> and the D.C. Circuit's 2019 decision in *NARUC* decision,<sup>4</sup> FERC's jurisdiction extends to the setting of rules that allow the participation of distributed resources in wholesale markets. In particular, in *FERC v EPSA*, the Supreme Court stated that "wholesale demand response is all about reducing wholesale rates; so too the rules and practices that determine how those programs operate."<sup>5</sup> The *NARUC* decision affirmed FERC Order 841 on electric storage resources and extended FERC's jurisdiction to energy storage, including behind-the-meter storage, by stating that FERC's energy storage order solely targets the manner in which an electric storage resource may participate in wholesale markets and does not regulate matters left to the states. The Commission applied these same principles in FERC Order 2222 to DER aggregations.

The Supreme Court in *FERC v EPSA* also affirmed the exclusive role of states to regulate retail electricity sales and rates and found that FERC had not regulated retail electricity sales in FERC Order 745 on demand response compensation. In FERC Order 2222, FERC recognizes state regulatory jurisdiction and clearly delineates that the order does not "preclude or limit state or local regulation of: retail rates; distribution system planning, distribution system operations, or distribution system reliability; DER facility siting; and interconnection of resources to the distribution system that are not subject to Commission jurisdiction."<sup>6</sup>

Based on these court decisions and FERC orders, FERC and state regulators have overlapping jurisdiction over the participation of distributed resources into wholesale markets. FERC has authority to set rules for participation of distributed resources into wholesale market, but states retain their authority over consumer electricity rates and the registration and operation of resources on the distribution network. FERC Order 2222 fully

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<sup>3</sup> *FERC v. Electric Power Supply Ass'n*, 136 S. Ct. 760, 776 (2016) (*FERC v EPSA*).

<sup>4</sup> *Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 964 F.3d (2019) (*NARUC*).

<sup>5</sup> *FERC v EPSA* at 3.

<sup>6</sup> FERC Order 2222, at P61.

recognizes this overlap by providing state and local regulators with fundamental roles in approving electric distribution company rules and DER review. The next section reviews state regulatory options to execute this responsibility.

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There are several aspects of governance of DER aggregators that are within the purview of state regulators based on legal precedent and FERC Order 2222 that should be examined in detail. These include (a) jurisdiction, (b) registration and licensing of DER aggregators, and (c) dispute resolution. LBNL in its report on DER aggregation for the Missouri Commission found that these aspects are usually considered first because they lay the groundwork for more detailed regulatory activity. After these fundamental issues are addressed, state regulators generally address specific technical aspects of DER aggregation, including rules for data sharing, double counting, interconnection, and metering and telemetry.<sup>7</sup> These more detailed issues are typically considered next as part of registration processes or utility tariffs, or more recently in the context of FERC Order 2222 implementation.<sup>8</sup>

LBNL also found that processes from electric distribution companies (EDCs) and RTOs can be applied to demand response aggregators (and by extension DER aggregators), thereby reducing the need for specific state rulemakings. For states that initially opted-out of demand response aggregation based on FERC Order 719 on demand response aggregation and now need to address how to allow DER aggregation in line with FERC Order 2222, an incremental approach beginning with reversing an Order 719 opt-out may offer an important opportunity for action for these states. By focusing initially on implementing a selection of rules or processes for demand response aggregation, while developing more comprehensive rulemaking on DER aggregation in parallel, states can address the key governance and implementation issues that can be applied to DER aggregation.

The following discussion reviews the key considerations and challenges that state regulators will need to examine in each of the three aspects utilizing LBNL's tiered structure to characterize options.

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<sup>7</sup> LBNL Aggregation Report, p. v.

<sup>8</sup> Each of these technical issues have been and will be subject to separate discussions in the bi-monthly report. Data Access and Privacy were discussed in the November 2024 report, and metering and telemetry will be explored in the March 2025 report.

## *Jurisdiction*

The ability of state regulators to regulate or oversee the activity of DER aggregators is based on state law and/or regulatory rules. A Tier I example of a state with limited capability to regulate demand response and DER aggregation is Michigan. As stated in a 2022 Order permitting demand response aggregation among resources exceeding 1 MW, the Michigan PSC found that it “does not have licensing, registration, or other statutorily defined authority over DR aggregators directly.”<sup>9</sup> Consequently, the PSC explicitly relies on MISO and PJM authority over these issues.

On the other end of the spectrum, and an example of a Tier III state, is Indiana. In 2022, Ind. Code ch. 8-1-40.1 was enacted, explicitly providing the Commission with rulemaking authority to implement Order 2222 and requiring the Commission to develop or amend rules as may be necessary to ensure appropriate participation of the DER aggregators in the wholesale markets as envisioned by Order 2222.<sup>10</sup> After the passage of this legislation, the Indiana IURC opened up a proceeding to further examine the jurisdictional status of DER aggregations, particularly whether DER aggregators were public utilities. In December 2024, the Indiana Commission closed this proceeding and concluded that DER aggregations should not generically be deemed to be public utilities and that the existing 2022 legislation gave the Commission sufficient jurisdiction to address FERC Order 2222 implementation issues.

Maryland provides an example of Tier II when it applied existing jurisdiction to demand response and DER aggregation. The MD PSC in 2011 interpreted Maryland regulations regarding electric suppliers to apply to curtailment service providers (i.e., demand response providers).<sup>11</sup> In late 2024, the MD PSC extended this definition further to apply to DER aggregators.<sup>12</sup>

Consequently, before state regulators begin exploring actions they can take to permit and set rules for DER aggregators, they need to carefully examine existing public utility codes, regulations, and legislation to clarify or determine what actions they can take. When this is determined, state regulators should next move to facilitating rules and processes for DER aggregations to participate in organized wholesale markets. Governance issues associated with these rules are discussed in the next several sections.

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<sup>9</sup> MI PSC, 2022. Case No. U-21099: In the matter, on the Commission’s own motion, to open a docket for the load serving entities in Michigan to file their capacity demonstrations as required by MCL 460.6w.

<sup>10</sup> Indiana P.L. 71-2022, adding Ind. Code §§ 8-1-40.1-4 and -5.

<sup>11</sup> Maryland PSC, Order No. 84275 dated August 22, 2011.

<sup>12</sup> Maryland PSC, Order No. 91391 dated October 25, 2024, p. 6, “Since CSPs can also be DERAs, the Commission concludes that it is logical for Staff to similarly propose amendments to the CSP license application form and adapt it for DERAs.”

## *Registration and Licensing of DER Aggregators*

The role of state regulations in determining eligibility of DER aggregations and individual DERs to participate in RTO/ISO markets is core to FERC Order 2222. Per FERC Order 2222, the compliance proposals of most RTOs and ISOs defer to state regulators to determine eligibility of DERs and DER aggregations to operate. For example, in MISO, as part of their registration as market participants, DER aggregators must affirm that they are in compliance with state and local rules. Furthermore, as part of the DER eligibility review process (which must take no longer than 60 days), EDCs must determine whether individual DERs are capable of participating per state regulatory rules. In order to conduct these reviews, state regulators and EDCs will need information about the eligibility of individual DERs and DER aggregators to operate in their states.

A key next step to determining eligibility is to determine the role of state regulators in registering and licensing DER aggregators. If a state determines that it does not currently have jurisdiction over DER aggregation, then they may choose to rely on RTO/ISO rules and procedures for registration (i.e., Tier I). Information about DER aggregations and individual DER participation will need to be obtained from RTOs and ISOs. In states that have jurisdiction, the major decision is whether to develop a licensing and registration process for DER aggregators. In many restructured states, existing rules associated with the eligibility of retail electric providers (e.g., licensing) can be revised and applied to DER aggregations. The only major difference between Tier II and III is whether these rules are extensions of existing rules or new proceedings will be needed to create these rules.

Maryland provides a good example of the extension and adaptation of existing licensing procedures to be applied to DER aggregations. As noted above, the Maryland PSC extended its jurisdiction over licensing and reporting that had applied to electricity providers to demand response providers and DER aggregators in 2011 and 2024, respectively. In order to do business in Maryland, demand response providers and DER aggregators must file an application for a license to operate in the State of Maryland with the MD PSC. Information required to be submitted in these applications includes business name and information, certificates of status, and financial documentation. In addition, like other electricity providers, they must submit confidential annual reports.

When designing registration and licensing requirements, regulators should assess what information is needed to determine eligibility and to ultimately protect consumers. Registration applications can be as simple as the provision of business information, but many state licensing processes require more information like Maryland requires. Another key decision is whether to require annual reporting and what level of detail to include in these annual reports, and how to consider burden on third-party providers in their creation – note that demand response providers in Maryland objected to detailed reporting when it was proposed in 2011 and 2024.

## Dispute Resolution

A challenging governance issue is who is responsible for dispute resolution. In FERC Order 2222 and subsequent compliance orders, FERC clearly stated that disputes related to RTO/ISO tariffs and rules (e.g., DER aggregator registration) must be addressed through RTO/ISO dispute resolution procedures, which ultimately may require FERC action. Dispute resolution for issues outside of FERC jurisdiction (and most likely within state jurisdiction), such as how an EDC conducts its DER review, must be addressed within state dispute resolution methods. Existing state dispute resolution processes may suffice. If not, DER dispute resolution processes should be developed and applied.

State regulators usually maintain existing processes and staff resources for dispute resolutions between customers, third-party developers, and retail utilities, but few have developed processes specific to demand response or DER aggregation. According to LBNL, most states have not observed many disputes associated with demand response aggregation and believe that existing dispute resolution procedures will be adequate. California is one of the few states that took action to adapt their existing broad dispute resolution procedures to demand response aggregation disputes.<sup>13</sup> Nevertheless, states like Pennsylvania and New Jersey currently investigating implementation of FERC Order 2222 have identified dispute resolution as an important issue. For example, the Pennsylvania PUC sought comment on

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*“Whether its existing application process for net metering customer-generators, 52 Pa. Code § 75.17, or its existing dispute resolution regulations, 52 Pa. Code Chapters 1 (relating to rules of administrative practice and procedure), 3 (relating to special provisions) and 5 (relating to formal proceedings), or both, can or should be adapted to facilitate adjudication of disputes about DERA registration of its Component DERs with PJM, consistent with Order 2222 and PJM’s DAPM, and if so, the specific changes to the PUC’s regulations that would facilitate this adaption.”<sup>14</sup>*

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Since the need for dispute resolution procedures is a *de novo* issue for many state regulators, a full review of the options and available statutory authority to conduct these procedures needs to be conducted. As states begin to develop DER aggregation-specific dispute resolution processes, other states should examine these as they develop their own.

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<sup>13</sup> PG&E, Electric Rule No. 24: Direct participation demand response, 2017.

<sup>14</sup> Pennsylvania PUC, *Advanced Notice of Proposed Rulemaking Order*, Docket L-2023-3044115, February 22, 2024.

Tier I	Tier II	Tier III
<b>Jurisdiction</b>		
<p>State regulators default to RTO authority over DER aggregations and completely delegates relevant processes.</p>	<p>State regulators use existing jurisdiction to regulate certain issues related to interactions between DER aggregations and regulated retail electric utilities.</p>	<p>State regulators coordinate with state legislature to pass legislation explicitly defining the state regulator’s jurisdiction over DER aggregation or initiating a process to address jurisdictional questions as part of Order 2222 implementation.</p>
<b>Registration and Licensing</b>		
<p>State regulators rely on RTO’s FERC Order 2222 rules and procedures for registration.</p>	<p>Initiate a process or issue an order clarifying the separate roles of the state regulator, regulated retail utility, and recognizing the role of the RTO in adapting and facilitating registration processes to accommodate new DER aggregation market access.</p>	<p>Initiate a process or issue an order specifically designed to clarify the state regulator’s role in developing eligibility requirements for ARCs such as for registration and licensing process.</p>
<b>Dispute Resolution</b>		
<p>Utilize existing dispute resolution processes to the extent possible for issues involving DERs within retail markets or in organized wholesale aggregation scenarios.</p>	<p>Adapt processes, frameworks or general principles from existing dispute resolution procedures to specifically address DER aggregation.</p>	<p>Coordinate with state regulator staff responsible for managing dispute resolution to develop a new process specific to DER aggregation disputes, possibly in the context of Order 2222 implementation.</p>

Figure 1: Examples of choices available to state regulators. Adapted from LBNL Aggregation Report

## Summary

In order to develop rules and regulations to implement FERC Order 2222, state regulators have a spectrum of choices available. Following the walk, jog, run framework, these choices range from reliance on RTO rules (Tier I) to the development of new rules through regulatory proceedings or state legislation (Tier III). Figure 1 includes examples of the choices available to state regulators. The choices that state regulators make on FERC Order 2222 will likely be governed by the structure of the electric industry in a state (i.e., whether the state restructured its electric market) and status of existing rules for third-party participation in electric markets.

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## TRACKER TIPS AND HIGHLIGHTS

The Policy Tracker is available to the public at [FERC2222.org](https://FERC2222.org). [\[LINK\]](#) If you would like to recommend content for the Tracker or provide feedback, please [contact us](#).

The Policy Tracker allows users to filter and search for content within a database of content pertaining to DER Policy, with emphasis on the implementation of FERC Order 2222. The keyword search functionality includes review of the source documents within the database, while the filters allow users to narrow their searches based on issue topic, RTO/ISO, and state or federal regulators.

In the following example, the MISO filter is selected and returns all items in the database with a MISO tag. Figure 2 shows the selection of the filter and Figure 3 shows partial results (those results expand to more than one page and are not included in the figure). If a user wanted to find MISO's compliance docket with FERC, the keywords "compliance docket" could be added to the MISO filter to further narrow the search as shown in Figure 4.

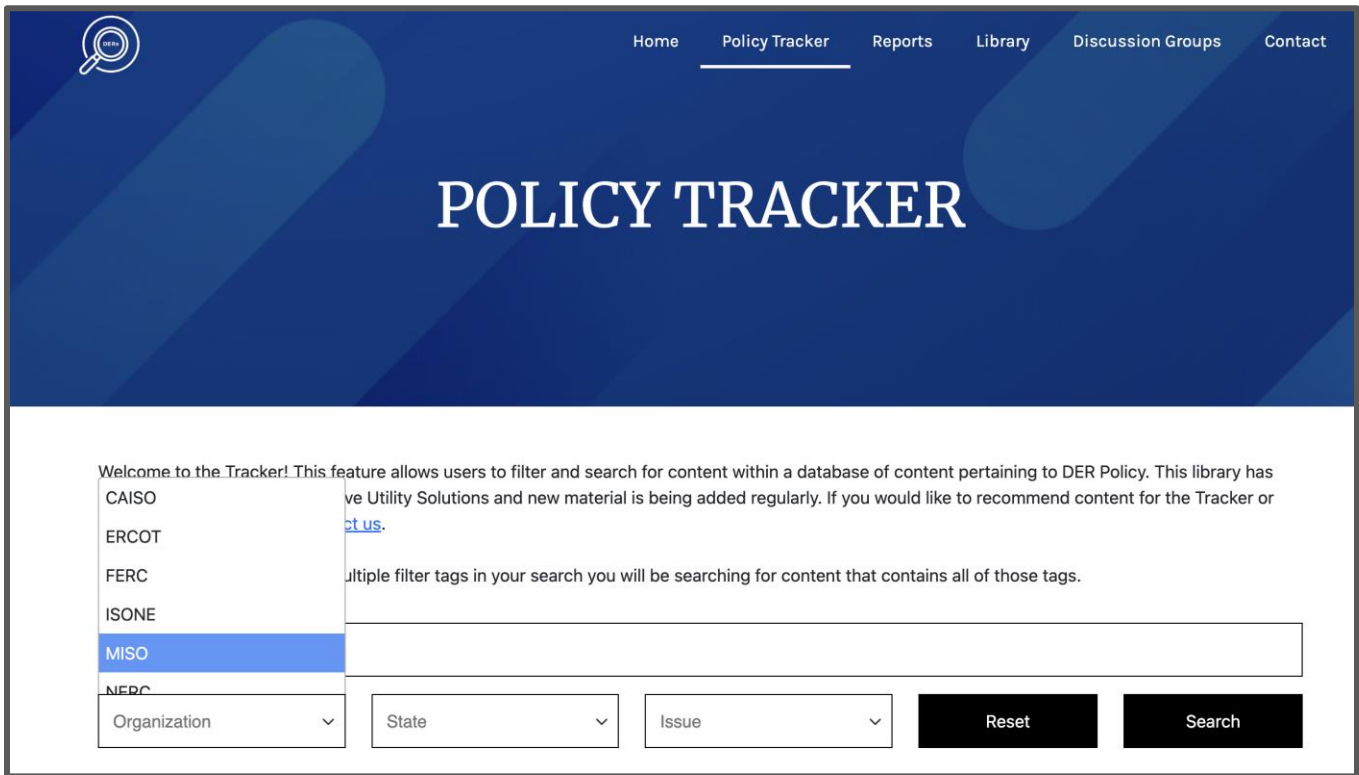


Figure 2: Screen capture of FERC2222.org Policy Tracker filter selection.

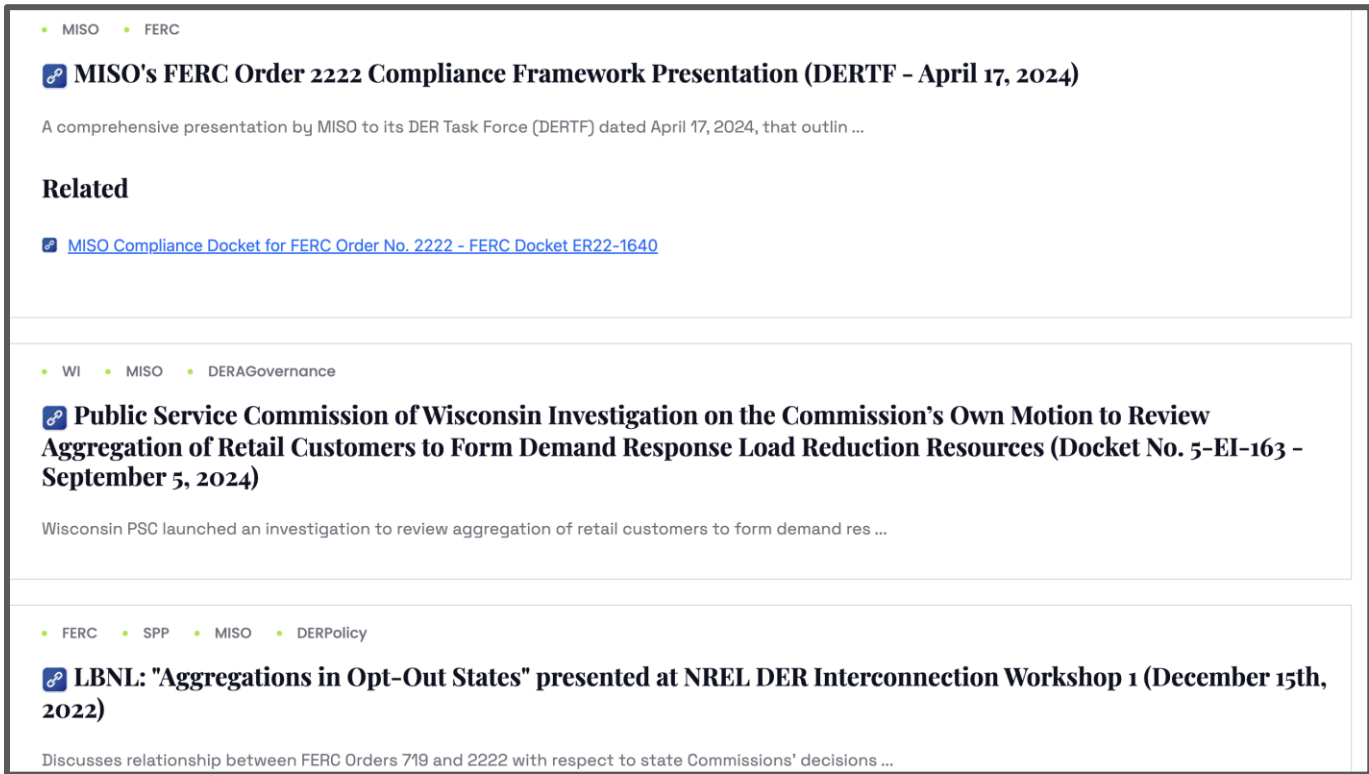


Figure 3: Screen capture of search results from the FERC2222.org Policy Tracker filter selection.

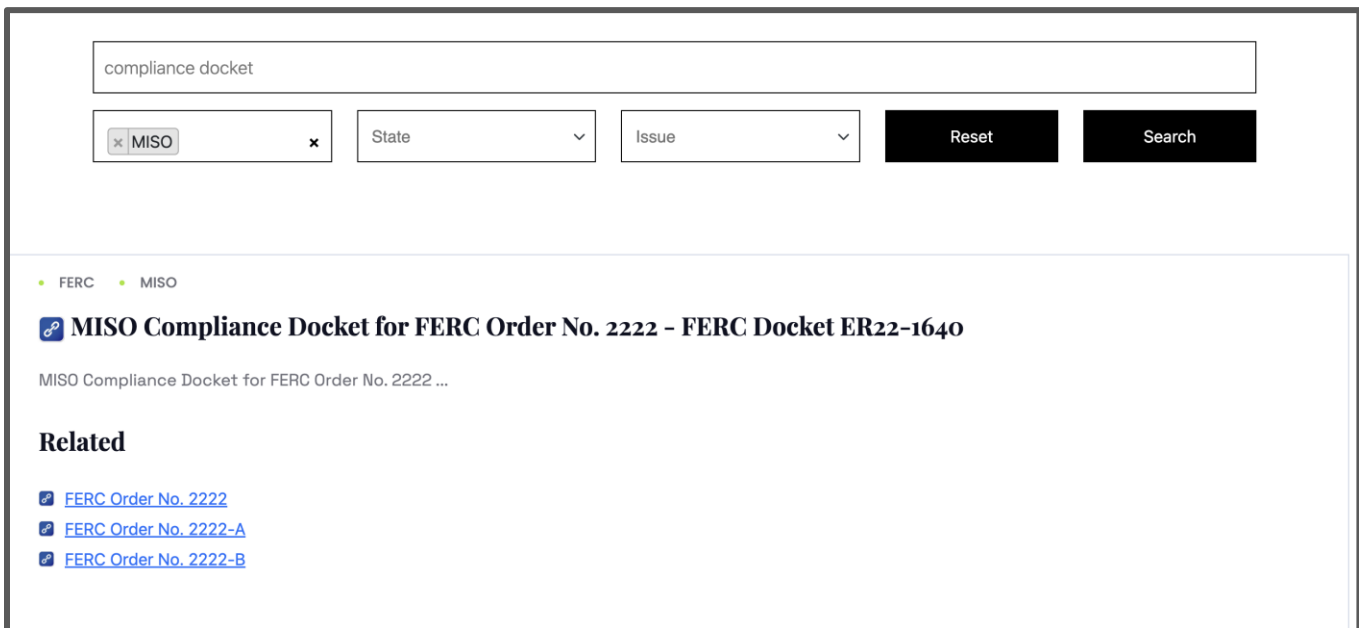


Figure 4: Screen capture of search results from the FERC2222.org Policy Tracker filter selection plus keyword search.

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