

The Supremes Put Out a (DR) Hit - Next Steps and Lessons Learned

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January 25 was quite a day, wasn't it? After more than a year of uncertainty as to whether the current policy and business model for demand response at the wholesale level was going to be scrapped, the Supreme Court overturned a lower court ruling and upheld FERC Order 745.

So what now?

While it often seemed so, the legal proceeding on Order 745 was never about all types and forms of DR. Moreover, a different Supreme Court decision that upheld the lower court ruling would not have been the death knell for wholesale DR. Demand response would have morphed and evolved and made it to the market in some other way.

So we should all simply let out a sigh of relief and resume the status quo? Well...no...there are some next steps to take.

In 2014, before the Supreme Court had decided to hear the 745 case, several parties started to talk about developing alternative plans for wholesale DR. Those discussions grew into a formal effort known as the *Evolution of DR Dialogue Project* (EDP). When the high court decided to hear the case, the question EDP participants asked themselves was, "Should we continue our work, or wait to see what the court does?" Our decision was to continue, as the group realized that DR had evolved a lot over the last 10 years and needed to evolve further - particularly in the context of the rise of Distributed Energy Resources (DER) - regardless of the outcome at the Supreme Court. So over the course of many months, this group of utilities, ISOs, DR providers, state and federal policymakers, consumer groups, environmental groups and other stakeholders worked via a Wedgemere-facilitated dialogue to examine the current issues for DR such as "visibility", "duality", "integration" and the need for DR to be fully considered as a DER option just like all the others that we normally think of.

The outcome of the EDP Group's work, including its important recommendations to policymakers and stakeholders, was just released in a [report](#) that is available at www.wedgemere.com. If you work in or care about demand response, DER and the future of both, you might want to take a look.

So what of lessons learned?

Today many companies are looking for immediate returns on any investment they make participating in the policy process. Companies and organizations say, "Why invest time, money and energy when nothing ever gets done quickly or, if something does get done, it won't mean anything anyway?"

Well...consider this example.

The Demand Response and Smart Grid Coalition (DRSG) was a group that some companies asked Wedgemere to form in 2001, primarily to pursue a tax incentive for the deployment of smart meters. Once established, DRSG began to quickly broaden its reach to other policy opportunities that would promote smart grid technologies and demand response. The development of the federal Energy Policy Act of 2005 (EPACT) was one of those opportunities. In the months leading up to its passage by Congress, DRSG was asked to submit proposals for provisions to be included in the bill. Wedgemere came up with several proposals, an example of which is the requirement that FERC do an annual DR report. The ideas and language we sent up to the Hill eventually became Section 1252 - the "DR" section - of EPACT.

Subsections (a) through (e) of 1252 were all fairly specific, but one other Wedgemere-drafted provision simply stated that demand response was the "official policy" of the U.S. and that FERC had a role in ensuring that. After EPACT passed, I remember people, including DR people, seeing this "official policy" language - subsection 1252(f) of the new law - and saying that it didn't seem to be doing anything. My reply to them was that maybe it would come in handy some day.

Last Monday, one thing that Supreme Court Justice Kagan cited in her majority opinion as evidence that Congress had weighed in on the issue of FERC's jurisdiction over DR was Section 1252(f) of EPACT. The lesson? Policymaking is a process that works in strange ways and it requires continual involvement if one really wants to benefit from it. Sometimes something done in 2005 can mean something in 2016. Maybe some investment in the policy process in 2016 will mean something good down the road as well.