

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Establishment of a Working Case)
Regarding FERC Order 2222 Regarding Participation)
Of Distributed Energy Resource Aggregators in Markets) File No. EW-2021-0267
Organized by Regional Transmission Organizations)
and Independent System Operators.)

**AMEREN MISSOURI’S RESPONSE TO ORDER OPENING
A WORKING CASE**

COMES NOW Union Electric Company d/b/a Ameren Missouri (the “Company” or “Ameren Missouri”), and in response to the Commission’s August 4, 2021 *Order Offering an Opportunity to Comment Regarding Modification of Temporary Ban on Aggregators for Commercial and Industrial Customers (the “Order”)*, states as follows:

INTRODUCTION

1. As noted in the *Order*, Aggregators of Retail Customers (“ARCs”) have been and currently are prohibited from aggregating demand response resources in Missouri.
2. As the caption of the docket indicates, this docket was opened to consider issues arising from the Federal Energy Regulatory Commission’s (“FERC”) issuance of Order 2222.¹ FERC Order 2222 was not directed to nor did it modify the “relevant electric retail regulatory authority’s” (“RERRA” (the Commission in Missouri)) power to prohibit ARCs from aggregating

¹ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 2222, 172 FERC ¶ 61,247 (2020) (“Order 2222”).

demand response and thus had no effect on the Commission's March 31, 2010 order putting that prohibition in place.²

3. In the *Order*, the Commission indicates it is considering modifying the prohibition as applied to commercial and industrial customers (which would leave it in place as to residential customers). As it considers that question, the Commission has invited stakeholders to comment on the following six questions:

- i. Whether the Commission should modify the current prohibition on the operation of ARCs in Missouri?
- ii. What modifications should be made to the current prohibition?
- iii. What impact would a modification to permit operation of ARCs for commercial and industrial customers have on existing MEEIA programs?
- iv. What impact would a modification to permit operation of ARCs for commercial and industrial customers have on the commercial and industrial customers?
- v. What impact would a modification to permit operation of ARCs for commercial and industrial customers have on non-commercial and nonindustrial customers?
- vi. Are any changes to the Commission's existing rules necessary?

² Order No. 2222 declined to establish an "opt-out" mechanism to allow RERRAs to prohibit distributed energy resources ("DERs") from participating in Regional Transmission Operator/Independent System Operator ("RTO/ISO") markets via a DER aggregator. RERRAs however may condition the participation of DERs in retail DER programs on those DERs not participating in RTO/ISO markets. In Order No. 2222-B, the Commission decided that RERRAs can prohibit the participation of demand response resources in all wholesale DER aggregations. The Commission initiated a Notice of Inquiry contemporaneously with issuance of Order No. 2222-A; it explores whether to revise the Commission's regulations to remove the Order No. 719 "opt-out" to demand response resource participation in RTO and ISO markets.

II. COMMENTS ON SPECIFIC QUESTIONS

Question i – Whether the Commission should modify the current prohibition on the operation of ARCs in Missouri?

4. The Commission should not modify the current prohibition on allowing ARCs to aggregate demand response resources and bid them directly into the wholesale markets at this time, without having proper protections in place for utility customers and the utility that need to apply in an environment where utility customers would be directly interacting with the wholesale markets through ARCs while still taking retail service from the utility. There are several reasons it would be unwise to lift the prohibition at this time, including those specifically discussed in response to this question below, and as further elaborated on in the Company's response to Question v, below.

5. First, neither the Commission's administrative rules nor the electric utilities' tariffs have been developed in a manner that contemplates the possibility that customers would be able to choose to interface with the wholesale market via third parties.³ Put another way, utility retail tariffs and program offerings have not been evaluated in the context of potential ARC aggregation of demand response to identify and, as necessary, modify those tariffs and programs to prevent cost shifts and other impacts that may arise and negatively impact utilities and their non-participating customers due to the interaction of retail tariffs and wholesale market structures. Consequently, the Commission's rules and utility tariffs need to undergo significant review and revision, not only to permit the aggregation of demand response resources, but to include necessary

³ This Commission appears to also recognize that there remains work to be done on its own rules before the prohibition should be lifted. In its *Reply Comments* filed on August 23, 2021 in FERC Docket No. RM21-14-000, the Commission noted that "initial comments indicate that public utility commissions in vertically integrated states lack the rules necessary to address the effects of third-party aggregators on the utility systems the commissions regulate."

safeguards to prevent subsidization, manipulation, unreasonable arbitrage, or other unintended consequences. Doing so will help, but not guarantee, that the same demand response resources do not participate in multiple programs, which is necessary to prevent unfair overcompensation of ARCs and any customers they might aggregate and to prevent improper subsidization by utilities and their customers of ARC activities.

6. Second, tariff provisions are necessary to clearly define the rights and responsibilities of both the electric utilities and their customers regarding the interaction between the normal and routine operation and maintenance of the distribution and transmission systems and the customers' ability to transact with the wholesale market via an ARC.

7. Third, the necessary communication protocols among the utilities, the ARCs, the participating customers, and the RTO do not yet exist and must be developed, implemented, and tested. Enough time must be afforded to complete this process to ensure that the systems do not negatively impact customer data privacy and cybersecurity issues. At the Commission's June 29, 2021 workshop on this topic, representatives of Ameren Illinois, which has implemented certain third-party programs including DR aggregation, presented information about the necessity of digital systems that create portals for aggregators to submit information to utilities about the customers that have enrolled with them. These portals represent interfaces between third-party entities and the digital systems of the utility which house sensitive customer data, and it is critical that there are adequate cybersecurity and customer data protections in place. In this regard, it should be recognized that the utilities will not only need adequate time to develop these systems and the protocols for aggregators to interface with them on subscribing customers' behalf, but also that utilities will incur costs to develop these systems and protocols. It is critical that the recovery of those costs is carefully considered in the individual rate cases of the utilities so that the costs

are equitably recovered from the customers benefiting from the aggregation activities that give rise to those costs.

8. It is important to understand that leaving the prohibition in place does not mean that demand response as a resource cannot be used when it is beneficial to do so, or that ARCs cannot have a role in demand response programs in Missouri. Put another way, question No. 1 in the Commission's *Order* should not be whether a "prohibition on ARCs" should continue, but rather, the question should be whether those ARCs should be able to bypass the retail authority (of the Commission, through its regulation of electric utilities) and bid aggregated demand response resources directly into the wholesale markets. To be clear, what the current prohibition prevents is aggregations of demand response resources, bid directly into the wholesale markets by unaffiliated third-party entities, which completely bypasses the regulated utility (and, consequently, also bypassing any regulation of the activity by the Commission). Leaving the prohibition in place does not mean that the Commission could not approve utility tariffs that would permit demand response resources to be aggregated by an ARC to participate through utility programs (regulated by the Commission) in those markets, as has been done in other jurisdictions as well as here in Missouri. In fact, Ameren Missouri believes that the best way to take advantage of demand response as a resource is for utilities, under the Commission's supervision, to tailor demand response programs to match the utility's and its customers' needs in a manner that creates the greatest level of reliability possible at the lowest possible cost for all its customers

9. That the prohibition should remain in place, at this time, is strongly supported by Comments filed by the Organization of MISO States ("OMS") in a FERC Notice of Inquiry Docket No. RM21-14-000) where FERC is examining its current regulations that allow RERRAs like the Commission to prohibit demand response from being aggregated and bid directly into wholesale

markets.⁴ *Comments of the Organization of MISO States, Inc.* (July 23, 2021). The Commission is a member of OMS and supported OMS' Comments.

10. As OMS indicated, the “long-standing and successful opt-out framework” allows state regulators to “retain necessary oversight over retail demand response offerings and ARCS operating within their jurisdictions to ensure [retail] customers are adequately protected.” OMS Comments, pp. 3-4. OMS continued: “[T]his regulatory structure ensures cost-effective, reliable, and robust distribution systems and planning.” *Id.*, p. 4.

11. As the OMS Comments also point out, among other things:

- a. Allowing third-party aggregation of demand response resources into the wholesale markets “does not in and of itself provide added reliability value above what an identical utility-run program would provide. Instead, it would actually create an inconsistency in how DR operates . . .” within the utility’s service territory. P. 9
- b. Through opting out (i.e., prohibiting aggregations of demand response directly into the wholesale markets), state regulators can “shape how their utilities’ retail customers are able to participate in a variety of programs, how their customer data is protected, and ultimately how the correct level and location of resources are made available to maintain reliability . . . this orderly sequence should not be disrupted [by removing the opt-out]. P. 10
 - i. Ameren Missouri would note that the consumer protections which can be afforded by state regulators if the opt-out is maintained are not limited to

⁴ See, *Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 174 FERC ¶ 61,198 (2018) (seeking comment on whether to revise its regulations that require a RTO/ ISO not to accept bids from an aggregator of retail customers that aggregates the demand response of the customers of utilities that distributed more than 4 million megawatt-hours in the previous fiscal year, where the relevant electric retail regulatory authority prohibits such customers’ demand response to be bid into organized markets by an aggregator of retail customers.)

access to and use of customer data. They could also include safeguards related to such things as enrollment (addressing slamming/cramming), deceptive advertising practices, and unconscionable contract provisions. It is also worth noting that while OMS is speaking to removal of the opt-out, most states in MISO have prohibited third-party aggregation of demand response in the wholesale markets by using the opt-out option but if those prohibitions were not in place, those state Commissions would in fact see a disruption of this orderly sequence because they would lose control over the ARCs' activities since they would be outside the regulated utility demand response programs.

- c. Absent the ability of the majority of the MISO states to maintain their prohibitions, “RTOs, regulators, and other affected stakeholders would have to resolve newly created gaps in the DR aggregation processes that would place demands on both staff and IT systems.” PP. 11-12
- d. OMS specifically recognized that states like Missouri that have used the opt-out to prohibit direct aggregation have done so to “mitigate potential burdens and issues associated with third-party aggregation, such as double-counting [to be addressed later in Ameren Missouri’s response], the level of visibility for planning and operational reliability purposes, lack of state oversight over ARCs [which without the prohibition would exist], the need for robust coordination and communication channels, and interaction with existing DR programs.” P. 12.

Question ii - What modifications should be made to the current prohibition?

12. Please see the answer to Question i – the prohibition should neither be removed nor modified, at this time.

Question iii - What impact would a modification to permit operation of ARCs for commercial and industrial customers have on existing MEEIA programs?

13. For several of the reasons discussed in connection with Question i, including the points made by OMS' Comments, removing the prohibition would have a negative impact on existing MEEIA programs. To repeat: with a prohibition in place state regulators can “shape how their utilities’ retail customers are able to participate in a variety of programs, how their customer data is protected, and ultimately how the correct level and location of resources are made available to maintain reliability....” The prohibition also permits the state regulator to implement a variety of other consumer protections.

14. Stated again, leaving the prohibition in place does not mean that the Commission could not approve utility tariffs that would permit demand response resources to be aggregated by an ARC to participate through utility programs (regulated by the Commission) in those markets, as has been done in other jurisdictions as well as here in Missouri.

Question iv - What impact would a modification to permit operation of ARCs for commercial and industrial customers have on the commercial and industrial customers?

15. Ameren Missouri is not able to answer this question because it is unknown at this time what Commission regulations and tariff changes would be needed to accommodate direct bidding of aggregated demand response resources into the wholesale markets by third-party aggregators. Similarly, as noted by OMS in their comments, it is unclear if "there may be several underlying issues with the ARC process that have yet to be resolved [*by MISO*] and would be exacerbated by the removal of the Opt-Out", which would require additional changes to the MISO

tariff and associated business practice manuals. None of the significant work needed to determine what those changes should be has been done.

Question v - What impact would a modification to permit operation of ARCs for commercial and industrial customers have on non-commercial and nonindustrial customers?

16. While for similar reasons the Company cannot specifically describe those impacts, it can identify several serious concerns about possible negative impacts on residential customers if the prohibition were lifted without first properly addressing, at a minimum, the items discussed in ¶¶ 4-7 above.

17. With respect to those items, as noted Commission rules and utility tariff provisions have not been developed in contemplation of retail customers having the choice of providing services to unregulated third-party entities or participating in programs offered by their host electric utility. If ARCs were going to be allowed to aggregate demand response directly into wholesale markets, it would be critical that there first be clear qualification requirements in utility tariffs to not only prohibit customers with the resource from enrolling both in the utility's demand response program and allowing the ARC to aggregate the same resource, but also to prohibit the manipulation and unreasonable arbitrage of utility sponsored programs. The latter can be addressed in large part through the establishment of minimum enrollment and switching provisions.

As also referenced earlier, the Commission's administrative rules and the electric utilities' tariffs must be revised to delineate the respective rights and obligations of the electric utility and customer more clearly in relationship to actions taken by the electric utility which may be seen as interfering with the customers' transactions with the wholesale market via an ARC. Such actions may be as simple as temporarily removing a circuit from service for maintenance. Doing so would

likely be seen by the customer as interfering with its ability to sell a service to the wholesale market during that period, or if the service has already been sold, the customer may face financial consequences from its inability to perform. Without the appropriate safeguards in place, utilities will be exposed to increasing liability through litigation and customers will face unnecessary risks associated with their market participation. The development of such safeguards will reduce the likelihood of such adverse consequences, and provide protection for the customer and ARC, allowing them to take action to mitigate their market exposure to such activities.

18. With respect to communication protocol issues, Ameren Missouri agrees with OMS' comments regarding concerns with the adequacy of MISO's current ARC communication process and that "premature removal of the Opt-Out may result in additional burdens for states, LBAs, and EDCs." (p. 12).⁵ The Company further echoes OMS' recognition that "(i)n addition to RTO tariff and/or Business Practice Manual changes, it would likely be necessary for states, LBAs, and EDCs to establish processes related to DR aggregation that are not in place today", that such "changes to state-regulated entities and processes may include improvements to metering, communication systems, data access, and coordination with distribution companies", and that "(a)t least a portion of these processes are state jurisdictional, and thus both RTO and state processes would need to be in place to ensure DR aggregation is successful and reliable."

19. As also noted earlier and as OMS also recognizes, the costs and burdens that would result from the removal of the demand response opt-out are similar to those resulting from compliance with Order No. 2222. As MISO (and SPP) have not yet developed and filed their Order 2222 compliance plans, it would be premature to eliminate the opt-out at this time. Doing so would risk the likelihood that the changes made to the Commission's administrative rules and

⁵ LBA, load balancing authority; EDC, electric distribution company (i.e., the utility).

the electric utilities' tariffs and processes required to accommodate ARC activity in Missouri would not meet the ultimate requirements of the RTOs' Order 2222 compliance plan, and thus require the proverbial return to the drawing board, along with its now redundant cost burden. At a minimum, removal of the opt-out should be delayed until the RTOs' compliance plans are finalized.

20. Additionally, it is important to reiterate that utility tariffs and programs should be evaluated, and modified as necessary, to ensure that the interaction of customers' billing on retail tariffs and the direct participation of those customers in wholesale markets through an aggregator do not result in costs shifts between participants and non-participating customers. For example, utilities procure the energy, capacity, and ancillary services needed for all their retail customers from the wholesale markets. Customers participating with ARCs that reduce load in response to a market driven event may avoid paying retail rates to compensate the utility (and its non-participating customers) for the energy or capacity that was procured for that customer's benefit during that event, then that same customer may turn around and sell that energy or capacity that the utility procured on their behalf, but for which the subscribing customer did not pay due to the impact of its reduced load on its retail bill, back to the market. There are inherently complex transactions and dynamics that need to be assessed to determine what, if any, changes are needed to rate structures, billing determinants, and programs, to equitably cover the costs incurred to serve customers that are also interacting with wholesale markets through entities other than the utility with an obligation to serve them.

21. Many of the foregoing issues likely require development of uniform policies at the Commission that could then be implemented in individual utility tariffs. This would necessitate rulemakings that have not even begun, and which are typically preceded by working dockets to work-through many issues before the time-limited formal rulemaking process starts. Then, tariff

filings and approval dockets would need to be conducted. With respect to issues implementing cost causation and responsibility, it is likely that necessary cost allocations and rate setting would have to take place in individual utility rate cases, which would take place at various times in the coming years.

Question vi - Are any changes to the Commission's existing rules necessary?

22. Yes, for the reasons discussed above. Further, given that many, if not all, of the policies, rules and tariff provisions necessary to successfully allow for the operation of ARCs in the State of Missouri, are substantially identical to those that will be necessary upon implementation of all forms of DER aggregation under FERC Order 2222, the finalization of such changes should be delayed until the RTOs have finalized and FERC has accepted their compliance plans, in order to avoid the need for substantial revisions and duplicative costs.

WHEREFORE, Ameren Missouri submits this response in accordance with the Order.

Respectfully Submitted,

/s/ James B. Lowery

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Motion was served on all parties of record in this case via electronic mail (e-mail) or via regular mail on this 1st day of September, 2021.

/s/ James B. Lowery
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