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 Operated by Regional Transmission Organizations and Independent System Operators	))))))	File No. EW-2021-0267

COMMENTS OF WALMART TO COMMISSION ORDER OFFERING AN OPPORTUNITY TO COMMENT REGARDING MODIFICATION OF TEMPORARY BAN ON AGGREGATORS FOR COMMERCIAL AND INDUSTRIAL CUSTOMERS

COMES NOW, Walmart, Inc. ("Walmart"), in compliance with the Commission's August 4, 2021 *Order Offering an Opportunity to Comment Regarding Modification of Temporary Ban on Aggregators for Commercial and Industrial Customers*, and for its Comments to the questions posed in that Order respectfully states as follows:

OVERVIEW

As shown on Walmart's website, Walmart operates 156 retail units and four distribution centers, and employs over 43,000 associates in Missouri. In fiscal year ending 2021, Walmart purchased $6.9 billion worth of goods and services from Missouri-based suppliers, supporting over 68,000 supplier jobs.[1]

Walmart's facilities in Missouri span across multiple public utilities including Union Electric Co. d/b/a Ameren Missouri ("Ameren"), Evergy Metro Inc. and Evergy Missouri West Inc. (collectively "Evergy"), and The Empire District Electric Company d/b/a Liberty ("Liberty"), as well as several cooperative and municipally-owned utilities. In turn, the majority of Walmart's Missouri facilities fall within the territories of two Regional Transmission

[1] https://corporate.walmart.com/our-story/our-locations

Organizations ("RTOs"), the Midcontinent Independent System Operator ("MISO") and Southwest Power Pool ("SPP"), both of whom have authority over wholesale energy transactions for their respective region.

Walmart has significant experience with demand response ("DR") with over 1,000 stores participating in DR initiatives throughout the United States. These programs span multiple RTOs and Independent System Operators ("ISOs") including MISO, ISO New England, New York ISO, PJM, Electric Reliability Council of Texas ("ERCOT"), and California ISO ("CAISO"). Walmart also participates in dozens of local utility DR programs and, at utility or government request, has provided emergency responses outside of formal programs. For example, Walmart reduced load to help with grid reliability during the 2020 heat wave that hit California[2] and during the winter storms that impacted Texas and neighboring states in February 2021.

Walmart supports a Commission decision rescinding its 2010 *Order Temporarily Prohibiting the Operation of Aggregators of Retail Customers* for a number of reasons. First, much has changed since this Order was issued over a decade ago. Comments made at the Commission's June 29 workshop reveal that Evergy and Liberty are currently operating in Kansas, a state that never prohibited Aggregators of Retail Customers (ARCs) from participating in DR. Similarly, Ameren operates in Illinois where ARCs have also been allowed to operate since the issuance of FERC Order 719. In these jurisdictions, the electric utilities operate alongside ARCs with both bidding DR into RTOs on behalf of retail customers. Not only has this given the Missouri electric utilities significant experience with ARCs, but it should also

[2] On August 16, 2020, CAISO notified customers to expect outages and asked customers to participate in voluntary DR due to a record breaking heat wave, noting that participation in DR "can help lower demand and avoid further actions including outages, and lessen the duration of an outage." *See* News Release, California ISO, *Flex Alert issued for next four days, calling for statewide conservation* (Aug. 16, 2020) http://www.caiso.com/Documents/Flex-Alert-Issued-Next-Four-Days-Calling-Statewide-Conservation.pdf.

alleviate concerns the Missouri Commission may have with allowing these same utilities to operate in a similar environment within Missouri.

Furthermore, allowing ARCs to operate in Missouri will expand DR participation. The current utility DR programs include artificial limitations that unnecessarily strangle DR potential. For instance, Evergy and Ameren, both summer peaking utilities, operate DR programs that are limited to the summer months. To the extent that customers have the ability to interrupt load in others months or to respond to issues other than merely reducing peak load (such as when DR would be cheaper than generation), that DR potential goes unrealized under the current utility programs. We saw this lost potential in Evergy's service area in February 2021 with the winter storm as there was no DR program in place that could be called upon. Without access to demand response -- that Evergy's customers could have provided -- SPP was required to impose larger, controlled outages on its member utilities than otherwise would have been required had Evergy's Missouri customers been able to aggregate and deploy their DR potential into the SPP market.

Demand response potential in Missouri service areas also goes unrealized due to the artificial compensation limits found in utility DR programs. Unlike the RTO markets that set price based on supply and demand, utility DR programs set compensation levels independently of a market environment, which can result in lower compensation when compared to market-based incentives. While utility DR programs incentivize some level of customer participation, there are undoubtedly many other customers who would interrupt load for the higher levels of compensation that can occur in wholesale markets. In fact, Westar (now part of Evergy) recognized the likelihood of increased compensation available from DR participation in the RTO energy markets in its comments to certain questions posed by the Kansas Corporation Commission in 2010:

(7) *What would be the effect on utility rate design if a single retail customer or an ARC bids demand response directly into SPP's organized energy market*?

The effect on a utility's rate design if retail customers bid demand response into the SPP market is likely to occur only in the design of the utility's retail demand response programs. Currently, for example, under Westar's largest demand response program — the Interruptible Service Rider — Westar provides customers a demand credit for the right to call an interruption and compensates the customer with an event payment if an interruption is called. ***If these customers have the option to bid demand response into the SPP market and receive compensation, the question with respect to Westar's retail programs may become whether it is compensating participants in its demand response programs in a manner that is sufficient to retain participation in the programs.***[3]

This potential increased compensation for large customers who aggregate and participate in RTO energy markets will not only increase DR participation, but it will also provide economic development benefits by reducing these large customers' overall electric bills and decreasing their costs of operating in Missouri. For all of these reasons, Walmart asks that the Commission lift its prohibition against ARCs participating in Missouri.

RESPONSE TO COMMISSION QUESTIONS

Question One: Whether the Commission should modify the current prohibition on the operation of ARCs in Missouri?

Response: Yes. As explained in response to question numbers 4 and 5, eliminating the current prohibition against the operation of ARCs in Missouri will provide benefits to all customers while insulating the general body of utility customers from the costs, risks, and responsibilities associated with DR participation, which will be borne solely by ARCs and participating customers.

[3] *Initial Comments of Westar Energy, Inc. and Kansas Gas & Electric Company*, Docket No. 10-GIME-215-GIE, filed on October 20, 2009 (emphasis added).

Question Two: What modifications should be made to the current prohibition?

Response: Ideally, the Commission would eliminate the prohibition against ARCs and allow DR capabilities for all commercial and industrial customers through aggregation. That said Walmart recognizes that, given its limited experience with ARCs operating in Missouri, the Commission may initially decide to lift the prohibition only for a particular segment of the commercial and industrial customer base in Missouri. After some period of time and after assessing the benefits of ARCs bidding the aggregated DR of this segment of commercial and industrial customers into the wholesale market, the Commission could expand the scope of ARC aggregation to include all commercial and industrial customers. Should the Commission prefer a staggered approach, Walmart provides the following two possible demand thresholds for participating in DR through an ARC.

First, Walmart recommends that the Commission follow the guidance provided by the FERC in Order 2222 and allow entities with demand in excess of 100 kW to participate in DR through a distributed energy resource ("DER") aggregation. In Order 2222, FERC discussed the minimum size for an aggregation to participate in RTO / ISO markets,[4] and after accepting comments from numerous parties, determined that the minimum size for a DER aggregation to participate in wholesale markets was 100 kW, stating:

> We adopt the NOPR proposal, with modifications, and add § 35.28(g)(12)(iii) to the Commission's regulations to require each RTO/ISO to implement a minimum size requirement not to exceed 100 kW for all distributed energy resource aggregations. We agree with commenters that a minimum size requirement not to exceed 100 kW will help improve competition in the RTO/ISO markets and avoid confusion about appropriate minimum size requirements for distributed energy resource aggregations under existing or new participation models.[5]

[4] Order No. 2222, Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators, Docket No. RM 18-9-000, 172 FERC ¶ 61,247, ¶ 1 (Sept. 17, 2020) (Order No. 2222) at ¶¶ 165-173.
[5] *Id.* at ¶171.

As an alternative, the Commission could allow commercial and industrial customers with a demand in excess of 300 kW to bid their DR into the wholesale market through an ARC. This second threshold is based on the General Assembly's previous recognition, for purposes of allowing economic development discounts, that customers with a demand in excess of 300 kW are situated differently than customers with a smaller peak demand.[6] As explained in response to question 4, eliminating the prohibition against the operation of ARCs in Missouri is expected to have economic development benefits. The use of a 300 kW threshold would also allow for the identification of the largest portion of the DR potential that has gone unrecognized to date. Therefore, to the extent the Commission is seeking to eliminate the prohibition for a certain segment of the commercial and industrial customer base, either a 100 kW or 300 kW demand threshold is a reasonable first step with the potential to lower and / or eliminate that threshold in the future.

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

Response: Currently both Ameren and Evergy have approved MEEIA portfolios[7] that include DR programs.[8] In order to prevent double-counting for the same DR resource, the Commission should require DR to participate in either the wholesale market or in a utility-sponsored DR program, but not both. To the extent that customers decide to participate in the wholesale market, either individually or through an ARC, that DR capability would necessarily be precluded from participating in utility MEEIA programs.

[6] Section 393.1640.
[7] Liberty – Empire has not yet filed an application for Commission approval of MEEIA programs.
[8] See, Ameren Tariff Sheet No. 248; Evergy Missouri Metro Tariff Sheet No. 1.81; Evergy Missouri West Tariff Sheet No. R63.09.

The Commission should further recognize that allowing commercial and industrial customers to participate in DR through ARCs would also help eliminate the tension inherent in MEEIA opt-out customers participating in utility DR programs. For instance, in a recent Evergy MEEIA case, the Office of Public Counsel ("OPC") objected to MEEIA opt-out customers being permitted to participate in MEEIA DR programs that were funded by non-opt out customers.[9] Ultimately, both the Commission[10] and the Western District Court of Appeals[11] held that OPC's objection was misplaced and that Section 393.1075.10 allows large customers to opt-out of the cost of MEEIA programs and simultaneously participate in MEEIA DR programs. Allowing these customers to participate in wholesale markets through an ARC largely eliminates OPC's concern. Specifically, MEEIA opt-out customers could now bid their DR into the wholesale market through the use of an ARC, eliminating the need to participate in the utility MEEIA program that was funded by non-opt out customers.

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

Response: There are three primary impacts on commercial and industrial customers of allowing those customers to participate in wholesale markets through an ARC. First, commercial and industrial customers would be able to receive compensation in exchange for curtailing their electric usage at their facilities. This capability is important to companies looking to manage their energy costs in Missouri, as over the past 15 years, Missouri industrial rates have increased

[9] See, Public Counsel's Initial Post-Hearing Brief, Case No. EO-2019-0132, filed October 11, 2019, pages 15-17.
[10] See, Amended Report and Order, Case No. EO-2019-0132, issued March 11, 2020, page 30 ("Opt-out customers shall be allowed to participate in Evergy Missouri Metro's and Evergy Missouri West's business response program.")
[11] Case WD83828, per curiam opinion issued March 2, 2021.

by 59.5 percent.[12] Over the same period of time, the national average industrial rate increased by only 18.4 percent.[13] As a result, Missouri's industrial rates are now above the national average industrial rate.[14] Commercial and industrial customers can partially mitigate the uncompetitive Missouri electric rates through DR participation at the wholesale level.

Second, commercial and industrial customers would have access to more opportunities to participate in DR. Commercial and industrial customers could choose to participate in DR throughout the year, rather than just in the summer months. There are also increased opportunities to curtail beyond just lowering the system peak. These expanded opportunities to participate in DR increases the likelihood that commercial and industrial customers can realize the economic benefits described above.

Finally, ARCs operate differently than utility sponsored DR programs and in a manner that better allows commercial and industrial customers to manage the risks of participation in wholesale DR programs. ARCs are able to draw from a broader portfolio of customers to deliver the DR bid into the wholesale market ensuring that the pledged load is available to curtail when called upon while simultaneously insulating individual customer facilities from the financial impacts of performance penalties.

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

Response: Missouri's MEEIA statute clearly recognizes that all customers benefit from utility peak demand reductions. This benefit comes from the fact that utilities can defer or even cancel

[12] Edison Electric Institute Typical Bills and Average Rates Report, Winter 2006 publication, page 280 as compared to Edison Electric Institute Typical Bills and Average Rates Report, Summer 2020 publication, page 256.
[13] *Id.* at pages 271 and 299.
[14] *Id.*

future generation additions. Benefits can also be realized from utilities retiring generation resources that are no longer competitive in the wholesale markets earlier than would otherwise be possible absent demand reductions.

Allowing ARCs to turn unrealized DR potential into reality will reduce utility peak demand, which, in turn, benefits all customers by cancelling or postponing utility generation additions. Citing a FERC Staff Report, Voltus' initial comments pointed out that "[d]emand response can easily account for 5-10% of peak load."[15] It clearly benefits all customers to use less energy and avoid additional generation.

Furthermore, incentive compensation paid to participating customers through ARCs for their contribution to peak reductions is not directly funded by other customers as is the case with MEEIA programs. Instead, these customers are compensated through RTO market participants. For these reasons, the benefits for allowing customers to participate in DR through an ARC flow through to all customers within the State of Missouri, with the costs, risks, and responsibilities of participation borne solely by ARCs and their participating customers.

Increased DR -- which an ARC would facilitate -- can also serve as a crucial resource during emergencies. As the FERC Staff Report noted, DR helped avoid the need for emergency operating procedures in Texas during the summer of 2018.[16]

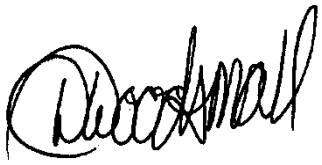
Question Six: Are any changes to the Commission's existing rules necessary?

Response: Undersigned counsel has not identified any existing rules that need to be changed in order to effectuate the operation of ARCs in Missouri. That said, however, the Commission may

[15] Voltus Comments on Commission Order Opening a Working Case to Consider the Commission's Response to FERC Order 2222, filed March 31, 2021 (citing to Staff Report: 2019 Assessment of Demand Response and Advanced Metering, at 17 (Dec. 2019), https://www.ferc.gov/sites/default/files/2020-04/DR-AM-Report2019_2.pdf (FERC 2019 DR Staff Report)).
[16] FERC 2019 DR Staff Report, at 22.

want to implement new rules to address certain concerns addressed at the June 29, 2021 workshop. Specifically, the Commission may want to implement rules requiring the annual registration of ARCs participating in Missouri. Additionally, the Commission may want to consider rules requiring data sharing between ARCs and utilities to the extent such information is not already provided under MISO or SPP's rules. Such data sharing may include the identification of entities participating through ARCs to prevent those entities from simultaneously participating in utility DR programs. This should reduce the possibility of double counting for the same DR resource.

Respectfully submitted,



David L. Woodsmall, MBE #40747
308 East High Street, Suite 204
Jefferson City, Missouri 65101
(573) 797-0005 (telephone)
david.woodsmall@woodsmalllaw.com

ATTORNEY FOR WALMART, INC.