BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

In the Matter of an Investigation into the Coordination of State and Federal Regulatory Policies for Facilitating the Deployment of all Cost-Effective Demand-Side Savings to Electric Customers of All Classes Consistent with the Public Interest.	))))))	File No. EW-2010-0187

COMMENTS
TO STAFF'S DEMAND RESPONSE AGGREGATOR DRAFT RULE BY ENERNOC, INC., THE ENVIRONMENTAL LAW & POLICY CENTER OF THE MIDWEST, LEGGETT & PLATT, AND WALMART

I. INTRODUCTION

EnerNOC, Inc., the Environmental Law & Policy Center of the Midwest, Leggett & Platt Inc., and Walmart Stores East, L.P. and Sam's East, Inc. (Collectively "Walmart") (Collectively "DR Parties"[1]) jointly respectfully submit the following comments and redlined version of the proposed Demand Response Aggregator Draft Rule that the Staff of the Missouri Public Service Commission ("Commission Staff" or "Staff") transmitted to the interested parties on April 15, 2011. The DR Parties again thank the Commission and its Staff for organizing a second Draft Rule Workshop ("April 11 Workshop").

II. STATEMENT OF POSITION

The DR Parties appreciate the Commission Staff's efforts to draft a sensible rule to encourage demand response activity in Missouri, and welcome the opportunity to comment. The

[1] The members of the DR Parties have changed from the February 1, 2011 filing that followed the initial workshop. The DR Parties that participated in the February 1, 2011 filing included Comverge, Inc., Energy Curtailments Specialists, Inc., EnerNOC, Inc., and Walmart Stores East, L.P. and Sam's East, Inc.

DR Parties provide the following comments and redlined sections of the draft rule for the Commission Staff to consider.

In Section III, the DR Parties will address two of the three questions sent to all interested parties on April 15, and then provide comments to the redlined draft rule in Section IV. All of these comments should be considered a supplement to the comments made during the April 11 Workshop (and in response to the January 19 Workshop as well.) It is the understanding of the DR Parties that the April 15 draft rule reflects the comments received by the Commission Staff and not necessarily the Staff's opinion on the matter. A number of the DR Parties' recommendations and comments were not incorporated into this draft (for example the removal of the 100 MW cap). Rather than exhaustively rehash all of our prior comments the DR Parties ask that you treat these comments as a supplement to the February 1 comments. With that in mind the DR Parties attempted to minimize repeating the comments we made to the original draft of the rule, with the understanding that we maintain our same position on those comments.

The DR Parties proposed changes (from the January Workshop and the April Workshop) will align the Commission's draft rule with the Federal Energy Regulatory Commission's ("FERC") most recent ruling on Demand Response Compensation in Organized Wholesale Energy Markets, FERC Docket No. RM10-17-000, Order No. 745 ("Order 745"). On March 15, 2011, FERC declared that a demand response resource participating in an organized wholesale energy market should be compensated for the service it provides to the energy market at the market price, "when dispatch of that resource is determined to be cost-effective" as determined by a net benefits test."[2] The market price is referred to as the Locational Marginal Price ("LMP"). Order No. 745 directly affects this Commission's proposed rule in two critical ways.

[2] 134 FERC ¶ 61,187, FERC Docket No. RM10-17-000, Order No. 745, ¶2 at 2 (March 15, 2011).

First, the ruling specifically rejects the Marginal Foregone Retail Rate compensation approach at the wholesale level. In order for the Missouri rule to be consistent with the MISO tariff, full LMP compensation is necessary for cost-effective demand resources in the wholesale energy market for wholesale markets to function effectively, it is critical for the states within the market territory to have rules that are consistent with the tariff of the system operator.

FERC also determined that the costs associated with demand response should be allocated to all customers who benefit from the lower LMP resulting from demand response. In paragraph 102 of Order 745, FERC stated:

> We therefore find just and reasonable the requirement that each RTO and ISO allocate the costs associated with demand response compensation proportionally to all entities that purchase from the relevant energy market in the area(s) where the demand response reduces the market price for energy. (emphasis added).

Given the lack of constraints in the MISO system and the requirement that the demand response resource be cost-effective in order to be dispatched, Missouri customers would see a net benefit when DR is dispatched to lower average prices. This remains true if customers in neighboring states are allowed to participate in demand response, but Missouri chose to prohibit ARCs. However, under that scenario Missouri customers would still be allocated a portion of the cost of DR payments, but would not realize the full benefits of demand response because they would be ineligible for direct DR payments for their own participation.

FERC made a strong statement in Order 745 that it supported a demand response compensation level that will provide a level playing field and create a catalyst for further energy management investment when it is cost-effective to do so.[3] It is up to the Commission to determine whether it will embrace that ruling or simply contribute its portion of the allocated amount to fund the efforts of other States in the MISO footprint.

[3] 134 FERC ¶ 61,187, FERC Docket No. RM10-17-000, Order No. 745, ¶47 at 39 (March 15, 2011).

By allowing ARCs within the Commission's jurisdiction, the Commission would ensure that Missouri customers will enjoy the full benefits of demand response, including direct payments to Missouri businesses that will boost the local economy, environmental benefits, and lower electricity rates that would result from increased levels of participation. Consider the example of PJM, where high participation levels of demand response saved customers $650 million during one event in 2006.[4]

III. DR PARTIES' RESPONSE TO STAFF REQUEST FOR INPUT

1. Commission Staff Request for input on Section 7 of the Draft rule:

"(7) The Commission reserves the right to set the MFRR, or any successor or equivalent to the MFRR. The Commission initially proposes to set the MFRR for Demand Response at the current effective retail rate of the End Use Customer.

Due to time constraints, this section was not addressed during the April 11 Workshop. As described above in Section II, FERC has stated that demand response resources at the wholesale level will be paid LMP, or the marginal value of an increase in supply or a reduction in consumption at each node within MISO, when it is cost-effective to do.[5] The Marginal Foregone Retail Rate ("MFRR") compensation level is inconsistent with FERC's direction to MISO and does not support the true value of demand response resources.

Section 7 of the Commission's proposed rule should be changed to incorporate FERC's guidance and set the compensation level for demand response resources at LMP. The DR Parties proposed change to this section can be found below as part of the proposed modifications to the Staff's redlined draft rule.

[4] http://www.ferc.gov/industries/electric/indus-act/rto/metrics/report-to-congress.pdf
[5] 134 FERC ¶ 61,187, FERC Docket No. RM10-17-000, Order No. 745, ¶53 at 43 (March 15, 2011).

2. MO Staff Request for additional input on the 100 MW DR cap in section 2(b):

Section 2(b) states:

"(2) An ARC shall not directly aggregate the Demand Response of an End Use Customer of an Electric Utility where the Commission is the RERRA unless:

* * *

b. The Demand Response of the End Use Customers(s), added to the existing Demand Response already aggregated by ARCs in the Electric Utility's Balancing Authority Area, is less than 100 megawatts (MW); and (emphasis existed in the Staff's draft)

The Commission should remove any cap in the draft rule that will place restrictions on demand response opportunities. After the January 2011 Workshop the DR Parties submitted written comments that included four reasons why this Commission should remove any barriers -- like the 100 MW cap -- on the amount of demand response ARCs may procure in an electric utility's Balancing Authority Area. The four reasons identified and addressed by the DR Parties in those comments were: (1) the 100 MW figure is an arbitrary number that has no substantive reason to support it; (2) incorporating a figure, like 100 MW, into the rule will make it administratively difficult to change later; (3) It is uncertain how MISO could administer a 100 MW cap; and (4) there is simply no justification for the cap at this time. Those reasons are still pertinent to the rule as it appears now.

Additionally, demand response is not a subsidized resource. In order to participate in the wholesale market, demand response would have to be more cost-effective than the resource that it is displacing. At this point it is impossible to determine at what point that might be, so to set a cap is not in the best interest of Missouri customers. Consider an example where all ARCs have procured approximately 98 MW of demand response in a Balancing Authority Area, and there is a 4 MW local university that is eager to participate and earn necessary revenue. Even if the

university is willing to curtail for a price that is substantially lower than what it costs to pay a generator, that customer would not be allowed to participate. The university would suffer, and all customers would suffer from having to pay higher rates. Whether there are 3 MW or 300 MW enrolled in a balancing area, the only way the MW will be enrolled in the wholesale market is if they are less expensive to customers than the resource they are displacing.

The Staff's second draft of the rule that was discussed at the April 11 Workshop also included the 100 MW cap on the amount of demand response ARCs may procure in an electric utility's Balancing Authority Area. The Staff explained that the second draft of the rule was not to be interpreted as the Staff's position. While the draft -- and the 100 MW cap -- may reflect the opinion of the most comments, the Commission should be careful not to interpret the choice most commented upon as the right choice for the Commission and its constituents going forward.

The comments during the workshop on this provision introduced a bevy of new concerns regarding a 100 MW cap per electric utility Balancing Authority Area. One of the issues that is not addressed in these rules is how the 100 MW cap will be applied. The DR Parties assert that a "hard"[6] 100 MW cap may result in scenarios where the value of this service is greatly diminished and the opportunity to learn is non-existent. For example, if the cap is met in each utility footprint by one customer, or through one program (either economic DR, emergency DR, or through ancilliary services) or through a bilateral contract with the utility there will not be a lot of information to extract about the effectiveness of DR. (And simply not a lot of DR.)

> As the parties had more time to think about the draft rule since the initial workshop there were other concerns raised on April 11 about the logistics of a 100 MW cap. Some of the other concerns raised include:

[6] "Hard" implies that ARCs may only provide service for 100 MWs no matter the mix of customers, the mix of services (economic DR, emergency DR, or Ancillary services) or whether it all through a contract with the utility. The converse would be a "soft cap" that allows ARCs to provide services to a mix of customers, maybe a separate cap for economic DR, emergency DR, and Ancillary services, and excludes services contracted through the utility.

1. The Commission's ruling would unfairly restrict demand response resources only in parts of the State under the Commission's jurisdiction; and

2. Why would the Commission want to cap Emergency Demand Response?

For all of these new reasons – and the reasons stated in the DR Parties' February 1 comments as well -- the DR Parties recommend that the Commission remove any limit on the amount of demand response available in each electric utility's Service Territory.

IV. PROPOSED DRAFT RULE CHANGES

PROPOSED DRAFT RULE CHANGES #1:

***language in ALL CAPS is proposed new language.
***language in ~~strikethrough~~ font is language we propose deleting.

Definition of Demand Response:

> (E) Demand Response (DR) - A ~~reduction~~ CHANGE in the consumption of electric energy by End Use Customers from their expected consumption in response to an increase in the price of electric energy OR AT THE REQUEST OF ANOTHER ENTITY IN ORDER TO MAINTAIN SYSTEM BALANCE OR RELIABILITY. ~~or to incentive payments designed to induce lower consumption of electric energy~~

Explanation for recommended change:

As stated in the DR Parties' February 1 comments the term "incentive" should be removed because in this context it has the potential to be misunderstood. The incentive being referred to is the fair compensation for the service being rendered by the demand response resource to maintain reliable system conditions consistent with security constrained economic dispatch.

PROPOSED DRAFT RULE CHANGE #2:

Definition of Marginal Foregone Retail Rate:

> (O) ~~Marginal Foregone Retail Rate (MFRR) – As defined in the ISO / RTO's Governing Market Rules Documents.~~
>
> **Explanation for recommended change:**

As described above, FERC Order 745 determined that the full LMP is the appropriate price for RTO/ISOs to compensate a demand response resource that participates in the wholesale energy market "when dispatch of that demand response resource is cost-effective" as determined by a net-benefits test.[7] If the Commission intends on creating a rule that is consistent with MISOs tariff, MRFF is no longer a term that should be included in the rule. This is particularly important in the context of a rule that cannot be changed without a long administrative process.

PROPOSED DRAFT RULE CHANGE #3:

The addition of Locational Marginal Price in the definition section:

> (NEW) LOCATIONAL MARGINAL PRICE (LMP) REFERS TO THE PRICE CALCULATED BY MISO OR SPP AT PARTICULAR ELECTRICAL NODES OR ZONES AND IS USED AS THE MARKET PRICE TO COMPENSATE GENERATORS.[8]

As discussed in Section II above, FERC has stated that demand response resources will be compensated at LMP, the marginal value of all resources in that market. This Commission should apply the same standard for its resources. To propose a compensation level for demand response resources that is less than LMP, like MFRR, would be inconsistent with FERC's ruling and will present a hurdle for the development of demand response opportunities in Missouri.

[7] 134 FERC ¶ 61,187, FERC Docket No. RM10-17-000, Order No. 745, ¶2 at 2 (March 15, 2011).
[8] Id.

PROPOSED DRAFT RULE CHANGE #4:

(2) An ARC shall not directly aggregate the Demand Response of an End Use Customer of an Electric Utility where the Commission is the RERRA unless:

a. The ARC is properly registered as a market participant with the Independent System Operator / Regional Transmission Organization (ISO / RTO) that the Electric Utility is a member of, as defined in relevant ISO / RTO Governing Market Rules Documents; and

b. ~~The Demand Response of that retail customer, added to the existing Demand Response already aggregated by ARCs in the electric utility's SERVICE TERRITORY, is less than 100 megawatts (MW); and~~

c. The ARC has followed the proper ISO / RTO procedure, as described in the relevant ISO/RTO's Governing Market Rules Documents, regarding registering the End Use Customer's Demand Response; and

Explanation for recommended changes:

On April 15 this area was identified by Staff and singled out as one of the three areas where the Staff wanted more feedback. The DR Parties provided the substantive response to this section in Section III above. In summary, the DR Parties request that section (2)(b) of the proposed rule be deleted. The Commission should not incorporate an arbitrary cap in the draft rule that will limit demand response opportunities. The DR Parties suggest multiple reasons why capping the amount of demand response that can be aggregated in an electric utility's Balancing Authority Area is not appropriate..

PROPOSED DRAFT RULE CHANGE #5:

(3) AN ARC OR ELECTRIC UTILITY SHALL NOT BE ALLOWED TO ENROLL A~~n~~ PARTICULAR LOCATION OF AN End Use Customer ~~shall not be allowed to enroll~~ in an Economic, Emergency, or Ancillary Services Demand Response program if that PARTICULAR LOCATION OF THE End Use Customer is currently enrolled within the Balancing Authority Area in the same type of Demand Response program.

Explanation for recommended changes

It appeared to be the consensus of the stakeholders who participated in the April 11 workshop that the definition of "End Use Customer" should define each location of a company or industry as a separate "End Use Customer." The DR Parties agree that narrowing the definition of "End Use Customer" to a distinct location is necessary to clarify Section three of the rule which clarifies the enrollment of demand response services by End Use Customer. However, the DR Parties recommend making a distinction regarding the locational limitation on End Use Customers only to section three. (The concern in Section Three is that a commercial or industrial customer with a number of different locations would be unnecessarily restricted in its options for signing those locations up for demand response services.) This concern does not affect the use of End Use Customer in other sections of the rule.

PROPOSED DRAFT RULE CHANGE #6:

~~(7) The Commission reserves the right to set the MFRR, or any successor or equivalent to the MFRR. The Commission initially proposes to set the MFFR for Demand Response at the current effective retail rate of the End Use Customer.~~

(7) THE COMPENSATION FOR DEMAND RESPONSE SERVICES WILL BE SET AT FULL LMP WHEN IT IS COST-EFFECTIVE TO DO SO.

Explanation for recommended changes:

Due to time constraints at the April 11 Workshop this section was not specifically discussed. On April 15 this area was identified by Staff and singled out as one of the three areas where the Staff wanted comments. The DR Parties provided the substantive response to this section in Section III above. In summary, the MFRR is no longer consistent with the

compensation levels approved for MISO by FERC. If the Commission intends on drafting a rule that is consistent with MISO's tariff, demand response resources should be compensated at the market rate, or Full LMP.

V. CONCLUSION

The DR Parties appreciate this opportunity to submit comments concerning the importance of the Demand Response Aggregator Rule as well as the Commission Staff's efforts to consider all viewpoints in this process.

Respectfully submitted,

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