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 Systems Operators	**STATE OF MISSOURI** **PUBLIC SERVICE COMMISSION** **FILE NO. EW-2021-0267**

COMMENTS OF CPOWER REGARDING MODIFICATION OF TEMPORARY BAN ON AGGREGATORS

Pursuant to the Public Service Commission's ("Commission") Order in the above-captioned docket dated August 4, 2021, Enerwise Global Technologies, LLC, d/b/a CPower ("CPower"), submits public comments for the record of this proceeding.

CPower is a leading provider of demand side energy solutions in Missouri and throughout North America. Although CPower is a Midcontinent Independent System Operator ("MISO") market participant, it does not currently operate as a aggregator of demand response resources in Missouri because of the temporary ban adopted almost twelve years ago.

CPower serves as a demand response ("DR") aggregator for numerous customers with facilities in Missouri operating in most other markets in North America in which there are no bans or other barriers to participation. While CPower provides limited services to our Missouri customers, our customers and many other customers lack meaningful opportunities to optimize load flexibility through DR participation.

CPower remains very interested in working with the Commission, Missouri utilities, and with customers to provide innovative and useful demand side services. However, innovative energy technology companies such as CPower that are not regulated utilities can only consider making investments in Missouri if there is a constructive regulatory environment. Today, with a *de jure* ban on

our business, CPower and many other advanced energy solutions companies find Missouri unattractive for investment to bring energy solutions to customers.

The temporary ban has stunted investment in innovation in demand side flexibility that would be beneficial to customers and the grid.

Today there is abundant latent potential for DR in Missouri that remains untapped. This potential will not be realized until the Commission removes unnecessary barriers that deny beneficial opportunities to customers and make the electric grid in Missouri less efficient and reliable than it would be if the potential were to be unleashed.

There remains in some circles, including in a number of midwestern states including Missouri, the mistaken perception that aggregator participation in demand response ("DR") is somehow inconsistent with traditional retail regulation of utilities. Such assertions are false, but this perception has persisted without critical inquiry into its validity. Proponents of prohibitions on aggregators are motivated by the desire to restrict competition and maintain a protected market for demand side services, rather than what is best for customers or Missouri. Competition restrictions are appropriate for core regulated utility services such as supply and distribution service. Demand response is not a natural monopoly service, however and is therefore not well-suited to regulation as a utility service. The result of restricting aggregator participation serves only to prevent Missouri from seeing more investment in advanced energy technologies and prevent the realization of benefits to customers and the grid.

In defense of maintaining restrictions on customer opportunities to take advantage of innovations in energy management, proponents of maintaining a ban often raise false platitudes about how aggregators participation can negatively impact load forecasting or cause costs to be borne by other customers. DR participation in the Regional Transmission Operator/Independent System Operator ("RTO/ISO"), including MISO and the Southwest Power Pool ("SPP"), would simply not be sustainable if

the wholesale market operated at cross-purposes with the retail market. In point of fact, DR participation in the wholesale market functions without interference with the retail market, regardless of whether that market is traditionally regulated or permits retail supply competition in some form or fashion. DR participation models in wholesale markets – every single one of them in every RTO/ISO market - are designed to operate in tandem with and in harmony with the retail market in both regulated and restructured markets. If this were not true, and DR participation models harmed the retail market, the Federal Energy Regulatory Commission would not be able to find them just and reasonable. Federal regulation of DR in wholesale markets is agnostic to the retail regulatory model in any particular state. While this absence of conflict should be self-evident and common-sensical, with so much misinformation and fear-mongering that has swirled around the DR opt out issue over the years, it still must be emphasized.

Wholesale market DR participation has been successful in both regulated and deregulated states in other RTO/ISO markets besides MISO and SPP for several years. In the east, traditionally regulated states such as Virginia, West Virginia, and Vermont allow customers to participate in wholesale market demand response programs and have not opted out. Despite the "parade of imaginary horribles" that proponents of the DR aggregator ban may raise, such DR activity does not interfere with retail regulation or the operations of regulated utilities. The example of these regulated states is offered as proof of that fact. What such participation does do is help customers reduce energy costs and make the grid more reliable and enhance the diversity of energy resources in every state where participation is allowed.

Unfortunately, at the time of adoption of the DR opt out rule, MISO and SPP had immature participation models for wholesale DR, and very little participation in those programs. Upon adoption of the opt out rule, early fear-mongering in the absence of actual experience led most MISO and SPP states to opt out of allowing DR, even before DR participation was occurring or understood. Wholesale DR opportunities were extinguished both MISO and SPP in their infancy, or even before they ever started in

many states. By contrast, the regulated states mentioned above, located in wholesale markets where DR had been active for many years, chose not to opt out. They certainly could have done so, and would have if such participation was harmful to utilities or customers of their respective states. The Commission should ask why it is those other regulated states with real world experience with wholesale DR did not opt out if the naysayers were correct and wholesale DR participation was incongruent with traditional regulation.

The challenges utilities face offering DR programs.

Another argument that is often raised supporting maintaining the ban is that customer participation in wholesale market DR programs should only be allowed through the utility. While it is understandable why a utility might prefer that treatment, that approach is unquestionably bad for customers and also will fail to leverage the demand side potential that exists.

Utility administered DR programs, whether designed to create distribution system benefits or wholesale market benefits, are incapable of realizing even a significant portion of the latent potential that exists in demand side resources. This is not a criticism of utilities in general or any utility in particular, or of any particular type of utility DR program. Rather, there is an inherent regulatory challenges that prevent utility DR programs from realizing demand side resource potential.

Utility DR programs are often tariff based offerings that are not well-suited for the diversity of the utility's customers. This is an unfortunate artifact of the non-discrimination obligation that is fundamental to utility regulation. As a result of the non-discrimination obligation, the utility will offer one (or a very small number) of DR tariffs that is/are open to all customers. At their best, such tariffs are designed for the "average customer." Unfortunately very few customers are actually average, and as a result the DR tariff doesn't work well for most customers. The arrangements cannot be customized under a tariff, and for this reason such tariffs are universally undersubscribed.

One potential way to address this first problem could be to adopt multiple tariffs. But doing so raises different problems for the utility. The utility could, for example, adopt a car wash industry DR tariff, or a hotel industry DR tariff, and injection-molding plastics manufacturing DR tariff, etc. This approach would perhaps attract more customer diversity. On the other hand, having many industry specific tariffs is quite cumbersome for the utility and would inevitably lead to risks of cross-subsidization across these customers.

The non-discrimination obligation, while an important and fundamental aspect of utility regulation, is a barrier to regulated utilities leveraging load flexibility resources from a diverse set of customers. Apparently recognizing this limitation, some Missouri utilities have attempted to overcome it by having contracts with a third-party vendor who has flexibility of contract to negotiate varying terms with customers with different load flexibility profiles. This approach can work, but it quickly becomes problematic because raises very serious consumer protection concerns. If the vendor is the acting as the exclusive agent working on behalf the utility, and faces no competition, it does not have the incentive to offer the customers the best deal for the customer. In this sense, the vendor is in no different position than having a utility providing services without a non-discrimination obligation – which no regulator would allow. This utility/exclusive 3rd party vendor approach is a suboptimal solution that carries risk of harm to customers. It should be considered only with great care and should only be utilized with substantial regulatory oversight to ensure that customers are treated fairly.

Missouri should invite aggregators and competition to bring advanced energy solutions utilities and customers.

For over a decade, Missouri and most other MISO and SPP states have banned aggregators from offering customer DR potential into the wholesale market. With each passing year, the region is falling even further behind other regions in the United States in the availability of advanced energy management solutions and leveraging demand side flexibility.

DR aggregators present no threat to the utility business model and do not interfere with the regulation or operation of distribution utilities. Aggregators do not distribute or sell electricity to customers. Aggregators instead offer customers a way to leverage the flexibility potential they possess to realize benefits for themselves and the grid. Moreover, DR participation through aggregators is a "Pareto improvement" – while some customers (participants in DR) are made better off though, no customer is made worse off. Only in the arcane world of utility regulation can such activity become warped into something that needs to be banned by law – yet here we are twelve years into the current temporary ban.

A reasonable way forward.

Removing the temporary ban is an important first step. But removing the ban alone will not launch a gold rush of DR aggregator activity in Missouri. This is true for one very practical reason. The primary value driver for DR in the wholesale market today is serving as a capacity resource to meet resource adequacy requirements. In a sense, the capacity resource opportunity is like the "anchor tenant" in a shopping mall. Without the capacity resource adequacy opportunity, most often there is insufficient value that can be created to justify participation as price responsive load in the wholesale market or participate as an ancillary services resource.

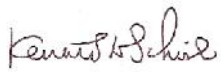
Since Missouri utilities are responsible for procuring capacity resource on behalf of the load they serve, DR aggregators need the ability to work with Missouri utilities to offer DR to meet the utilities' resource adequacy obligations to the wholesale market. While MISO operates an auction for resource adequacy resources, the auction is a thinly traded residual auction that allows load serving entities to trade out of long and short positions. Accordingly, pricing in the MISO auction is not reflective of the true value of resource adequacy resources and is not a viable mechanism for aggregators to rely upon. For this reason, the business reality is that aggregators need Missouri utilities as commercial partners in order to bring solutions to Missouri. In addition to taking the first step of removing the temporary ban,

the Commission should encourage its jurisdictional utilities to engage with aggregators about the opportunity to work together to utilize DR to meet resource adequacy requirements.

The fact that aggregators generally need the utility to be willing to buy capacity also presents a linkage that would allow the Commission to assert regulatory jurisdiction over aggregators to the extent it is desired. This is not to suggest that it is necessary to adopt regulation over aggregators – most states do not regulate aggregators at all, and among those that do, the extent of regulation is usually limited to a qualification and a DR aggregator registry. Nevertheless, to the extent that the Commission would find it useful or necessary to assert some control over aggregators, there is a nexus to Commission jurisdiction under the auspices of the Commission jurisdiction over the business activities of its jurisdictional utilities.

WHEREFORE, CPower respectfully requests that the Commission repeal the temporary ban and direct jurisdictional utilities to pursue discussions with DR aggregators about opportunities to work cooperatively for the benefit of customers and reliability and efficiency of the electric grid.

Respectfully submitted,



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