**BEFORE THE PUBLIC SERVICE COMMISSION
FOR 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

**EVERGY MISSOURI METRO'S AND EVERGY MISSOURI WEST'S
RESPONSE TO ORDER OFFERING AN OPPORTUNITY TO COMMENT
REGARDING MODIFICATION OF TEMPORARY BAN ON AGGREGATORS FOR
COMMERCIAL AND INDUSTRIAL CUSTOMERS**

COMES NOW, Evergy Metro, Inc. d/b/a Evergy Missouri Metro ("Evergy Missouri Metro") and Evergy Missouri West, Inc. d/b/a Evergy Missouri West ("Evergy Missouri West") (collectively, "Evergy"),[1] and, pursuant to the Missouri Public Service Commission's ("Commission" or "MPSC") Order issued in the above-captioned docket on August 4, 2021 responds as follows:

1. On February 24, 2021, the Commission issued an Order establishing a *Working Case Regarding Federal Energy Regulatory Commission ("FERC") Order 2222 Regarding Participation of Distributed Energy Resource Aggregators ("DERA") in Markets Operated by Regional Transmission Organizations ("RTO") and Independent System Operators ("ISO")*.

2. On March 31, 2021, Evergy filed its initial response, indicating that it supports the ongoing coordination and collaboration by all parties involved in the complex decisions required to successfully implement the requirements of FERC Order 2222. The Company also noted that FERC Order 2222 recognizes the role of the Commission as the relevant electric retail regulatory authority ("RERRA") and highlighted several areas with the potential for significant impact and where Commission coordination and/or oversight may be required.

[1] Effective October 7, 2019, Evergy Metro Inc. d/b/a Evergy Missouri Metro adopted the service territory and tariffs of Kansas City Power & Light Company ("KCP&L") and Evergy Missouri West, Inc. d/b/a Evergy Missouri West adopted the service territory and tariffs of KCP&L Greater Missouri Operations Company ("GMO").

3. On April 30, 2021, Staff filed its report recommending that the Commission use the docket to conduct a series of workshops. Staff also suggested that the docket be used to continue to gather information regarding the operation of Aggregators of Retail Customers ("ARCs").

4. On June 29, 2021, the first workshop was held. One of the topics discussed at the workshop was the operation of ARCs in Missouri. Per the Order issued on March 31, 2010 in docket EW-2010-0187, demand response load reductions of customers of the four Missouri electric utilities regulated by the Commission are prohibited from being transferred to ISO or RTO markets directly by retail customers or third party ARCs until otherwise Ordered by the Commission.[2]

5. On August 4, 2021, the Commission issued *Order Offering An Opportunity To Comment Regarding Modification of Temporary Ban on Aggregators for Commercial and Industrial Customers* inviting parties to provide comments addressing Commission questions as the Commission contemplates whether or not there should be a modification to the prohibition of the operation of ARCs in Missouri.

6. Evergy appreciates the opportunity and respectfully offers the following comments in response to the Commission's Order.

1. Whether the Commission should modify the current prohibition on the operation of ARCs in Missouri?

RESPONSE: Evergy believes it is premature to make any modifications to the current prohibition on the operation of ARCs in Missouri. A modification to the current prohibition under the current legislative and policy framework effectively allows ARCs to bypass regulatory oversight. The Company believes it is important to preserve the current policy framework until the implications of third-party participants involved in retail customer relationships can be fully debated and explored until

[2] See, *Order Temporarily Prohibiting the Operation of Aggregators of Retail Customers*, March 31, 2010; File No. EW-2010-0187

assurances exist that adequate policies to protect and preserve consumer and ratepayer interests are in place.

As the Commission contemplates the issues raised by this Order, the Company redirects to issues previously stated in Evergy's comments filed in EW-2010-0187. While these comments were not presented in the context of complications and challenges associated with the implementation of FERC 2222, they remain relevant to the activities of third-party ARCs and include, among others, the following for consideration:

(i) Challenges resulting with demand response activity by third-parties, which affect the utility's ability to predict and schedule actual hourly loads, meet NERC real-time regulation requirements, and ensure proper annual capacity requirements to meet load obligations.

(ii) Complications in revenue and energy accounting due to the differences between market settlement load of the system and actual load of the system, as well as differences between billed energy and demand for customers and actual energy and demand for customers.

(iii) The need to enhance technology and data management systems to protect the safety and reliability of distribution system operations.

(iv) Questions about which entity shall bear the costs of integration for metering and telemetry requirements to support ARC operations (i.e., the Company, the customer, or the ARC).

2. *What modifications should be made to the current prohibition?*

<u>RESPONSE</u>: The Company believes it is premature to make modifications to the current prohibition at this time. As addressed above, and in previous filings in this docket, there remain a number of significant issues and challenges to be addressed. The current structure affords the MPSC the needed time to carefully assess potential policy gaps and existing tariff structures prior to the implementation of FERC Order 2222, and to apply the stakeholder process to ensure that the distribution utility and its retail (participating and non-participating) ratepayers do not bear the burden of increased system costs that may result from third-party ARC activities.

Further, the Company notes that it has existing programs already in place, in which customers can choose to participate in demand-side management programs. The Company offers a robust portfolio of energy efficiency and demand response programs through its MEEIA ("Missouri Energy Efficiency Investment Act") Cycle 3 portfolio, and the Company also offers a Market Based Demand Response tariff ("MBDR")[3], which enables DR participation in the SPP wholesale market through the Company. This tariff (constructed based upon the "Indiana Model")[4] provides the ability for the utility to offer the retail customer's DR resources into the SPP market on the customer's behalf with the customer receiving revenues from wholesale market participation in the form of compensation from the retail utility. As part of the Emerging Issues in Utility Regulation Workshop (EW-2017-0245)[5], Staff recommended that the MPSC Commission "encourage the electric utilities to submit tariffs similar to the "Indiana Model" and Staff further affirmed the Company's positions that "(u)tilities should be involved in DR, whether utility scale or through third-parties, to ensure system reliability." Staff further acknowledged that allowing ARCs would prevent the Commission from regulating services that ARCs seek to provide and that the Commission would have "no control over the manner in which the aggregators conducted business." Evergy acknowledged the recommendation by Staff to implement a similar Indiana-like model and implemented the MBDR

[3] ER-2018-0145, ER-2018-0146, Schedule MBDR.
[4] See MPSC Staff Report on Distributed Energy Resources, "A Working Case to Explore Emerging Issues in Utility Regulation", File EW-2017-0245.
[5] Ibid.

tariff, which allows demand response aggregation in a purposeful manner such that the Commission maintains the oversight that Staff articulated in its recommendation.

Across these existing programs that the Commission approved, we believe customers have an array of options which enable them to participate in demand-side management activities with direct and associated benefits to all retail customers.

3. *What impact would a modification to permit operation of ARCs for commercial and industrial customers have on existing MEEIA programs?*

RESPONSE: The Company uses its MEEIA programs to lower summer system peak load as part of its emergency load curtailment plan, to modify forecasted system peak load levels to defer investments in new capacity, and to reduce purchased energy costs during periods of significantly increased market energy prices. The MEEIA programs also provide retail customers information and opportunities to help them manage their overall energy usage and lower their bills.

As reported in our last MEEIA Cycle 3 filing (prepared in 2018), Evergy has invested $294 million in demand-side management ("DSM") programs in Missouri since 2005. These programs have been designed with the express goal of maximizing benefits to all customer classes, regardless of direct participation, and to help keep energy costs low for everyone. Design of the MEEIA programs are accomplished through a rigorous stakeholder and evaluation process and a requirement to demonstrate the programs are cost-effective, with measurable and verifiable savings. Outside of this current proceeding, a thorough examination of the resulting effects on ratepayers and existing programs from modifying the current prohibition has not yet occurred.

Direct competition by ARCs could impact the ability to attract large retail customers to participate in existing and future utility-sponsored programs- programs that have been evaluated and approved by the Commission. Because large retail customers often have multiple locations to support aggregations of meaningful size, aggregators are targeting or cherry-picking such customers in states that did not choose to Opt-Out. A migration of large retail customers from utility-sponsored demand response programs to unregulated programs with little or no regulatory oversight could undermine the effectiveness of the MEEIA programs which are designed to maximize benefits to all customers.

Further, existing utility demand response programs are currently utilized and relied upon for system peak load management and to support long-term resource planning efforts by deferring new capacity needs. If a non-utility participant bids its DR resource into the SPP market, the capacity value of the DR resource is lost under current planning processes. Current market protocols do not have a mechanism that would enable the utility to reduce its capacity reserve obligation for non-utility-controlled DR resources.

Direct competition with existing and future Company-sponsored programs could remove a large group of customers with meaningful demand response potential from participation in MEEIA programs, divert potential benefits away from state-approved utility programs, and weaken the Commission and Company goal of helping lower energy costs for everyone. If the Opt-Out were lifted the Commission would likely need to also alter the Company's MEEIA portfolio offering, which could change , the benefits for which current MEEIA programs were carefully designed. In addition, the Commission and the Company would need likely to re-evaluate long-term planning efforts since DR is a key input to the current IRPs.

4. *What impact would a modification to permit operation of ARCs for commercial and industrial customers have on the commercial and industrial customers?*

RESPONSE: As stated above, commercial and industrial customers represent a class of customers with meaningful DR potential. While many existing utility-sponsored DR programs are currently designed to provide savings by reducing electrical consumption and retail bills, ARCs offer a revenue stream from participation in the wholesale markets. This revenue stream provides an opportunity for customers to further offset energy costs, depending on the profit sharing terms of the agreement with the ARC.

One of the goals of FERC Order 2222 is to expand opportunities for market participation by distributed energy resources ("DER"), and, by enhancing competition among supply-side resources, potentially lowering the wholesale price for the supply of energy and ancillary services within SPP. It is reasonable to expect that enhancing market competition will yield benefits in supply-side costs, which would in turn benefit all wholesale customers; however, the potential for increased costs to support broader activity on the distribution system may offset some of those savings. Therefore, it is possible that the majority of such benefits will accrue primarily to the ARC and to the retail customers that choose to participate in such activities.

Evergy's Missouri customers participating in our MEEIA programs have a positive and tenured relationship with the Company on DR. Evergy has partnered with its customers on DR for nearly 15 years, beginning with the Company's Comprehensive Energy Plan when its DR programs were in its infancy, to today where Evergy has over 80 MW in business demand response contracts and over 150 customer contracts. Evergy strategically implemented a distributed energy resource management ("DERM") platform to manage its residential and business DR programs with the intent of furthering the management of DER resources to minimize grid impact. Removing the Opt-Out provision to allow demand response aggregation by ARCs without Commission oversight could confuse customers that may not understand the difference between utility-offered DR programs and the relationship to grid stability for all customers and new unregulated ARCs.

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

<u>RESPONSE</u>: Utility-sponsored programs are designed to maximize benefits across different classes of ratepayers and are also designed to ensure that investments in such programs yield greater value than the invested cost. By competing directly with utility-designed programs, aggregators could impact the ability of the Company to attract certain types of customers, reducing the overall benefits achievable from utility-sponsored programs. More importantly, greater participation by commercial and industrial customers with third-party aggregator programs is likely to have the net effect of shifting the benefits of demand response participation to third-party aggregators and their program participants, with nonparticipating customers carrying the burden of remaining system costs.

This dynamic underscores the reality that current tariff structures and cost allocation methodologies were not designed in contemplation of the participation of third-party aggregators in retail customer programs. Dismantling or even modifying the existing framework should not be done without careful examination the impacts and potentially unintended consequences and ensuring third-party aggregators are sharing in system costs for utilizing distribution system infrastructure.

6. Are any changes to the Commission's existing rules necessary?

RESPONSE: The Company believes that it is important to continue working in partnership with the Commission to review current utility programs and consider expanding customer programs to accommodate new technology trends and customer preferences. Evergy proposed, and the Commission approved, Evergy's MBDR tariff, which was inspired by the "Indiana Model" and recommended by Commission Staff in 2018. This tariff was offered as an extension of the Company's traditional business demand response program where the utility aggregates DR, either through itself or through a third-party, with the ability to work with customers with DR resources who were wanting to participate in the wholesale market. The MBDR tariff continues to be an option for parties to consider without the Commission having to remove the Opt-Out.

WHEREFORE, Evergy Missouri Metro and Evergy Missouri West respectfully submit the attached responses pursuant to the Commission's Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document was served upon all counsel for Staff and the Office of the Public Counsel on this 1st day of September 2021 via e-mail.

/s/ Roger W. Steiner