

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 31st day of March, 2010.

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

**ORDER TEMPORARILY PROHIBITING THE OPERATION OF
AGGREGATORS OF RETAIL CUSTOMERS**

Issue Date: March 31, 2010

Effective Date: March 31, 2010

The Federal Energy Regulatory Commission (FERC) issued Orders 719 and 719-A ordering Regional Transmission Organizations (RTOs) and Independent Transmission System Operators (ISOs) to amend their market rules to allow Aggregators of Retail Customers (ARCs) to bid demand response resources from retail customers directly into the RTO and ISO wholesale energy and ancillary services markets, unless the laws or regulations of the relevant retail electric regulatory authority do not permit a retail customer to participate.¹ The FERC found that allowing ARCs to act as intermediaries in the organized market would reduce barriers to demand response.

In the final rule adopted by FERC, ISOs and RTOs may not accept bids from ARCs that aggregate the demand response of customers of utilities that distributed more than four

¹ Order No. 719, Final Rule, *Wholesale Competition in Regions with Organized Electric Markets*, Docket Nos. RM07-19-000 and AD07-7-000, 125 FERC 61,071 (October 17, 2008).

million megawatt-hours in the previous fiscal year, where the relevant electric retail regulatory authority (RERRA) *prohibits* ARCs from doing so. The ISO and RTO may not accept bids from ARCs that aggregate the demand response of customers of utilities that distributed four million MWh or less in the previous year unless the RERRA specifically permits it.²

The term “relevant electric retail regulatory authority” means the entity that establishes retail electric prices and any retail competition policies for customers, such as the state public utility commission.³ All four of the investor owned public utilities regulated by the Commission distributed more than four million MWh last fiscal year.⁴ As such, unless the Commission affirmatively prohibits ARCs from aggregating customers’ demand response, the ARC is allowed to do so and MISO may accept the ARC’s bids.

The Commission issued an Order opening this docket on January 6, 2010, to investigate the implementation of various demand side programs and the effect of FERC Orders 719 and 719-A on Missouri electric utilities and ARC operation in market opportunities within MISO and SPP. In this docket, the Commission is addressing several issues with particular applicability to the operation of ARCs in Missouri including:

1. Does any Missouri statute, case law or regulation prohibit or restrict electric utility customers from participating through an ARC in demand response bidding programs?
2. Does a single retail customer or ARC act as a public utility subject to the Commission’s regulation if it bids demand response into the SPP or MISO market?

² 18 C.F.R. 35.28(g)(1)(iii), Order No. 719-A, Order On Rehearing, *Wholesale Competition in Regions with Organized Electric Markets*, Docket Nos. RM07-19-001, 128 FERC 61,059 para. 60 (July 16, 2009).

³ Order 719, para. 158.

⁴ Union Electric Company, d/b/a AmerenUE; Kansas City Power & Light Company; KCP&L Greater Missouri Operations Company; and The Empire District Electric Company.

3. Does the right to furnish retail electric service under section 393.170 give a certificated utility an exclusive right to benefit from demand response activities of its retail customers through an ARC?
4. How would a certificated utility and its retail customers be affected if a single retail customer or an ARC bid demand response directly into the SPP or MISO market?
5. What would be the effect on utility rate design if a single retail customer or an ARC bid demand response directly into SPP's or MISO's organized energy market?
6. What would be the effect on utility revenue collection if a single retail customer or an ARC bid demand response directly into SPP's or MISO's organized energy market?
7. How would a utility's long-term load forecasting process change if a single retail customer or an ARC bid demand response directly into SPP's or MISO's organized energy market?
8. How would a utility's budgeting process change if a single retail customer or an ARC bids demand response directly into SPP's or MISO's organized energy market?
9. Are there any other consequences of allowing participation in demand response programs by a single retail customer or an ARC?

The Commission has not yet resolved these and other questions regarding the operation of ARCs in Missouri, such as whether ARCs must be certificated by the Commission pursuant to section 393.170 RSMo. 2000, in order to operate in Missouri.

On March 19, 2010, the Commission received a letter from the Midwest Independent Transmission System Operator, Inc. (MISO) stating that CPLN – CPower, Inc., had registered with MISO to aggregate customers' demand response in AmerenUE's service territory. MISO filed a tariff with FERC on October 2, 2009, to comply with FERC Orders 719 and 719-A allowing the operation of ARCs in wholesale energy markets. The proposed MISO tariff provides that the RERRA has ten (10) business days from the date of

notification to comment on the ARC's application before it becomes effective. MISO's compliance filing has not been approved by FERC; it proposes an effective date of June 1, 2010. However, MISO requested feedback within ten (10) business days regarding whether the Commission had affirmatively considered ARCs bidding demand response into the market, i.e., whether the Commission had permitted or not prohibited ARC participation in organized markets.

There are significant questions that must be addressed by the Commission about the operation of ARCs in the service territories of the utilities regulated by the Commission. Many of those questions are set forth above. Other questions include determining the marginal foregone retail rate (MFRR), or the amount of compensation, to the utility from the ARC for the reduction in demand and foregone sales. According to MISO's proposed tariff filed at FERC, the Commission has an obligation to address the MFRR.

The Commission finds that additional information is required to address the questions before the Commission. The Commission concludes that it is appropriate at the present time to prohibit the transfer of demand response load reductions to ISO and RTO markets in Missouri by retail customers or third-party ARCs of the four electric utilities regulated by the Commission, while the Commission considers how it will proceed regarding such matters pursuant to FERC Orders 719 and 719-A and Missouri statute, caselaw, and regulations.

This is the file in which the Commission will address the operation of ARCs in Missouri. In a February 25, 2010 Staff Report submitted in this file and File Nos. EW-2009-0291, EW-2009-0290, and EW-2009-0292, the Staff indicated that it was proposing that demand response aggregation be addressed in EW-2010-0187 in addition

to demand-side matters, in general, and also energy efficiency matters as they relate to Senate Bill No. 376 ("Missouri Energy Efficiency Investment Act," i.e., section 393.1075). The Staff further reported that the participants had agreed upon a schedule of workshops for EW-2010-0187 and EW-2009-0291 for April 14, May 17-18 (a.m. only), and June 11, 2010.

On March 3, 2010, the Commission issued a procedural order adopting the Staff's proposed schedule of workshops, with some slight modification. The modification directed the workshop participants to address the RTO issues, i.e., the demand response aggregation issues, at either the April 14, 2010, or May 17-18, 2010 workshops. On March 25, 2010, the Commission clarified that its activities in File No. EW-2010-0187 relate to matters associated with ARCs and Orders 719 and 719-A. As a consequence, the Commission is directing the Staff to confer with the participants to the February 22, 2010 workshop, including CPower, Walmart, and MISO, and submit by 5:00 p.m., April 2, 2010, any revisions to its schedule of workshops.

The Commission notes that it discussed at its March 24, 2010 Agenda Session, CPower's application to MISO to become an ARC for Missouri, MISO's notification to this Commission of CPower's application, FERC Orders 719 and 719-A, and MISO's pending tariff filing with FERC. A video stream archive of that Agenda Session can be accessed through the Commission's internet website.

Finally, the Commission invites the participants in this docket to address the legal issues attending the operation of ARCs in Missouri, including in particular, whether an ARC must be certificated and regulated by the Commission.

THE COMMISSION ORDERS THAT:

1. 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.
2. The Staff shall file by 5:00 p.m., April 2, 2010 any revisions to its schedule of workshops for File No. EW-2010-0187.
3. The participants shall file additional comments regarding the issues attending ARC operation, in general, and ARC operation in Missouri, in particular, by April 9, 2010.
4. This order shall become effective immediately upon issue.
5. This order shall remain in effect until further order of the Commission

BY THE COMMISSION



Steven C. Reed
Secretary

(S E A L)

Clayton, Chm., Davis, Jarrett, Gunn,
and Kenney, CC., concur.

Woodruff, Chief Regulatory Law Judge