



**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile or electronically mailed to all counsel of record this 22<sup>nd</sup> day of June 2023.

/s/ Nathan Williams

## MEMORANDUM

To: Missouri Public Service Commission Official Case File,  
Case No. EW-2021-0267

From: Geoff Marke, Chief Economist  
Jordan Seaver, Policy Analyst  
Missouri Office of the Public Counsel

Re: Order Regarding Opportunity for Additional Comments related to Aggregations of Retail Customers (“ARCs”)

Date: 6/22/2023

*“Whenever competition is feasible it is, for all its imperfections, superior to regulation as a means of serving the public interest.”*

Alfred E. Kahn, Economist & former Chairman of the Civil Aeronautics Board

Many of the questions the Commission posed to stakeholders appear to be utility and/or Aggregator of Retail Customers (ARC) specific in nature, and in some cases, the questions appear to be directed specifically to the Midcontinent Independent System Operator (MISO) and the Southwest Power Pool (SPP). As such, we have elected to respond to the questions by section where we will provide general policy recommendations for the Commission’s consideration.

### Size Limitations for Demand Response (DR) Eligibility

Answer: There should be no size limitations (either total, in single location, or aggregated across multiple locations) placed on C&I customers to either participate in wholesale DR directly or through an unregulated ARC. The option for a customer to participate in a wholesale DR program should rest with the ARC administering the program. Imposing a size limitation will preclude many customers from participating in DR, which will ultimately lead to reduced benefits to all customers. Any additional regulatory oversight (e.g., Tier 3 options) will also result in increased costs for demand response programs for customers as ARCs will merely pass on the costs of compliance to participating customers. This will increase the likelihood of customers participating in programs and result in a deadweight loss to all involved, including nonparticipants.

Finally, but perhaps most importantly, regulated utilities should not be allowed to offer regulated (ratepayer funded) C&I demand response programs. Allowing such a practice to continue would be anti-competitive and result in competitive disadvantage for third-party aggregators. Existing demand response programs should be phased out by the end of 2024.

We recommend that the Commission approach the specific area of ARC participation in a similar manner as was exercised in Kansas and Oklahoma (Tier 1)—little to no regulatory oversight. As it pertains to the other possible policy permutations that will arise from FERC 2222 (e.g., policy decisions stemming from the introduction of battery storage, microgrids, rooftop solar aggregators, etc.), we recommend the Commission take an approach similar to Michigan’s insofar as more dialogue and workshops are warranted.

C&I customers participate in ARCs across the United States today. The technological capability to leverage collective resources through a competitive market to the benefit of all customers would exist today but for the Commission’s prohibition. The same cannot be said today for other programs and areas of interest under FERC 2222. We believe that this docket can provide an appropriate jumping off point for further FERC 2222 issues beyond C&I demand response aggregators moving forward and recommend that it be the place for such filings and discussions.

#### Dispute Resolution:

Answer: We recommend that the Commission delegate dispute resolution to the relevant Regional Transmission Organization (RTO). In unique situations where a dispute resolution would be germane to the Missouri Public Service Commission we recommend that the existing processes in place surrounding a complaint case should be implemented. Based on our review of the LBNL report this has not been an issue experienced by other states more seasoned with ARC participation. The sole exception appears to be limited to distributed energy resource (DER) aggregation in retail programs in California, which is a very different program under very different circumstances than those being discussed in this filing.

#### Double Counting/Dual Participation

Answer: Double-counting can distort the market and lead to inaccurate pricing. It can also make it difficult to compare the performance of different demand response resources. There are a number of ways to prevent double-counting, including:

- 1.) Clearly defining the terms of each demand response program: This includes specifying the metrics that will be used to measure load reduction or energy savings of each demand response resource, as well as the rules for how these savings will be credited.
- 2.) Establishing a central registry of demand response resources: This registry can help to ensure that each demand response resource is only enrolled in one program at a time.
- 3.) Using technology to track load reduction and energy savings: This can help to ensure that the same load reduction or energy savings is not counted multiple times.

The aforementioned safeguards should be RTO specific. For our purposes at the state level, there are at least two immediate situations where double-counting may arise that should give regulators pause under the current paradigm.

- 1.) If a customer is enrolled in a demand response program that pays for load reduction is also enrolled in a program (e.g., MEEIA) that pays for energy savings. The customer's load reduction is counted towards both metrics, resulting in double-counting; and
- 2.) A demand response resource is enrolled in a program that pays for load reduction during peak hours. The resource is also enrolled in a program that pays for load reduction during emergency events. The resource's load reduction is counted towards both metrics, resulting in double-counting.

Option 1 requires due diligence of utilities, regulators and advocates to minimize double-counting and is most germane to the design and implementation of a Commission-approved MEEIA. Option 2 is worth having a greater level of discussion in future rate case proceedings. At a minimum, an update to the utility's emergency demand response ("load shedding") tariff is warranted.

### Data Governance

Answer: The OPC has filed testimony supporting that utilities use the Green Button functionality and each of the electric utilities have entered into stipulation and agreements to utilize the Green Button functionality to mitigate data transfer concerns.<sup>1</sup>

That unique platform<sup>2</sup> should allow for secure transfer of finite customer data to 3<sup>rd</sup> party vendors.

To the extent that the Commission wants to ensure that ARCs protect customer information, whether through attestations or some other method, we believe that the following minimum safeguards should be in place:

Encryption: ARCs encrypt all customer data at rest and in transit. This means that the data is scrambled so that it cannot be read by unauthorized individuals.

Access controls: ARCs only allow authorized personnel to access customer data. This is typically done through a combination of username and password, as well as two-factor authentication.

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<sup>1</sup> This was accomplished in the following cases:

- Case No. ER-2021-0312 – Liberty
- Case No. ER-2021-0240 – Ameren Missouri
- Case No. ER-20218-0145 – Evergy Missouri Metro
- Case No. ER-2018-0146 – Evergy Missouri West

<sup>2</sup> The Green Button platform allows customers online access to view and download their energy usage data.

Physical security: ARCs store customer data in secure facilities that are protected from unauthorized access.

Auditing: ARCs perform regular audits of their security measures to ensure that they are effective. This includes conducting penetration tests and reviewing security logs.

In addition to these security measures, the Commission may want to ensure that ARCs have a number of policies and/or frameworks in place to protect customer information. These policies typically include:

Explicit Transparent Privacy Policy: The ARC's privacy policy explains how the ARC collects, uses, and shares customer data.

Consent: The ARC obtains customer consent before collecting or using their data.

Right to access: Customers have the right to access their data and to request that it be corrected or deleted.

Data breach notification: The ARC is required to notify customers if their data is breached.

If the Commission elects not to elicit this level of regulatory oversight we recommend that the ARCs make it clear in any contract that their service is not regulated by the Missouri Public Service Commission.

Finally, we recommend that the Commission revisit Case No. AW-2018-0393, the working case docket concerning potential data privacy rules for customers. The docket was opened five years ago and there has been no activity for the past three years. Any further discussion centered on FERC 2222 activity needs to strongly consider consumer safeguards surrounding data privacy.

#### Regulatory Gaps:

Presently we do not anticipate any regulatory gaps beyond what was identified above (see double counting). No doubt the Commission and various stakeholders will adapt as FERC 2222 evolves following further FERC guidance to the RTO's.

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

**AFFIDAVIT OF GEOFF MARKE**

STATE OF MISSOURI    )  
                                  )    SS.  
COUNTY OF COLE    )

**COMES NOW GEOFF MARKE** and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Memorandum* and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

  
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Geoff Marke  
Chief Economist

**JURAT**

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 21<sup>st</sup> day of June, 2023.



TIFFANY HILDEBRAND  
My Commission Expires  
August 8, 2023  
Cole County  
Commission #15637121

  
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Tiffany Hildebrand  
Notary Public

My Commission expires August 8, 2023.

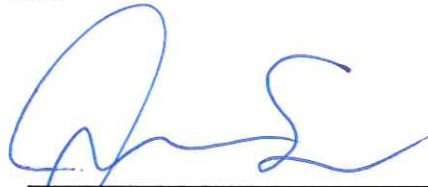
**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

**AFFIDAVIT OF JORDAN SEAVER**

STATE OF MISSOURI    )  
                                  )    SS.  
COUNTY OF COLE    )

**COMES NOW JORDAN SEAVER** and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Memorandum* and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

  
\_\_\_\_\_  
Jordan Seaver  
Policy Analyst

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Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 21<sup>st</sup> day of June, 2023.



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