

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF 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	)	Case No. EW-2021-0267
in Markets Operated by Regional	)	
Transmission Organizations and	)	
Independent Systems Operators	)	

**PUBLIC COUNSEL’S COMMENTS REGARDING THE COMMISSION’S  
TEMPORARY BAN ON DISTRIBUTED ENERGY RESOURCE  
AGGREGATORS PARTICIPATING IN WHOLESALE MARKETS**

In response to Commission’s August 4, 2021, order inviting comments on modifying the Commission’s temporary ban on distributed energy resource aggregators participating in the capacity, energy, and ancillary service markets operated by Regional Transmission Organizations and Independent System Operators (RTO/ISO) in Missouri, the Office of the Public Counsel (“Public Counsel”) supports lifting that temporary ban as to the aggregation of commercial and industrial customers in its comments made in the attached memorandum authored by its Chief Economist, Mr. Geoff Marke, Ph. D. In that memo Public Counsel also endorses exploring the impacts of rooftop solar, EV cars or various other future “Internet of Thing” devices to minimize any unintended consequences with the view to lifting the ban as to residential customers as well.

Respectfully,

/s/ Nathan Williams

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of the Public Counsel

**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 1<sup>st</sup> day of September 2021.

/s/ Nathan Williams

## MEMORANDUM

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

From: Geoff Marke, Chief Economist  
Missouri Office of the Public Counsel

Re: Aggregators of Retail Customers (ARCs)

Date: 9/1/2021

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

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

### **Questions:**

#### **Whether the Commission should modify the current prohibition on the operation of ARCs in Missouri?**

Yes. At this time the Commission should modify the current prohibition on the operation of ARCs in Missouri to allow industrial and commercial curtailment/demand response aggregation.

Functioning, competitive ARCs for large industrial/commercial interruptible curtailment programs have been viable and active market players in other states for years. Therefore, the Commission lifting its prohibition on aggregators of industrial and commercial retail customers from participating in the SPP and MISO markets in Missouri should not be controversial. In contrast, I am unaware of experience elsewhere with residential ARCs participating in wholesale markets; therefore, I caution the Commission against opening the SPP and MISO markets in Missouri to residential ARCs before it fully understands the logistics of how such aggregation would function.

#### **Economic Efficiency Argument for Competitive ARCs:**

OPC favors ARC participation in wholesale markets because the lower clearing price that results from bidding demand response in RTO/ISO markets *benefits all customers* in those markets, not just the bidding demand response aggregator. This is a positive externality. When an action causes a positive externality, that action is typically under-invested and can be viewed as a market imperfection. Conversely, a utility’s failure to use cost-effective demand response can be seen as causing a negative externality, as the inaction raises the market price for everyone.<sup>1</sup>

In my opinion the Commission’s regulatory intervention on March 31, 2010, to prohibit demand response aggregators from competing in the wholesale markets has created (or at least exacerbated) market imperfections. Simply put, demand response is not a natural monopoly service—a service least costly when its production costs are minimized by a market with a single supplier.

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<sup>1</sup> See also Staff and OPC’s arguments against Evergy’s failure to call events despite millions in capital investments for programmable thermostats in Case No: EO-2020-0227.

The premise behind RTO/ISOs is that market forces will push prices down to “just and reasonable” levels. If these market forces are insufficient because demand response is absent (or suboptimal because of barriers to entry caused by government interference) then it calls into question the validity of the RTO/ISO market premise.

Allowing only regulated utilities to aggregate customer demand response converts a potentially competitive market into a monopsony market, depriving customers of the dynamic efficiencies and differentiated choices that minimize cost and maximize convenience. Just because the utility is the service territory's sole buyer of energy in the RTO market does not mean it should be the service territory's sole aggregator of demand response.

### **What modifications should be made to the current prohibition?**

The Commission should lift the prohibition on the ability for competitive ARCs to offer large commercial/industrial demand response programs in Missouri.

I would be intellectually inconsistent if I did not extend the same rationale to residential customer service offerings, and I am inclined to endorse such a blanket modification; however, I believe more dialogue is warranted as it pertains to rooftop solar, EV cars or various other future “Internet of Thing” devices to minimize any unintended consequences.<sup>2</sup> No doubt the passage of FERC 2222, and the subsequent effectuation of that order will provide greater directive.

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

Ratepayers would benefit by no longer having to pay MEEIA related costs for this niche program function, but would still receive the benefit of a lowering of the clearing price (in theory).

Future MEEIA filings would need to omit C&I demand response as a ratepayer-subsidized program. Today, utilities have an unearned advantage in the area of demand response through regulatory-assisted protection, barriers to entry, and an overly generous earnings opportunity. There are clearly market options that should be leaned on to maximize economic efficiencies.

It is important to note that curtailment programs for industrial and commercial customers existed long before MEEIA. The inclusion of demand response programs in MEEIA has merely meant that the utilities can make even more money by leaning on its regulatory-source advantage. The exclusion of demand response programs would allow utilities to focus their efforts on other, related MEEIA endeavors.

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

It would create a positive impact. Competition creates opportunities for individuals to enter the marketplace and start new businesses. It creates jobs and provides people with a choice of employers, work places, and products. Competition also reduces the need for governmental

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<sup>2</sup> These include but are not limited to issues over cybersecurity, safety, equity concerns, double counting of savings/payments, and interoperability of devices.

interference through regulation of business. A free market that is competitive, benefits consumers, society, and preserves personal freedoms. Commercial and industrial customers will benefit directly by having more options, and all customers in the RTO/ISO should benefit from reduced clearing prices.

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

I do not believe so.

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

**AFFIDAVIT OF GEOFF MARKE**

STATE OF MISSOURI    )  
                                  )  
COUNTY OF COLE     )     SS.

**COMES NOW GEOFF MARKE** and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Public Counsel's Comments Regarding the Commission's Temporary Ban on Distributed Energy Resource Aggregators Participating in Wholesale Markets* 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 1<sup>st</sup> day of September, 2021.



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

  
\_\_\_\_\_  
Tiffany Hildebrand  
Notary Public

My Commission expires August 8, 2023.