

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held at its office in Jefferson City on the 24th day of May, 2023.

In the Matter of the Establishment of a)
Working Case Regarding FERC Order 2222)
Regarding Participation of Distributed Energy) **File No. EW-2021-0267**
Resource Aggregators in Markets Operated)
by Regional Transmission Organizations and)
Independent System Operators)

**ORDER REGARDING OPPORTUNITY FOR ADDITIONAL COMMENTS,
ORDER SCHEDULING WORKSHOP, AND NOTICE OF LBNL REPORT**

Issue Date: May 24, 2023

Effective Date: May 24, 2023

Background

The Commission opened this working file on February 23, 2021, and directed its Staff to investigate and recommend an appropriate response from the Commission to Order No. 2222 issued by the Federal Energy Regulatory Commission (FERC) on September 17, 2020. That order amends FERC's regulations to remove barriers to the participation of distributed energy resource (DER) aggregators in the capacity, energy, and ancillary service markets operated by Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs). The Commission received comments from various stakeholders and a Staff report, and conducted a workshop on Order No. 2222 on June 29, 2021.

Previously, in an order issued on March 31, 2010, the Commission prohibited the operation of aggregations of retail customers (ARCs) in Missouri.¹ That prohibition remains in place until further order of the Commission. On August 4, 2021, the Commission issued an order offering the parties in this working docket an opportunity to comment regarding modification of the Commission's 2010 temporary ban on aggregators, as it is applied to commercial and industrial customers of electrical corporations in Missouri.

In response to the Commission's Order, the following electric utilities provided comments: Union Electric Company d/b/a Ameren Missouri (Ameren Missouri) and Evergy Metro, Inc., d/b/a Evergy Missouri Metro and Evergy Missouri West, Inc., d/b/a Evergy Missouri West (together referred to as "Evergy"). Additionally, the Office of the Public Counsel, Enerwise Global Technologies, LLC, d/b/a CPower, Voltus, Inc. (Voltus), and Walmart, Inc. responded to the Commission's opportunity to comment. Additionally, Voltus provided reply comments in response to Ameren Missouri and Evergy's response to the Commission's questions. Staff provided a report to the Commission, summarizing the comments and outlining the positive and negative projections reflected in the comments.

Department of Energy Grant and Report

On February 2, 2022, the Commission issued a notice that it had been awarded a grant of technical assistance from the U.S. Department of Energy, pursuant to the Grid

¹ *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*, Order Temporarily Prohibiting the Operation of Aggregators of Retail Customers, File No. EW-2010-0187, March 31, 2010. The order specifically states: "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."

Modernization Lab Consortium (GMLC). The goal of the technical assistance is to help the Commission in its efforts to fairly integrate DER aggregation into the Commission's current regulatory framework, while not compromising safety, reliability, and consumer protection. Through the grant, the Lawrence Berkeley National Laboratory prepared a report, *Regulation of Third-Party Aggregation in the MISO and SPP Footprints* (LBNL Report), with particular focus on states within the two regional transmission organizations that include Missouri: the Midcontinent Independent System Operator (MISO) and the Southwest Power Pool (SPP).² A copy of the LBNL Report is filed in this docket.

The LBNL Report summarizes how other states have evaluated and/or integrated aggregators into wholesale markets. The LBNL Report examines how states have addressed a set of relevant policy issues, including jurisdiction, dispute resolution, registration and licensing, double counting, the roles of and limitations on aggregators, data protection, and implementation challenges. The LBNL Report makes several general findings. The LBNL Report notes that a majority of MISO and SPP states opted out of third-party ARC participation in wholesale markets³ after FERC Order No. 719 and 719-A.⁴ However, third-party ARCs in Kansas and Oklahoma do participate in the SPP without comprehensive state-administered rules.⁵ Michigan, where MISO has a large footprint, recently modified its opt-out to allow aggregations of larger commercial and industrial customers in its jurisdictional territories, and is using its early experience as the

² Sydney P. Forrester, Cole Triedman, Sam Kozel, Cameron Brooks, Peter Cappers, *Regulation of Third-Party Aggregation in the MISO and SPP Footprints* (LBNL Report), April 2023.

³ LBNL Report, pg. 6.

⁴ See 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).

⁵ LBNL Report, pg. 7. Specifically, the Report notes that Oklahoma's largest utility, PSO, has adjusted its tariffs to address issues related to customer participation in third-party aggregations, and that Evergy Kansas petitioned for tariff changes regarding third-party aggregations in January 2023. LBNL Report, pg. v fn. 1.

first step in an incremental approach to addressing ARCs.⁶ The LBNL Report describes how other states are moving forward with evaluations of ARCs,⁷ and notes that regulators in other states share the Commission's interest in better understanding issues surrounding aggregations, ARCs, and the role of retail regulators.⁸ Regardless of their state's market footprint or regulatory structure, regulators indicated a desire to learn more about the implementation of Order No. 2222 and to share experiences with regulators in Missouri and other states.⁹

Opportunity for Additional Comments

In light of the ongoing developments regarding ARCs described in the LBNL Report, the Commission will continue to evaluate modification of its 2010 temporary prohibition on ARCs as applied to commercial and industrial customers. To further that evaluation, the Commission invites stakeholders to comment on the details of such a modification. Specifically, the Commission invites comments addressing:

A. Size Limitations for Demand Response (DR) eligibility:

Previous comments proposed various size limitations for commercial and industrial (C&I) customers to participate in wholesale DR either directly or through third-party ARCs. Proposals ranged from no size limit, to thresholds of 10kW, 100kW, 300kW, or a modification limited to large customers. In addition, the Michigan Public Service Commission approved 1MW as the threshold for ARC participation in its jurisdiction.

⁶ LBNL Report, pg. v, pg. 2 fn. 4, and pg. 10.

⁷ LBNL Report, pg. 2 fn. 4.

⁸ LBNL Report, pg. 8.

⁹ *Id.*

1. What impact could any of these limits have on implementation of a modified opt-out as applied to C&I customers in terms of reliability, participation or the need for additional regulations?
2. Should the Commission establish different size limits for different utilities based on customer classes?
3. Should these size limits apply to a single location, or should a single customer be permitted to aggregate multiple locations to meet the threshold?
4. How many in terms of numerical value and as a percentage of the C&I customer classes and any specific sub-classes and what types of customers (with and without aggregated load) would be included within the proposed thresholds?
5. Should there be a maximum aggregated size limit?

B. Dispute Resolution:

1. As to utilities with affiliates in states that allow ARCs:
 - a. How are relationships between utilities and ARCs managed?
 - b. What types of disputes arise, and how frequently?
 - c. How are disputes resolved?
2. As to the ARCs:
 - a. How do they manage relationships with utilities?
 - b. What types of disputes arise, and how frequently?
 - c. How are disputes resolved?
3. As to MISO and SPP:
 - a. What types of disputes arise related to third-party demand response, and how frequently?

- b. How are those disputes typically resolved?
- c. What disputes, if any, have been resolved by the state utility commission or other state regulatory authority?

C. Double Counting/Dual Participation:

1. Should the Commission clarify whether a C&I customer can participate only in the wholesale market or only in the retail market? How should this clarification be made?
2. If dual participation in the wholesale and retail markets for different services is allowed, how would improper double counting be identified and avoided?
3. What specific internal processes and procedures would utilities need to implement to address double counting under the requirements and procedures imposed by MISO or SPP?

D. Data Governance:

1. Do existing utility tariffs include provisions related to customer data privacy?
 - a. What revisions related to third-party demand response aggregation, if any, would be necessary?
2. What customer information is generally shared between the utility and the ARC?
 - a. What information, if any, is public information?
3. How do ARCs protect customer information?
4. How do ARCs protect their systems from cybersecurity threats?
5. Would adoption of Green Button or similar alternative facilitate timely and accurate demand response registration?
 - a. Are there any implementation constraints related to adopting Green Button or similar alternative?

E. Regulatory Gaps:

If the Commission modifies its opt-out to permit third-party demand response for C&I customers, what regulatory gaps, if any, exist under MISO and SPP rules governing demand response?

Notice of Workshop

In addition, the Commission will schedule a workshop to be held July 10, 2023. The workshop will take place in Room 450 at the Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65101. Interested stakeholders may participate in the workshop either virtually or in person. The Commission will issue an agenda for the workshop in a subsequent order with a starting time and instructions on how to participate virtually.

THE COMMISSION ORDERS THAT:

1. Any interested stakeholder wishing to comment regarding the questions identified in the body of this order shall do so no later than June 22, 2023.
2. A workshop will be held in-person and by WebEx video and telephone conference on July 10, 2023, in Room 450 of the Governor Office Building, 200 Madison Street, Jefferson City, Missouri 65101. Information on the starting time, agenda, and WebEx call-in and login information will be distributed at a later date.
3. This order shall be effective when issued.



BY THE COMMISSION

Nancy Dippell

Nancy Dippell
Secretary

Rupp, Chm., Coleman, Holsman, and
Kolkmeier CC., concur and certify compliance
with the provisions of Section 536.080, RSMo (2016).

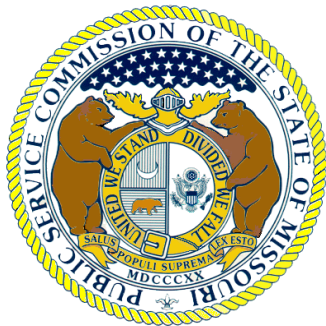
Dippell, Chief Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

I have compared the preceding copy with the original on file in this office and I do hereby certify the same to be a true copy therefrom and the whole thereof.

WITNESS my hand and seal of the Public Service Commission, at Jefferson City, Missouri, this 24th day of May, 2023.



Nancy Dippell

Nancy Dippell
Secretary

MISSOURI PUBLIC SERVICE COMMISSION

May 24, 2023

File/Case No. EW-2021-0267

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Enclosed find a certified copy of an Order or Notice issued in the above-referenced matter(s).

Sincerely,



**Nancy Dippell
Secretary**

Recipients listed above with a valid e-mail address will receive electronic service. Recipients without a valid e-mail address will receive paper service.