

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 12<sup>th</sup> day  
of October, 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 Systems Operators )

**ORDER PARTIALLY MODIFYING THE  
COMMISSION'S 2010 ORDER REGARDING ARCS**

Issue Date: October 12, 2023

Effective Date: December 11, 2023

The Commission opened this working file to receive input and determine how the Commission may best respond to the changes that will result from implementation of the Federal Energy Regulatory Commission's (FERC) Order No. 2222,<sup>1</sup> and to review the Commission's current practices in the areas affected by that order. Initial comments in March and April of 2021 requested the Commission re-examine its 2010 order temporarily prohibiting the demand response load reductions of customers of the four Missouri electric utilities regulated by the Commission from being transferred to the wholesale electricity markets directly by retail customers or third-party aggregations of retail customers (2010 Order).<sup>2</sup> After review, in this order, the Commission lifts a portion of the

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<sup>1</sup> *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 2222, 172 FERC ¶ 61,247 (2020).

<sup>2</sup> File No. EW-2010-0187, *Order Temporarily Prohibiting the Operation of Aggregators of Retail Customers* (issued March 31, 2010).

prohibition, as described herein, to allow larger commercial and industrial (C&I) customers to participate in demand response programs in wholesale electricity markets directly or through an aggregator of retail customers (ARC). The other portions of the opt-out contained in the 2010 Order remain in place, except as specified herein.

### **History of FERC Orders Relating to Aggregators**

In 2008, FERC issued Order No. 719, directing Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) to amend their wholesale market rules to allow ARCs to bid demand response resources from retail customers directly into the RTO and ISO markets, unless the laws or regulations of the relevant retail electric regulatory authority (RERRA) do not permit a retail customer to participate.<sup>3</sup> In the rule adopted by FERC, RTOs and ISOs may not accept bids from ARCs that aggregate the demand response of customers of utilities that distribute more than four million megawatt-hours in the previous fiscal year, where the RERRA prohibits ARCs from doing so.<sup>4</sup> This aspect of FERC's rule is commonly known as the state "opt-out" provision. In its 2010 Order, the Commission exercised its opt-out authority and temporarily prohibited the load reductions of customers of the Missouri electric utilities regulated by the Commission from being transferred to the ISO or RTO markets directly by retail customers or third-party ARCs.

In 2020, FERC issued Order No. 2222. Order No. 2222 directed RTOs and ISOs to amend their market rules to remove barriers to the participation of distributed energy

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<sup>3</sup> *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 125 FERC ¶ 61,071 (2008), *order on reh'g*, Order No. 719-A, 128 FERC ¶ 61,059 (2009). The term "relevant electric retail regulatory authority" (RERRA) means the entity that establishes retail electric prices and any retail competition policies for customers, such as the state public utility commission. Order No. 719-A at P. 154.

<sup>4</sup> Order 719-A at P. 51.

resource aggregators in the capacity, energy, and ancillary service markets operated by RTOs/ISOs. Order No. 2222 defines a Distributed Energy Resource (DER) broadly as “any resource located on the distribution system, any subsystem thereof or behind a customer meter.”<sup>5</sup> Technologies include, but are not limited to, electric storage resources, distributed generation, demand response, energy efficiency, thermal storage, and electric vehicles and their supply equipment.<sup>6</sup> Importantly, unlike Order No. 719, Order No. 2222 does not allow RERRAs such as the Commission to broadly prohibit DERs from participating in the regional wholesale markets.<sup>7</sup> The two RTOs operating in Missouri, the Midcontinent Independent System Operator (MISO) and the Southwest Power Pool (SPP), have submitted tariff revisions pursuant to Order No. 2222. Those revised tariffs are awaiting final FERC approval.

### **Proceedings in This Docket**

In February 2021, the Commission issued an order inviting comments on how the Commission should respond to Order No. 2222. In responsive comments, utilities highlighted several areas of potentially significant state-level impacts where Commission coordination and oversight may be required to implement Order No. 2222, including ARC registration procedures, avoiding double counting, metering and telemetry, consumer protection, data sharing and communication, cost allocation and recovery issues, and the effects of ARCs on distribution utility operations.<sup>8</sup> Other stakeholders urged the

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<sup>5</sup> Order No. 2222 at P. 114.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at P. 58.

<sup>8</sup> EW-2021-0267. See e.g., *Evergy Missouri Metro’s and Evergy Missouri West’s Response to Order Directing Comments* (March 31, 2021); *Ameren Missouri’s Response to Order Opening A Working Case* (March 31, 2021); *Liberty’s Supplemental Response to Commission Order*, (April 16, 2021).

Commission to lift its 2010 Order prohibiting retail customers from participating in ARCs as part of its investigation in this docket.<sup>9</sup>

On August 4, 2021, the Commission issued an order providing stakeholders an opportunity to comment on whether and to what extent modifications should be made to the 2010 temporary ban on ARCs to allow demand response load of C&I customers of Commission-jurisdiction utilities to participate in RTO markets.<sup>10</sup> Utility comments requested the Commission leave the 2010 Order in place until Commission rules and utility tariffs undergo significant review and revision.<sup>11</sup> Other stakeholders asked the Commission to modify its 2010 Order, noting that ARCs participating in wholesale markets are regulated by FERC, and that both MISO and SPP have regulations in place governing ARCs.<sup>12</sup> These stakeholders also emphasized that ARCs have participated in wholesale markets in other states without comprehensive state-level rule or tariff revisions.<sup>13</sup> Specifically, Walmart and The Office of the Public Counsel requested the Commission lift its prohibition for C&I customers to allow these large, sophisticated commercial entities to take advantage of opportunities to participate in the wholesale markets.<sup>14</sup> Public Counsel asked the Commission to maintain the prohibition on residential customers participating with ARCs until questions about consumer protection could be addressed.<sup>15</sup>

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<sup>9</sup> EW-2021-0267, *Voltus Comments* (March 31, 2021); *Renew Missouri's Comments* (March 31, 2021); *Comments of Midwest Energy Consumers Group* (March 31, 2021).

<sup>10</sup> EW-2021-0267, *Order Offering an Opportunity to Comment Regarding Modification of Temporary Ban on Aggregators for Commercial and Industrial Customers* (August 4, 2021).

<sup>11</sup> EW-2021-0267, *Ameren Missouri's Response* (Sept. 1, 2021); *Evergy Missouri Metro's and Evergy Missouri West's Response* (Sept. 1, 2021).

<sup>12</sup> EW-2021-0267, *Voltus Comments* (Sept. 1, 2021); *Comments of CPower* (Sept. 1, 2021); *Voltus Reply Comments* (Sept. 28, 2021).

<sup>13</sup> EW-2021-0267, *Voltus Reply Comments* (Sept. 28, 2021).

<sup>14</sup> EW-2021-0267, *Public Counsel Comments* (Sept. 1, 2021); *Comments of Walmart* (Sept. 1, 2021).

<sup>15</sup> EW-2021-0267, *Public Counsel Comments* (Sept. 1, 2021).

In February 2022, the Commission announced receipt of a grant from the United States Department of Energy to provide technical assistance to the Commission in addressing the state-level regulatory challenges presented by Order No. 2222. The grant resulted in a report authored by Lawrence Berkeley National Laboratories (LBNL Report) describing how various states had approached demand response ARCs after FERC issued Order No. 719.<sup>16</sup> On May 24, 2023, the Commission issued an order submitting the LBNL Report into this docket and seeking additional stakeholder comments on a possible modification of the 2010 Order for C&I customers. The Commission also conducted a workshop on C&I demand response on July 10, 2023.

### **Discussion**

Based on all of the information in this docket, the Commission finds it appropriate to modify its 2010 Order to allow C&I customers of Commission-jurisdictional electric utilities with demands of 100 kilowatts (kW) or greater to transfer demand response load reductions to RTO markets directly or through third-party ARCs under the specific conditions described in this order. A customer with multiple sites under the same corporate ownership may aggregate multiple sites within an electric utility's service area to meet this minimum size requirement. In addition, this modification allowing C&I customers to participate in wholesale demand response programs does not include C&I customers participating in retail demand response programs. The Commission will continue to evaluate dual participation for future consideration.

This partial modification of the 2010 Order provides larger commercial and industrial customers the opportunity to participate in wholesale demand response

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<sup>16</sup> EW-2021-0267, Lawrence Berkeley National Laboratory Report: *Regulation of Third-Party Aggregation in the MISO and SPP Footprints*, Forrester, Triedman, Kozel, Brooks, Cappers (April 2023).

programs. Walmart and other companies work with aggregators in other states, and this modification provides those companies the same opportunities for their locations in Missouri.<sup>17</sup> As Public Counsel noted, demand response can lead to lower wholesale electricity prices, which benefits all customers.<sup>18</sup> Wholesale demand response cost-effectively enhances reliability and helps mitigate grid emergencies during severe weather.<sup>19</sup> In addition, this partial modification of the 2010 Order will allow the Commission and utilities to gain valuable experience with ARCs as FERC moves toward implementation of Order No. 2222. Comments and stakeholder presentations emphasized the complexity of state-level issues raised by Order No. 2222, and the value of practical experience with ARCs in analyzing possible responses to these issues and crafting appropriate policies.<sup>20</sup> As noted previously, Order No. 2222 does not permit state regulators to opt out of DER aggregations, and FERC is considering whether to eliminate the demand response opt-out provision established under Order No. 719.<sup>21</sup> Therefore, it is appropriate to make this partial modification now, so that the Commission can gain practical experience with ARCs while maintaining the opt-out for smaller commercial and all residential customers, prior to potential FERC action removing the state opt-out provision of its regulations.

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<sup>17</sup> EW-2021-0267, *Comments of Walmart*, (Sept. 1, 2021); *Comments of Walmart* (June 22, 2023).

<sup>18</sup> EW-2021-0267, *Public Counsel's Comments* (Sept. 1, 2021); *Public Counsel's Additional Comments* (June 22, 2023).

<sup>19</sup> EW-2021-0267, *Voltus Comments* (Sept. 1, 2021).

<sup>20</sup> EW-2021-0267, *Evergy Missouri Metro's and Evergy Missouri West's Response* (March 31, 2021); *Ameren Missouri's Response* (March 31, 2021) (describing the complexity of DER); *Voltus Reply Comments* (Sept. 28, 2021); *Notice of Workshop Presentations* (July 12, 2023), *DR Aggregation in Michigan*, slide 23, noting the Michigan PSC's conclusion that a limited modification of its opt out to allow large customers to join ARCs "will allow parties to gain experience with bundled load aggregation while introducing the least amount of issues."

<sup>21</sup> FERC Docket RM21-14, *Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 174 FERC ¶ 61,198, Notice of Inquiry (March 18, 2021). FERC noted that significant legal, policy and technological developments since Order No. 719 may warrant reconsideration of the demand response opt out. P. 2.

The Commission agrees with comments about the complexity of potential impacts associated with aggregations of energy-injecting DER such as rooftop solar or electric vehicles under Order No. 2222.<sup>22</sup> The Commission intends this limited modification of its 2010 Order to provide experience with demand response ARCs while minimizing the impacts and burdens on the utilities. As the LBNL Report indicates, experience in other states indicates that ARCs can operate in vertically integrated states without comprehensive state-level requirements beyond those in place at the RTOs.<sup>23</sup> The Commission agrees that more work needs to be done before lifting the opt-out for smaller commercial and residential customers due to the complexity of the issues specific to those smaller entities. The Commission anticipates that the experience gained through this modification will assist all stakeholders in developing a policy framework for ARCs going forward. The Commission also notes there is no provision in this Order which requires C&I customers or ARCs to take advantage of the partial modification in this Order.

Wholesale demand response has evolved since the Commission issued its 2010 Order. Both MISO and SPP have established procedures and regulations governing ARCs that address many of the issues raised in this docket.<sup>24</sup> For example, both MISO and SPP have registration procedures that require ARCs to provide information about the customers that seek to participate.<sup>25</sup> Both RTOs inform the applicable utility and RERRA of the registration that has been submitted for participation as an ARC and allow time for

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<sup>22</sup> EW-2021-0267, *Ameren Missouri's Response* (Sept. 1, 2021); *Evergy Missouri Metro's and Evergy Missouri West's Response* (Sept. 1, 2021); *Public Counsel's Comments* (Sept. 1, 2021).

<sup>23</sup> EW-2021-0267, *LBNL Report* pgs. 7, 10; *Reply Comments of Voltus* (Sept. 28, 2021).

<sup>24</sup> EW-2021-0267, *Voltus Reply Comments* (Sept. 28, 2021); *Notice of Workshop Presentations* (July 12, 2023). See *ARC and Demand Response Resource Participation in MISO Markets*, slides 7-8; *Demand Response in the SPP Market*, slides 4-8.

<sup>25</sup> EW-2021-0267, *Voltus Reply Comments* (Sept. 28, 2021); SPP Tariff Attachment AE Sections 2.2, 2.6 and 2.7; Market Protocols for SPP Integrated Marketplace 6.1.4 and 6.1.5; MISO Business Practices Manual 026 Section 3.2.

objection to the inclusion of a retail customer in an aggregation, which provides visibility into ARC activities and mitigates concerns about double counting the demand response resources.<sup>26</sup> Both MISO and SPP have dispute resolution procedures in place.<sup>27</sup> ARCs are also subject to state and federal consumer protection and privacy laws, and to the jurisdiction of the FERC Office of Enforcement, which seeks to prevent anticompetitive conduct and threats to the nation's energy infrastructure, among other duties.<sup>28</sup>

Regarding data governance and cybersecurity issues, both MISO and SPP rules include confidentiality provisions.<sup>29</sup> Voltus and CPower described how their technology is designed to protect against cybersecurity threats.<sup>30</sup> In addition, Missouri's utilities are utilizing Green Button functionality that should allow for secure transfer of customer data to third parties.<sup>31</sup> As experience is gained with ARCs in Missouri, all stakeholders will be able to raise issues in this working docket or in other dockets for Commission consideration.

#### **THE COMMISSION ORDERS THAT:**

1. Demand response load reductions of C&I customers, served by one of the four Missouri electric utilities regulated by the Commission, that meet the 100kW minimum size requirement and that are not participating in a retail demand response

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<sup>26</sup> *Id.* See also *Voltus Reply Comments* (Sept. 28, 2021).

<sup>27</sup> EW-2021-0267, *Voltus Comments* (June 22, 2023); *Comments of CPower* (June 22, 2023); SPP Tariff Attachment AE, Section 10.3 and SPP Tariff Section 12; Integrated Marketplace Protocols 4.5.15; MISO Business Practice Manual 023-Alternative Dispute Resolution.

<sup>28</sup> EW-2021-0267, *Voltus Comments* (June 22, 2023).

<sup>29</sup> EW-2021-0267, *Notice of Workshop Presentations* (July 12, 2023). *ARC and Demand Response Resource Participation in MISO Markets*, slide 7; *Demand Response in the SPP Market*, slide 7. See MISO Business Practice Manual 001 6.3.13; SPP Tariff Attachment AE, Section 11.

<sup>30</sup> EW-2021-0267, *Comments of CPower* (June 22, 2023); *Voltus Comments* (June 22, 2023).

<sup>31</sup> EW-2021-0267, *Public Counsel's Additional Comments*, (June 22, 2023).



program, may be transferred to the RTO markets directly by such retail customers or third-party ARCs.

2. Entities under the same corporate umbrella may aggregate multiple sites in the same utility service area to meet the 100 kW minimum size requirement.

3. In all other respects, the Commission's 2010 Order remains in place. Demand response load reductions of customers with demand less than 100 kW; and demand response load reduction of residential customers will continue to be prohibited from being transferred to the RTO markets directly by retail customers or third-party ARCs as stated in the Commission's 2010 Order.

4. This order shall become effective on December 11, 2023.



**BY THE COMMISSION**

A handwritten signature in black ink that reads "Nancy Dippell".

Nancy Dippell  
Secretary

Rupp, Chm., Coleman, Holsman, Kolkmeier  
and Hahn CC., concur.

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 12<sup>th</sup> day of October, 2023.**



*Nancy Dippell*  
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**Nancy Dippell**  
**Secretary**

**MISSOURI PUBLIC SERVICE COMMISSION**

**October 12, 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**

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