

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

In the Matter of an Investigation into the)
Coordination of State and Federal Regulatory) File No. EW-2010-0187
Policies for Facilitating the Deployment of all)
Cost-Effective Demand-Side Savings to)
Electric Customers of All Classes Consistent)
with the Public Interest.)

**COMMENTS
TO STAFF’S DEMAND RESPONSE AGGREGATOR DRAFT RULE
COMVERGE, INC., ENERGY CURTAILMENT SPECIALISTS, INC., ENERNOC, INC.,
AND WALMART**

I. INTRODUCTION

Comverge, Inc. (“Comverge”), Energy Curtailment Specialists, Inc., EnerNOC Inc. (“EnerNOC”) and Walmart Stores East, L.P. and Sam’s East, Inc. (Collectively “Walmart”) (Collectively “DR Parties”) jointly respectfully submit the following comments and redlined version of the proposed Demand Response Aggregator Draft Rule that the Staff of the Missouri Public Service Commission (“Commission Staff” or “Staff”) transmitted to the interested parties on January 7, 2011. The DR Parties thank the Commission and its Staff for organizing the January 18, 2011 Draft Rule Workshop (January 18 Workshop) that allowed the parties to discuss the initial draft and this additional opportunity to submit comments.

II. STATEMENT OF POSITION

The DR Parties appreciate the Commission Staff’s efforts to draft a sensible rule to encourage demand response activity in Missouri. The draft rule will provide a significant step toward carrying out the intent of the Missouri Energy Efficiency Investment Act (“MEEIA”) to encourage the development of “all cost effective demand-side savings” investments. The DR

Parties provide the following comments and attached redlined draft rule for the Commission Staff to consider during the remainder of the rule drafting process.

The DR Parties reviewed the notes of the January 19 Workshop transmitted to the parties on January 27, 2011 and agree that the notes accurately reflect the positions of the DR parties. The DR parties present the following comments and redlined draft rule as a supplement to the comments made during the January 19 Workshop. The DR Parties' comments and redlined draft were developed with the intent to add further clarity to the Staff's draft and make the rule slightly more flexible to meet the growing effort (and need) of the State of Missouri to take advantage of Demand Response opportunities.

PROPOSED DRAFT RULE CHANGE #1:

***language in ALL CAPS is proposed new language.

***language in ~~strikethrough~~ font is language we propose deleting.

Ancillary Services - Those services necessary to support the transmission of electric power from seller to purchaser, given the obligations of the Balancing Authority and transmitting utilities within the Balancing Authority Area, to maintain reliable operations of the interconnected transmission system. Ancillary services supplied with generation ~~OR DEMAND RESPONSE MAY~~ include load following, reactive power-voltage regulation, system protective services, loss compensation service, system control, load dispatch services, and energy imbalance services while maintaining reliable operation of the ISO/RTO controlled Grid in accordance with National Electric Reliability Commission (NERC) standards and Good Utility Practice.

PROPOSED DRAFT RULE CHANGE #2:

Aggregator of Retail Customers (ARC) - A company who ~~bids~~ PROVIDES demand RESPONSE ~~reductions~~ or acts as an agent on behalf of retail customer(s) directly into the Regional Transmission Organization's (RTO's) and/or Independent System Operator's (ISO's) organized markets ~~OR DIRECTLY TO ORGANIZED MARKETS OR UTILITIES.~~

PROPOSED DRAFT RULE CHANGE #3:

Demand Response (DR) – A SERVICE PROVIDED BY ~~Changes in electric usage by~~ end-use customers, WHEREBY THE CUSTOMER IS COMPENSATED FOR ACTIVELY DECREASING OR INCREASING ~~its~~ from their normal consumption patterns, INCLUDING BUT NOT LIMITED TO, AT THE REQUEST OF A SYSTEM OPERATOR, ARC, OR THROUGH SELF DIRECTED response to changes in the price of electricity over time., ~~or to incentive payments designed to induce lower electricity use at times of high wholesale market prices or when system reliability is jeopardized.~~

Explanation for recommended change:

Although there are many definitions of DR, even FERC recognizes load management as a *service* affecting wholesale rates as opposed to a sale for resale of energy¹ The term “incentive” was removed because in this context it has the potential to be misunderstood. The incentive being referred to is the fair compensation for the service being rendered by the demand response resource to maintain reliable system conditions consistent with security constrained economic dispatch.

PROPOSED DRAFT RULE CHANGE #4:

Demand Response Program- A Program of an Electric Utility filed in a Commission tariff or an ARC PARTICIPATING ~~filed~~ with the ISO / RTO that describes conditions, payments, and terms regarding the Demand Response of a Retail Customer.

PROPOSED DRAFT RULE CHANGE #5:

EMERGENCY DEMAND RESPONSE – A DEMAND RESPONSE RESOURCE THAT IS UTILITIZED FOR RESOURCE ADEQUACY PURPOSES AND MAY BE CALLED BY AN RTO OR ISO IN A GRID RELATED EMERGENCY. EMERGENCY DEMAND RESPONSE INCLUDES DEMAND RESPONSE PARTICIPATION AS A RESOURCE ADEQUACY CREDIT UNDER MISO

¹ *Energy Connect Order*, Docket No. ER09-1307, at pages 7-8, 130 FERC ¶61,031, January 19, 2010.

MODULE E OR DEMAND RESPONSE PARTICIPATING UNDER MISO
SCHEDULE 30.

Explanation for recommended addition:

The draft rule should incorporate emergency demand response opportunities along with economic demand response and ancillary services.

PROPOSED DRAFT RULE CHANGE #6:

~~**Industrial Customer** – A customer of an electric utility that takes service under the terms and conditions of the electric non-residential rate schedule that is classified as an industrial customer using the Standard Industrial Classification (SIC) code or North American Industry Classification System (NAICS) code.~~

Explanation for recommended change:

To ensure that all customers are classified, the DR Parties recommend dividing the customer classes into residential and non-residential classes. The definitions of Industrial and Commercial customers are incorporated into the proposed definition of non-residential.

PROPOSED DRAFT RULE CHANGE #7:

NON-RESIDENTIAL CUSTOMER - A CUSTOMER OF AN ELECTRIC UTILITY THAT TAKES SERVICE UNDER THE TERMS AND CONDITIONS OF THE ELECTRIC UTILITY'S NON RESIDENTIAL RATE SCHEDULE THAT IS NOT CLASSIFIED AS A RESIDENTIAL CUSTOMER, INCLUDING BUT NOT LIMITED TO THOSE CUSTOMERS CLASSIFIED AS INDUSTRIAL OR COMMERCIAL USING THE NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS) CODE.

Explanation for recommended change:

As stated above, to ensure that all customers are classified, the DR Parties recommend dividing the customer classes into residential and non-residential classes. The definitions of Industrial and Commercial customers are incorporated into the proposed definition of non-residential.

PROPOSED DRAFT RULE CHANGE #8:

Relevant Electric Retail Regulatory Authority (RERRA) – As defined in FERC Order 719, MEANS THE ENTITY THAT ESTABLISHES THE RETAIL ELECTRIC PRICES AND ANY RETAIL COMPETITION POLICIES FOR CUSTOMERS, SUCH AS THE CITY COUNCIL FOR MUNICIPAL UTILITY, THE GOVERNING BOARD FOR A COOPERATIVE UTILITY, OR THE STATE PUBLIC UTILITY COMMISSION ~~is the Missouri Public Service Commission for the state of Missouri.~~

Explanation for recommended change:

The DR Parties propose that the rule incorporate the same definition of RERRA that was stated in FERC's "719" Final Order -- the Wholesale Competition in Regions with Organized Electric Markets case, Docket Nos. RM07-19 and AD07-7-0000 (October 17, 2008) at page 86.

PROPOSED DRAFT RULE CHANGE #9:

Retail Customer – A Residential Customer, OR NON-RESIDENTIAL CUSTOMER OF AN ELECTRIC UTILITY. ~~Commercial Customer, or Industrial Customer of an electric utility.~~

Explanation for recommended change:

The definition of Retail customer has been changed to incorporate the addition of a non-residential customer definition and the deletion of the Commercial and Industrial definitions from the proposed rule.

PROPOSED DRAFT RULE CHANGE #10:

- (2) An Aggregator of Retail Customers (ARC) shall not directly aggregate the Demand Response of a NON-RESIDENTIAL ~~commercial customer or industrial~~ customer of an Electric Utility where the Commission is the Relevant Electric Retail Regulatory Authority (RERRA) unless:
 - a. The ARC is properly registered as a market participant with the Independent System Operator / Regional Transmission Organization (ISO / RTO) that the Electric Utility is a member of, as defined in relevant ISO / RTO tariff or Business Practice Manual; and
 - b. ~~The Demand Response of that retail customer, added to the existing Demand Response already aggregated by ARCs in the electric utility's Balancing Authority Area, is less than 100 megawatts (MW); and~~
 - c. IF THE MIDWEST INDEPENDENT SYSTEM OPERATOR CONCLUDES A LIMIT ON DEMAND RESPONSE IS NECESSARY TO MAINTAIN RELIABILITY, THE COMMISSION RESERVES THE RIGHT TO IMMEDIATELY IMPOSE SUCH A LIMIT AS CALLED FOR BY THE MIDWEST INDEPENDENT SYSTEM OPERATOR.
 - d. The ARC has followed the proper ISO / RTO procedure, as described in the ISO / RTO's Open Access Transmission Tariff (OATT) and / or Business Practice Manual, regarding registering the Retail Customer's Demand Response; and

- e. The customer is not ~~currently~~ enrolled in the EXACT ~~same~~ type of Demand Response Program, Economic, Ancillary Services, OR EMERGENCY DEMAND RESPONSE, with an Electric Utility or Load Serving Entity (LSE) WITHIN THE BALANCING AUTHORITY'S AREA.

Explanation for recommended changes:

The DR Parties request removal of section (2)(b) of the proposed rule.

The Commission should not incorporate an arbitrary cap in the draft rule that will limit demand response opportunities. The DR Parties suggest multiple reasons why capping the amount of demand response that can be aggregated in an electric utility's Balancing Authority Area is not appropriate at this time. Without support for a cap, the 100 MW cap in Section (2)(b) of the proposed rule is not appropriate for the proposed rule. The DR Parties present a number of reasons for removing the 100 MW cap from the draft rule:

1. Administrative efficiency, by including the 100 MW cap in the rule the Commission would have to modify the rule to change the cap at a later date;
2. It is uncertain if MISO could administer a 100 MW cap; and
3. There is no justification for a cap at this time.

For all of these reasons, which were addressed during the January 18 Workshop and are addressed with more specificity below, the DR Parties recommend that there be no limit on the amount of demand response available in each electric utility's Balancing Authority Area.

1. Including the 100 MW cap in the draft rule would result in later rule modifications when the Commission wanted to modify or eliminate the cap.

Rather than set in stone a cap on the amount of demand response that can be aggregated the DR Parties recommend that the Commission reserve the right to set the cap amount – if needed – at a later time. A reservation of rights would be sufficient and flexible enough for the Commission to evaluate the need for any cap as the rule process moves forward. If a specific

capped amount of demand response is included in the rule, the Commission will have to pursue another rule making process to modify the amount.

2. There has not been a demonstration that MISO can administer a 100 MW cap on the amount of demand response in a Balancing Authority Area.

Prior to adopting a cap of any size the Commission should consider whether a proposed cap can be implemented and whether the cap will be fair to all parties. First, a determination will have to be made whether it is even possible for MISO to monitor such a cap. For example, can MISO stop bids that exceed the 100 MW cap.

Second, a cap may present a number of situations that inexplicably favor one group of customers over other customers. At some point, the Commission may have to decide between worthy applications if it appears the 100 MW cap will be reached. Finally, not all non-residential customers are subject to the Commission's jurisdiction and the 100 MW limits. Those commercial or industrial customers operating in jurisdictions served by municipalities or cooperatives where the Missouri PSC does not serve as the Relevant Electric Retail Regulatory Authority will not have to worry about limitations on their demand response activities and that could create some competitive disadvantages in certain parts of the State.

3. There is no evidence that a cap on the amount of aggregated demand response permitted in the Balancing Authority Area is necessary.

The only way that demand response clears in the MISO market is if it has a lower resource cost. Without specific evidence that a problem will arise if the demand response of retail customers is aggregated – or at what level a problem will arise – the DR Parties do not see the need for creating an arbitrary cap.

In addition, the DR Parties believe the market for demand response of non-residential customers will take time to mature. Currently, demand response is in its nascent stages in much of the Midwest, and the benefits of demand response have yet to be fully appreciated. The price of electricity in Missouri is currently relatively low and blackouts are not a common concern. But those “certainties” can change. Placing limitations or restrictions on the amount of demand response permitted, could have a chilling effect on participation. Furthermore, the 100 MW cap is very unlikely to play a positive role in promoting demand response, something that is a primary objective of the MEEIA legislation.

PROPOSED DRAFT RULE CHANGE #11:

- (3) ~~An Electric Utility or LSE shall not enroll a Retail Customer into an Economic or Ancillary Services Demand Response program if that Retail Customer is currently enrolled in the same type of Demand Response program with and ARC.~~ A RETAIL CUSTOMER MAY NOT PROVIDE FROM ANY SINGLE LOCATION IN THE STATE OF MISSOURI A SPECIFIC INDIVIDUAL DEMAND RESPONSE SERVICE AS DEFINED BY THE RTO/ISO MARKET FOR SUCH SERVICES THROUGH MORE THAN ONE ARC OR ELECTRIC UTILITY AT THE SAME TIME

PROPOSED DRAFT RULE CHANGE #12:

- (6) An ARC may enter into a contract agreement with an Electric Utility or LSE to aggregate NON-RESIDENTIAL CUSTOMERS ~~Commercial, Industrial~~ or Residential Customers in behalf of the Electric Utility or LSE.

Explanation for recommended change:

Section 6 has been changed to incorporate the addition of a non-residential customer definition and the deletion of the Commercial and Industrial definitions from the proposed rule.

III. CONCLUSION

The DR parties applaud the Commission Staff for its leadership in developing a process that allows everyone the opportunity to participate. We appreciate this opportunity to submit comments concerning the importance of the Demand Response Aggregator Rule as well as our recommendations regarding specific provisions of the Staff draft proposal.

Respectfully submitted,

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