**UNITED STATES OF AMERICA**
**BEFORE THE**
**FEDERAL ENERGY REGULATORY COMMISSION**

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| **Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organizations and Independent System Operators** | **)** **)** **)** **)** | **Docket No. RM21-14-000** |

## REPLY COMMENTS OF PUBLIC INTEREST ORGANIZATIONS

Pursuant to the Supplemental Notice of Inquiry (NOI) issued by the Federal Energy Regulatory Commission (Commission) in the above-captioned proceeding on March 18, 2021, the undersigned Public Interest Organizations (PIOs)[1] respectfully submit the following replies to certain initial comments on the Commission NOI as filed on July 23, 2021.

These reply comments address several of the arguments made by parties in support of retaining the Commission regulations that require a Regional Transmission Organization (RTO) or Independent System Operator (ISO) not to accept bids from an aggregator of retail customers (ARC) where the relevant electric retail regulatory authority (RERRA) prohibits customers' demand response (DR) to be bid into organized markets by an ARC ("DR Opt-Out Rule").[2]

Given the myriad benefits of DR described in the initial comments by multiple parties,[3] and the expansion of those benefits that would result from removal of the DR Opt-Out Rule,

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[1] Environmental Law and Policy Center, Natural Resources Defense Council, Sierra Club, and Sustainable FERC Project.

[2] *Wholesale Competition in Regions with Organized Electric Markets*, 125 FERC ¶ 61,071 at P156 (Oct. 17, 2008) ("Order No. 719").

[3] For example, see Initial Comments of the Public Interest Organizations; Advanced Energy Economy; Google; Illinois Commerce Commission; R Street Institute; and Voltus, Inc, Docket No. RM21-14 (July 23, 2021).

arguments supporting retention of the rule should be subject to careful scrutiny. As discussed below, these arguments do not justify retaining the DR Opt-Out Rule.

## I. Integrated Resource Planning Processes Address Uncertainties and Plan for Multiple Scenarios

Several commenters[4] assert that the load reductions resulting from ARC DR participation introduce complexity and cannot be fully accounted for in a utility's Integrated Resource Plan (IRP). For example, the Louisiana and Mississippi Public Service Commissions state that "load reductions through ARCs are not accounted for in the IRP or planning processes and those DR resources cannot be relied upon to satisfy energy or capacity requirements by the incumbent utilities."[5] The Indiana Utility Regulatory Commission states that "a vertically integrated generation and distribution utility must have knowledge of the type, location, and amount of DR on its system to accurately model its current and future resource needs….Direct retail customer DR participation in a wholesale market without the knowledge and oversight by the local electric utility regarding the type, amount, and location of DR located on the local electric utility's system would undermine this important planning process."[6] Finally, the Kansas Corporation Commission (KCC) states that the utilities in the state "expect that greater penetration of demand response resources and, in particular, heterogenous aggregations of distributed energy resources with variable load profiles, will significantly complicate load forecasting and resource planning."[7]

[4] For example, see Initial Comments of the Organization of MISO States, Inc.; Louisiana Public Service Commission and the Mississippi Public Service Commission; Indiana Utility Regulatory Commission; and Kansas Corporation Commission, Docket No. RM21-14 (July 23, 2021).

[5] Initial Comments of the Louisiana Public Service Commission and the Mississippi Public Service Commission at 19.

[6] Initial Comments of the Indiana Utility Regulatory Commission at 6.

[7] Initial Comments of the Kansas Corporation Commission at 10.

These positions fail to recognize that IRPs are essentially tools to develop plans that address multiple uncertainties in many exogenous factors, which may include rooftop solar installations, adoption of energy efficiency measures, fuel costs, economic and demand growth, weather, and technology shifts and costs. It is for this reason that IRPs typically include a sensitivity analysis with multiple scenarios.[8] Indiana-Michigan Power sums this up well in its 2018-19 IRP:

> The resource planning process continues to be complex, especially with regard to such things as technology advancement, changing energy supply pricing fundamentals, uncertainty of demand, and end-use efficiency improvements. These complexities exacerbate the need for flexibility and adaptability in any ongoing planning activity and resource planning process.[9]

The IRPs by utilities in those states that have chosen to opt-out show that there is still a level of uncertainty in the projection of future levels of DR, as there is with many factors in the IRP. Both Evergy[10] and Entergy Louisiana[11] hired the consulting firm ICF to conduct an analysis of different DR scenarios for inclusion in their IRPs. Evergy's IRP ironically shows that the potential benefits of DR included in its IRP were not being pursued by the utility. As stated in

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[8] See for example, *Load Forecasting in Electric Utility Integrated Resource Planning*, Lawrence Berkeley National Laboratory (Oct. 2016), finding that in the context of an IRP, "sensitivity analyses are especially important because strategies derived from load forecast sensitivity analysis may allow the resource plans to adjust as new information comes in." Available at: https://eta-publications.lbl.gov/sites/default/files/lbnl-1006395.pdf

[9] *2018-19 Integrated Resource Plan Public Summary*, Indiana-Michigan Power (July 2019) at 9, available at: https://www.indianamichiganpower.com/lib/docs/community/projects/IM_2018-19_IRP_Public_Summary.pdf. In Michigan, ARCs may bid DR into the markets for the 10 percent of customers participating in retail choice.

[10] *Evergy Kansas Central and Evergy Metro 2021 Integrated Resource Plan* (May 2021) at 43-48, available at: https://estar.kcc.ks.gov/estar/ViewFile.aspx/S202105280812003862.pdf?Id=b2c17b30-9138-49bc-ab62-4ac8ed8d2074

[11] *2019 ELL IRP – DSM Potential Study* (April 2018), available at: https://cdn.entergy-louisiana.com/userfiles/content/irp/2019/DSM_Potential_Study.pdf?_ga=2.224422866.95464033.1629420340-1578106751.1629420340

the IRP, ICF's analysis of the DR scenarios was conducted "with the anticipation of potential utility provided energy efficiency and demand response programs that will provide benefits to Kansas customers. As of April 2021, no specific programs have been developed to meet those impact targets."[12]

Utilities could seek out better information regarding the development and utilization of DR by the ARCs to improve its integration into their IRPs and enable the utility to adapt its other resource procurement decisions.  Efforts to improve forecasting around uncertain inputs is fundamental to good utility planning. To that end, state commissions and utilities could establish communications protocols for the ARCs to ensure that the utilities receive needed data on the full scope of DR and its potential impacts on load for inclusion in their planning analyses, or the RTOs/ISOs could gather such data from the ARCs.[13]

Robust wholesale market participation by ARCs has the potential to reduce costs for consumers as it avoids operating inefficient units at peak times and can even reduce the scale of new resource builds needed.  That there may be some complexity associated with incorporating this resource into a plan is not reason to shut down this otherwise beneficial change, but instead calls for enhanced efforts to understand and adapt to it. Moreover, given that not all vertically integrated states located within RTOs/ISOs have opted out shows that allowing ARCs to bid DR into the markets is fully compatible with utility resource planning responsibilities.

## II. The Need to Create Regulations and Procedures for ARC Participation is not a Sufficient Reason to Deny Customers the Benefits of Expanded DR Programs

[12] *Evergy Kansas Central and Evergy Metro 2021 Integrated Resource Plan* (May 2021) at 47.

[13] Initial Comments of the Illinois Commerce Commission, Docket No. RM21-14 (July 23, 2021) at 5 and footnote 16 citing Order 2222 at P 322 and 324.

A second common argument made in the comments is that removal of the DR Opt-Out Rule will create burdens for the state commissions and utilities. The Organization of MISO States argues that the reason states have maintained the Opt-Out is "to mitigate potential burdens and issues associated with third-party aggregation, such as double-counting, the level of visibility for planning and operational reliability purposes, lack of state oversight over ARCs, the need for robust coordination and communication channels, and interaction with existing DR programs."[14] The American Public Power Association (APPA) and National Rural Electric Cooperative Association (NRECA) explain that a "burden will be placed on state and local authorities and other RERRAs to take affirmative action to address the myriad regulatory issues that may be raised by ARCs."[15]

The KCC anticipates taking on the "new, complex task of determining how to ensure protection of retail customers and distribution utilities."[16] But later in its comments, the "KCC acknowledges the expected benefits of enhancing competition by facilitating participation of demand response resources in wholesale markets and thereby impacting the price of wholesale power."

State Commissions and other RERRAs are by nature regulators, and therefore new programs or policies should not be rejected simply because they require the creation of additional rules and greater oversight. Given that the benefits of DR go beyond just lowering the price of power and rates (as the KCC notes) and can include avoiding the construction of new resources, improvements in resilience during extreme weather, and increasing system flexibility, among

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[14] Initial Comments of the Organization of MISO States at 12.

[15] Initial Comments of the American Public Power Association and the National Rural Electric Cooperative Association at 9, Docket No. RM21-14 (July 23, 2021).

[16] Initial Comments of the Kansas Corporation Commission at 8.

many others, the benefits side of the ledger is likely to be significantly greater than the regulatory costs. In any case, regulators are obligated to consider both costs and burdens in their analysis, especially when considering a Commission-jurisdictional practice affecting rates, such as demand response.

## III. Claims of RTO/ISO Departures Should Not Be a Basis for Commission Policy

The Midcontinent ISO (MISO) states that removal of the DR Opt-Out Rule "has the possibility to adversely impact RTO/ISO membership decisions by utilities, states and RERRAs."[17] Similarly, APPA and NRECA reiterate Commissioner Christie's concern that removal of the Opt-Out could discourage states from participating in RTOs/ISOs.[18]

These statements echo the multiple claims of potential departure from RTOs/ISOs made in response to the Commission's proposal to end the return-on-equity (ROE) adder for RTO participation in the Supplemental Notice of Proposed Rulemaking in Docket RM20-10.[19] Such statements about possible departures from or a reluctance to join an RTO/ISO are being made without support and cannot be a basis for Commission decision making. The considerations involved in deciding whether to join or exit an RTO/ISO are wide-ranging and involve factors that are far more consequential than whether states and RERRAs have the authority to block ARC competition. Moreover, utilities within MISO have acknowledged in recent state

[17] Initial Comments of the Midcontinent Independent System Operator (ISO), Docket No. RM21-14 (July 23, 2021).

[18] Initial Comments of the American Public Power Association and the National Rural Electric Cooperative Association at 10-11.

[19] Joint Reply Comments of Public Interest Organizations, Docket No. RM20-10 (July 26, 2021) at 8-10.

commission proceeding the significant benefits of RTO/ISO membership, which are unlikely to be diminished or outweighed by removal of the DR Opt-Out Rule.[20]

Moreover, as explained in detail by the PIOs and others,[21] achieving the full potential of DR will reduce costs to consumers and enhance the reliability and resilience of the grid. As such, it is the removal of the Opt-Out and not its retention that *enhances* the benefits of RTO/ISO participation for consumers by expanding DR innovation and opportunities, and is therefore essential to achieving just and reasonable rates.[22] Were a utility to depart an RTO/ISO because the Commission had taken steps to ensure that rates are just and reasonable, that would be a disservice to the consumers in that state. The Commission cannot be deterred from its responsibility to ensure that rates are just and reasonable because certain utilities may be reluctant to assume undefined administrative burdens or competitive implications of a market in which DR can participate more fully.

## IV. Conclusion

The PIOs appreciate the opportunity to provide these reply comments and continue to urge the Commission to remove the DR Opt-Out Rule, given that the comments have not provided justification for its retention.

[20] Joint Reply Comments of Public Interest Organizations, Docket No. RM20-10 (July 26, 2021) at 4-5, citing Ameren Missouri's statement to the Missouri Public Service Commission that it "struggles to develop a scenario where it would envision MISO participation not providing a net benefit," and Entergy Mississippi LLC 's discussion of the "ongoing benefits of MISO membership" in statements to the Mississippi Public Service Commission.

[21] See for example, Initial Joint Comments of the Public Interest Organizations, Advanced Energy Economy and Voltus, Inc.

[22] *Id.*

Respectfully Submitted,

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Comments of Public Interest Organizations