



April 10, 2023

Will Seuffert, Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, MN 55101-2147

Subject: Dakota Electric Association Reply Comments

***In the Matter of a Commission Investigation into the Potential Role of
Third-Party Aggregation of Retail Customers
Docket No. E999/CI-22-600***

Dear Mr. Seuffert:

Dakota Electric Association® (Dakota Electric or Cooperative) respectfully submits these Reply Comments in response to the Minnesota Public Utilities Commission's (Commission) December 9, 2022 Notice of Comment Period (Notice) in the above referenced docket. This Notice states that the issue to be addressed in Comments is "Should the Commission take action related to third party aggregation of retail customers?" This Notice further identified the following topics open for comment:

1. Should the Commission permit aggregators of retail customers to bid demand response into organized markets?
2. Should the Commission require rate-regulated electric utilities to create tariffs allowing third-party aggregators to participate in utility demand response programs?
3. Should the Commission verify or certify aggregators of retail customers for demand response or distributed energy resources before they are permitted to operate, and if so, how?
4. Are any additional customer protections necessary if aggregators of retail customers are permitted to operate?

On, or before March 13, 2023, 19 parties filed comments and public comments in this matter. The following parties submitted comments:

- Recurve, as public comment, February 16, 2023;
- SwitchDin, as public comment, March 8, 2023;
- SunRun, as public comment, March 9, 2023;
- Rocky Mountain Institute (RMI);
- Voltus, Inc. (Voltus);
- Advanced Energy Management Alliance and CPower (AEMA);
- Minnesota Large Industrial Group (Large Industry);
- Great River Energy;
- Xcel Energy;
- Armada Power, LLC (Armada);
- Minnesota Solar Energy Installers Association (MnSEIA);
- Low-Income Consumer and Worker Advocates (Legal Aid);
- Minnesota Department of Commerce (Department);
- Otter Tail Power Company (Otter Tail);
- Clean Energy Economy Minnesota (CEEM);
- Minnesota Power;
- Sierra Club and Union of Concerned Scientists (SC&UCS);
- R Street Institute (R Street); and
- Wal-Mart Inc (WalMart).

Dakota Electric reviewed the comments of the parties and appreciates the thoughtful, far reaching, and in-depth analysis by the various groups. The issues of third-party aggregation and the aggregation of retail customers (ARCs) represent fundamental questions on the topic of regulation and how utility services are provided to ratepayers in Minnesota. The Cooperative appreciates the opportunity to provide a response to the comments of other parties and additional support for Dakota Electric's position in this matter. Given the large number of parties, Dakota Electric does not respond directly to

each party but rather touches on several important topics. The Cooperative specifically responds to the following topics/issues raised in party comments:

- Legal Standing of ARCs;
- Statutory Framework;
- MISO Regulation and Consumer Protection Laws as a Substitute for Commission Regulation;
- Current FERC Proceedings Regarding ARCs;
- Claimed Benefits of ARCs and the Reality of Demand Response in Minnesota;
- Small Utility Exemption; and
- Dakota Electric Approach to Demand Response.

Dakota Electric responds to each section separately below.

I. Legal Standing of ARCS

There was significant discussion by parties, including Dakota Electric, in comments regarding the legal standing of ARCs and whether they constitute utility service under Minnesota Statute. These arguments generally involve the appropriate definition or interpretation of “utility service” in Minnesota Statutes. The arguments fall into two general categories, whether 216B.02, subd. 4¹ is most appropriate or 216B.37-216B.40 (Service Area Statutes)² are most appropriate. The definition of public utility in

¹ Minnesota Statute 216B.02, subd. 4 states the following in relevant part:

"Public utility" means persons, corporations, or other legal entities, their lessees, trustees, and receivers, now or hereafter operating, maintaining, or controlling in this state equipment or facilities for furnishing at retail natural, manufactured, or mixed gas or electric service to or for the public or engaged in the production and retail sale thereof but does not include (1) a municipality or a cooperative electric association, organized under the provisions of chapter 308A, producing or furnishing natural, manufactured, or mixed gas or electric service; (2) a retail seller of compressed natural gas used as a vehicular fuel which purchases the gas from a public utility; or (3) a retail seller of electricity used to recharge a battery that powers an electric vehicle, as defined in section [169.011, subdivision 26a](#), and that is not otherwise a public utility under this chapter. Except as otherwise provided, the provisions of this chapter shall not be applicable to any sale of natural, manufactured, or mixed gas or electricity by a public utility to another public utility for resale.

² The Service Area Statutes state the following:

216B.02, subd. 4 references an entity in Minnesota that operates, maintains, or controls equipment for the furnishing of electric service at retail. It does not include additional clarification for what is meant specifically as electric service. The Service Area Statutes, in particular 216B.38, subd. 4a, appear to include an additional clarifier in terms of the definition of utility service by including a reference to “ultimate consumption.” Parties contend that this apparent qualifier means that the guaranteed service territory statute does not apply to ARCs because their service does not involve the consumption of electricity and that they cannot be classified as a public utility or providing utility service and, are thus, not subject to Commission regulation.³

These two parts of 216B suggest inconsistency or ambiguity, which means additional review is needed to fully understand the concept of utility service in Minnesota. The first step in this process is an analysis of how the Commission has historically (and currently) approached the topic of utility service and its relationship to demand response. In terms of Dakota Electric, the Commission’s understanding of how

It is hereby declared to be in the public interest that, in order to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public, the state of Minnesota shall be divided into geographic service areas within which a specified electric utility shall provide electric service to customers on an exclusive basis. **Minnesota Statute 216B.37.**

"Electric service" means electric service furnished to a customer at retail for ultimate consumption, but does not include wholesale electric energy furnished by an electric utility to another electric utility for resale. **Minnesota Statute 216B.38, subd. 4a.**

"Electric utility" means persons, their lessees, trustees, and receivers, separately or jointly, now or hereafter operating, maintaining, or controlling in Minnesota equipment or facilities for providing electric service at retail and which fall within the definition of "public utility" in section [216B.02, subdivision 4](#), and includes facilities owned by a municipality or by a cooperative electric association. **Minnesota Statute 216B.38, subd. 5.**

Except as provided in sections [216B.42](#) and [216B.421](#), each electric utility shall have the exclusive right to provide electric service at retail to each and every present and future customer in its assigned service area and no electric utility shall render or extend electric service at retail within the assigned service area of another electric utility unless the electric utility consents thereto in writing; provided that any electric utility may extend its facilities through the assigned service area of another electric utility if the extension is necessary to facilitate the electric utility connecting its facilities or customers within its own assigned service area. **Minnesota Statute 216B.40.**

³ SC&UCS Comments, Pages 5-6; Department Comments, Pages 2-6.

demand response relates to our service is unambiguous, these programs are regulated and, in our estimation, would be considered utility service. Dakota Electric's demand response programs, and associated rates, are included within our cost-of-service studies and are Commission approved tariffs and rates. If demand response is not utility service under Minnesota Statute, and is instead an ancillary service, then why does Dakota Electric have Commission-approved tariffs and rates for these programs?

The Service Area Statutes existed when the Commission began approving Dakota Electric's demand response programs (*e.g.*, Commercial and Industrial Interruptible Program);⁴ as such, it stands to reason that the Commission was aware of the "delivery of electricity" provision when it exercised authority over these services and rates. If demand response is not utility service, then it also stands to reason that the Commission would have treated demand response like appliance service plans, which are not regulated by the Commission and kept separate from regulated utility operations. It seems far-fetched that the Commission has inappropriately regulated demand response for over 30 years or that it has limited authority in this matter.⁵

The second step involves reviewing the concept of the "delivery of electricity" and the application of this concept by the other parties. The arguments and conclusions of other parties insert a modern understanding of the electricity industry into the Service Area Statutes. The Service Area Statutes were promulgated in 1974 and have not been substantively updated since 1978. When these Statutes were created, the idea that demand response, or generating resources, could be sold into a competitive market was not contemplated. In fact, the proposed creation of RTO/ISOs did not occur until FERC orders in the mid-1990s and the first authorization of an RTO/ISO did not happen until 1999.⁶ The idea that utility service would require the delivery of electricity makes sense, because, in the 1970s, that would have been the common understanding of utility service. However, with the evolution of demand response, the authorization of CIP by the Minnesota Legislature, and the Commission's approval of demand response rates

⁴ Docket No. E111/M-89-990.

⁵ R Street Comments, Pages 8-9.

⁶ FERC Order 2000.

and programs show that the Commission's expectations and understanding of utility service evolved.

If these interpretations are taken to their logical conclusion, all demand response should become unregulated. The Department appears to reach a similar conclusion by stating the following, "In essence, allowing ARCs to bid DR into markets is deregulating DR as an electric service in Minnesota."⁷ If these programs are unregulated, then it raises the question of whether rate-regulated Minnesota utilities should remove approved demand response programs from regulated rates and all associated demand response equipment from rate base. Dakota Electric believes that this endgame would turn the clock back on Minnesota's decades of successful demand response policy and would have a negative impact on energy policy and the State of Minnesota. The ratepayer and Minnesota energy policy are not served by an unregulated demand response market or the creation of a two-tier model for demand response, with certain suppliers being regulated and others unregulated. This will no doubt cause confusion among consumers and will likely have a negative impact on rates and the efficacy of programs.

The argument by certain parties that demand response is not utility service is eroded, however, in their responses to Questions 2 and 3 in the Commission's Notice regarding verification.⁸ In particular, R Street stated the following:

In order to have a well-functioning and trusted market-place for ARCs to participate in Minnesota, R Street believes that the Commission should adopt rules and tariffs to enable ARC participation. R Street sees the role of ARC registration and the development of rules and tariffs to provide certainty to ARCs, utilities, the Commission and customers regarding the operation of ARCs. Furthermore, R Street notes that any rule and tariff that is adopted should be applied in the same manner for each utility under Commission authority. Such conformity is vital to ensuring that aggregators can operate in Minnesota with one set of rules rather than multiple, utility-specific requirements. This consistency will reduce

⁷ Department Comments, Page 21.

⁸ RMI Comments, Page 4:

Yes, RMI recommends that the Commission require rate-regulated electric utilities to create tariffs allowing third-party aggregators to participate in utility demand response programs and any other programs with similar aims. In addition, the Commission should require utilities to create programs or tariffs that allow customer-sited DERs to provide grid services as part of a VPP.

overhead and customer acquisition costs for the ARCs and will ensure that individual utility practices is not a barrier to entry.⁹

This above quote appears to argue that Commission regulation, through tariff and rate-setting, is necessary to ensure a properly function ARC market. The Commission is tasked with insuring, amongst other things, that utility service is just and reasonable; as such, if this market needs Commission tariffs, then it suggests that these are utility service or would be reasonably considered utility service by the public. If you do not believe that demand response is a utility service, then Dakota Electric believes there is a logical disconnect in stating that Commission regulation is necessary.

Based on our review of Statutes and Commission decisions and regulation of these matter, the Cooperative believes that Minnesota Statute 216.02, subd. 4, remains the most appropriate guide for the regulatory status of ARCs in Minnesota. The Commission had, and continues to have, authority to opt-out of allowing ARCs in its May 18, 2010 Order in Docket No. E999/CI-09-1449, and Dakota Electric believes the Commission's decision in that docket remains in the public interest. Focusing on the Service Area Statutes reaches a conclusion that is contrary to long-standing Commission-policy and statewide energy policy. As noted in our comments, Dakota Electric included demand response capabilities and load management as an integral part of our AGI Project.¹⁰ Otter Tail also noted that it too built capabilities associated with demand response into its recently approved EUIC Rider for its AMI Project.¹¹ The Commission's long-standing regulation of utility demand response rates and programs is appropriate, and the certainty that this regulatory approach has provided is part of the reason why demand response has been successful in Minnesota.

II. Statutory Framework

Even if we assume that ARCs are not utility service, there is no legislative guidance on ARCs that speaks to the concept and what impacts they may have on overall electrical service in Minnesota. Given this significant policy concern, Dakota Electric

⁹ R Street Comments, Page 6.

¹⁰ Dakota Electric Comments, Page 4.

¹¹ Otter Tail Comments, Page 4.

believes it is appropriate for the Commission to maintain its regulatory authority, which it exercised in Docket No. E999/CI-10-1449, in the interest of protecting ratepayers and the State of Minnesota and not allow third party aggregators at this time. This approach is especially reasonable given pending FERC investigations on this topic and the related issue of aggregation of distributed energy resources.¹²

The Commission has some potential guidance on this issue if it compares third-party aggregation to PURPA and DER because both concepts involve interconnection into the distribution system. An important caveat in the case of PURPA and DER was that there was a clear directive in Federal law regarding small power producers. In response to this clear directive, the Minnesota legislature created Statutes governing how these facilities interconnect to distribution systems and how these generators operate in Minnesota. As noted in our original comments, the Commission created a robust, fully vetted interconnection process for DER (which has been updated twice), because the Commission acknowledged the fact that these resources are important from an energy policy standpoint and impact the greater distribution system. This well thought out process, both legislatively and administratively, simply does not exist for ARCs in Minnesota.

Demand response, whether provided by an ARC or incumbent utility, exists within a distribution system; as such, it is critical that these resources are integrated and understood within the greater operation of the distribution system. When ARCs operate independently, they run the risk of negatively impacting distribution system operation and negatively impacting other ratepayers. These important considerations appear to be acknowledged by certain parties in the following statements:

When participating in a retail program, the load resources are registered directly with the host utility. The utility is made aware of the exact location of the resource, the size of the resource and the source (e.g., lighting, HVAC, manufacturing equipment) of the load reduction. Additionally, if the load reduction is supported by on-site generation, many of the details of the generator are reported to the utility and ISO/RTO. For residential demand response programs that may have thousands of participants, registrations may not be customer specific, but

¹² Xcel Energy Comments, Pages 1-2.

rather they are reported at a more regional level such as a pricing node, a city or county, or a utility service territory.¹³

To the extent that the Commission and utilities are concerned about protecting the distribution system, the Commission has full power to do so in the retail tariffs that it approves for its jurisdictional utilities related to the terms of service taken by customers of those utilities. Voltus fully recognizes that ARCs are aggregators of retail utility customers. To the extent that those customers take retail distribution service from a state regulated utility those customers are subject to the terms of the retail distribution tariffs under the Minnesota Commission's jurisdiction.¹⁴

Dakota Electric appreciates these statements by AEMA and Voltus. These statements acknowledge the implicit understanding that an incumbent utility needs visibility to fully understand how an independent control event will impact the greater distribution system and that ARCs impact distributions systems and have an obligation to follow retail tariffs. Beyond questions regarding the overall legality of ARCs, these potential impacts are Dakota Electric's biggest concern. Our concerns are amplified by AEMA's statement regarding residential programs and the difficulty that may exist in trying to report these data on a more granular basis.

Based on our review of ARCs generally, and the current record in this proceeding, there is insufficient evidence to support third party aggregation of demand response in Minnesota at this time. Notwithstanding other issues raised by Dakota Electric on this topic, there has not been a robust discussion about how these resources would interconnect with incumbent distribution systems and how they may impact other Minnesota ratepayers. The Cooperative does not believe that authorizing ARCs without this analysis and discussion runs the risk of creating significant unintended consequences and does not serve the public interest.

III. MISO Regulation and Consumer Protection Laws as a Substitute for Commission Regulation

¹³ AEMA Comments, Pages 15-16.

¹⁴ Voltus Comments, Page 18.

Parties argued in comments that Commission regulation of ARCs is unnecessary because it is not envisioned in Minnesota Statutes and, since capacity is sold into the MISO market, there is effective regulation by MISO. The parties note that if ARCs are unable to deliver the promised capacity, then there are financial consequences from MISO.¹⁵ First, as noted in Section I above, Minnesota Statutes do not envision ARCs bidding a regional market because this concept did not exist when the Legislature enacted regulation of utilities and service territories in 1974. Second, Dakota Electric agrees with these parties that MISO has rules and requirements for resources and, if resources including demand response that are bid into the MISO market or expected for dispatch do not materialize, MISO will de-rate or financially penalize these resources. However, this argument falsely assumes that MISO oversight is an appropriate replacement for the Commission's regulatory authority over retail rates and terms of service.

At a high level, MISO's oversight focuses on two areas: 1) helping maintain the reliable operation of the bulk power system for the region and the participating utilities it serves, and 2) ensuring the efficient economic dispatch of resources and associated services. Although demand response can be bid into an RTO/ISO, it is also connected to and can impact operation of the distribution system, which MISO does not oversee. If we use DER integration as a guide, MISO monitors this integration but their concern, generally, is whether a DER project, or overall DER penetration, will impact the transmission system and require upgrades or modifications to the bulk power system, primarily transmission resources. MISO will likely take the same approach to demand response, which means that ARCs could cause significant power quality or service issues at the feeder level, but if it does not impact the bulk power system, MISO will not take action. Simply put, MISO is not a distribution operator and has a fundamentally different role than the Commission.

Furthermore, MISO does not regulate retail rates; it is interested in economic dispatch of wholesale power. Power quality issues caused by independent ARCs could result in the need for distribution system upgrades that would be borne by an

¹⁵ MnSEIA Comments, Page 5.

incumbent utility and paid by their ratepayers. In addition, as noted by Xcel Energy,¹⁶ ARCs may require incumbent utilities to acquire additional resources, either through construction of resources or purchases in the MISO capacity market, to meet MISO capacity requirements. This too would raise rates for the incumbent utility and its ratepayers. To reiterate, MISO's responsibility, in the simplest sense, is to minimize wholesale power costs. This does not mean that at the Minnesota level, or the retail utility level, overall costs or rates will go down. The only certain result is that costs will be shifted from those consumers that have operations, or characteristics, that can benefit from direct ARC involvement to those that are unable to participate.

In addition to MISO regulation, parties present the idea that existing consumer protections in Minnesota law are sufficient to protect ARC consumers.¹⁷ Dakota Electric agrees that Minnesota has strong consumer protections in place, but respectfully notes that Minnesota consumer and contract laws are not the same as Commission regulation. These consumer protection laws do not fully realize the unique and important nature of utility service. This unique nature was correctly described in Legal Aid's comments:

Lastly, one of the core features of the regulated utility model is nondiscrimination and the obligation of utilities to serve all customers within their service area. This is a unique and important feature of regulated electricity provision and is critical given the essential nature of the service. Third party DR providers will be under no such similar obligation to serve all Minnesota ratepayers or offer them similar products.¹⁸

Minnesota's existing consumer protection laws are set up to protect consumers in more standard business relationships. The fact that utility service is regulated in Minnesota, by definition, means that it is not what is generally considered a "regular" business. The consumer protections in 216B offer Minnesota ratepayers a separate venue, specifically created, for energy related issues. The consumer protection in 216B is built around the unique and important realities of energy and utility service. Further, consumers have access to a system which they are not required, on their own, to bear the risk of a

¹⁶ Xcel Energy Comments, Pages 4-7.

¹⁷ MnSEIA Comments, Page 5; RMI Comments, Pages 6-7.

¹⁸ Legal Aid, Page 2.

service dispute. It is also likely that a two-part system will still result in complaints against incumbent utilities, when in fact, an ARC is the issue (it could also be a utility creating issues for an ARC), which will cause consumer confusion and additional costs for utilities, the Commission, and other state agencies.

Based on our review, Dakota Electric does not believe that MISO regulation or Minnesota consumer protection laws provide Minnesota ratepayers with adequate or similar regulation compared to the Commission. The Commission has a long, effective history of regulating rates and service for demand response programs. This regulation protects ratepayers and the public interest and maintains just and reasonable rates. It is unclear whether other bodies will be able to provide Minnesota ratepayers with the same level of regulatory oversight and protection, especially for the recognized public good of electrical service.

IV. Current FERC Proceeding Regarding ARCs

As noted in our original comments, the FERC offered its ruling on ARCs in Orders 719 and 719-A. These orders allow responsible regulatory bodies to opt-out of allowing ARCs to bid into regional markets and utilities under 4 billion kwh sales per year are not required unless they are explicitly opted in. The Commission opted out of allowing ARCs in its May 18, 2010 Order in Docket No. E999/CI-09-1449. In its comments, R Street noted that the FERC is currently reviewing and conducting additional analysis on the topic of demand response and DER aggregation.¹⁹ Despite these on-going investigations, R Street concluded that the most appropriate regulatory path for the Commission is to remove the ARC opt-out. Xcel Energy also referenced these pending investigations at the FERC and reached a different conclusion, namely, that it is appropriate for the Commission to reserve judgment on the important energy policy issue of ARCs until the FERC reaches a final conclusion on these pending matters.²⁰

Dakota Electric agrees with Xcel Energy on this topic. It is unclear why the Commission would cede their authority on this issue if a potential clarification is forthcoming at the FERC. This is especially true when there are significant questions

¹⁹ R Street Comments, Pages 2-3.

²⁰ Xcel Comments, Pages 1-2.

regarding the true costs and benefits of ARCs in Minnesota, which are discussed further in Section V below. Minnesota has been a leader in demand response, which is supported by the Department's analysis of EIA data,²¹ so deciding to change course without additional clarification or changes from the FERC is premature and may not represent the best decision for Minnesota ratepayers or the public interest.

V. Claimed Benefits of ARCs and the Reality of Demand Response in Minnesota

Several parties provided significant discussion and claims that ARCs will lower costs and save Minnesota ratepayers money. As noted in our initial comments, this argument is only supported by economic theory if incumbent utilities do not participate in demand response (or actively oppose) or demand response is at an unacceptably low level.²² If the Commission looks at this issue in a global sense, the argument that insufficient demand response exists in Minnesota is false. The Department provided detailed analysis which shows that Minnesota is a national leader in the deployment of demand response.²³ Dakota Electric appreciates the Department's thorough cost analysis, which casts doubt on the unsubstantiated claim that ARCs will benefit all ratepayers. If we look specifically at the Dakota Electric system, approximately 40% of our members, across all service types, participate in at least one demand response program, and Dakota Electric can shed, depending on ambient temperatures, between 50 and 90MW of winter load and 80 to 130MW of summer load. This summer load shed is nearly 20% of our peak load and represents a clear and unambiguous wholesale power savings for our membership and the 26 other member cooperatives in Great River Energy, our wholesale power supplier.

The comments by the generating utilities (*i.e.*, Xcel Energy, Minnesota Power, Otter Tail, Great River Energy) and the Department correctly point out the issue with the cost saving argument from other parties. Parties wrongfully assume that utilities will not have to plan for ARC related capacity or that ARCs will not impact utility program cost effectiveness.²⁴ In terms of the cost effectiveness of existing utility programs, this claim

²¹ Department Comments, Pages 6-14.

²² Dakota Electric Comments, Pages 4-5.

²³ Department Comments, Pages 6-14.

²⁴ AEMA Comments, Page 15.

is unsubstantiated because current demand response programs are included in a utility's cost of service calculations. The presence of independent ARCs, or a change in demand response policy, may impact cost effectiveness, overall rate recovery, and may also result in stranded assets. On the topic of planning, utilities have an obligation to serve retail load, so they will likely treat ARCs the same way they treat standby service as they do with distributed energy resources or similar resources. Minnesota is a fully regulated state, and the Commission has a strong, and committed, stance on the topic of system reliability and requires utilities to replace capacity if it is retired or a contract is not renewed. These costs of what is essentially duplicative service will be borne by the utilities and ratepayers, including those who are also ARC customers, through higher wholesale power costs.

Looking more specifically at this topic, Voltus argues that the whole of a utility benefits from the capacity market revenue associated with demand response.²⁵ This is only true if certain assumptions are met. First, the capacity reduction should be tied to new demand response capacity. As noted by utilities in this proceeding, if an ARC cannibalizes existing utility demand response capacity, it may, in fact, have an opposite effect on costs by requiring a utility to build additional resources or acquire capacity in the MISO market. Second, the capacity reduction must be tied to avoided generation. Simply, if there is no generation to avoid, then the demand response capacity does not have significant value. This leads to the third assumption, which is that there is significant value in the capacity market. Dakota Electric agrees that current market dynamics in MISO suggest higher capacity values in the future (like seen in the capacity auction for the 2022-2023 planning year) but that is not a guarantee that these rates will materialize every year.

Despite the Department's analysis which calls into question the claimed benefits of ARCs and, at best, concludes that ARCs maintain the status quo,²⁶ parties in this case argue that Minnesota utilities are not interested in demand response or are not using demand response effectively. This argument is highlighted below:

²⁵ Voltus Comments, Pages 4-5.

²⁶ Department Comments, Page 20.

The Commission should consider how to enable a more efficient and cost-effective electricity system. Included in that determination is the role that aggregators can play in supporting this goal as aggregators have an incentive to sign up customers and have those programs be used. Rather than not calling demand response programs for years, aggregators have the ability to work with customers who may want more flexibility and be compensated for that flexibility.²⁷

This quote from R Street tries to inaccurately characterize all utilities in Minnesota and does not realize the facts regarding demand response as illustrated by the Department. The notion that Minnesota utilities are not committed, or are unwilling, to use demand response is false. Looking specifically at Dakota Electric and Great River Energy, we deploy demand response to management billing peaks on a monthly basis and whenever market or system conditions dictate. This approach is similar to the Peak Flex Credit pilot referenced by R Street.²⁸ Great River Energy's current demand response strategy attempts to mitigate overall system prices and allows it to offer a wide range of demand response programs to its member cooperatives, including Dakota Electric. These programs are not just related to MISO system dynamics but can also respond to specific system or cost realities, which in turn drive lower overall costs across the entire Great River Energy System. This represents tangible savings to all cooperative members served by Great River Energy and its distribution cooperatives, including savings to Dakota Electric's members of approximately \$17 million per year in avoided wholesale power costs.²⁹ Dakota Electric notes that these demand response offerings, and greater power portfolio decisions, are not static. As noted in our comments, Great River Energy recently began bidding demand response capacity into the MISO capacity market and it anticipates significantly increasing this in the future.³⁰ The current demand response strategy from Great River Energy and Dakota Electric closely resembles the "additional benefits" that ARCs claim they can provide consumers.³¹ The collective membership is saving money in wholesale power costs and realizing the benefits of lower nameplate

²⁷ R Street Comments, Page 5.

²⁸ *Id.*

²⁹ Dakota Electric Comments, Page 5.

³⁰ *Id.*

³¹ AEMA Comments, Page 5.

retail rates and demand response program rates.³² This further solidifies the Cooperative's conclusion that Dakota Electric is currently operating as an efficient aggregator.³³

Dakota Electric provides services its members want and does not have an incentive to quash demand response. Our entire membership (*e.g.*, residential, commercial, agricultural) are active participants in demand response and, no pun intended, demand and actively seek out these programs. As noted in our comments, the Cooperative saves approximately \$17 million a year in avoided wholesale power costs, and we actively pursue all cost-effective demand response.

Dakota Electric has a long-standing, successful commitment to demand response. Specifically, we reiterate that approximately 40% of our nearly 115,000 members participate in at least one demand response program, and the Cooperative can shed approximately 20% of summer load.³⁴ This commitment to demand response in Minnesota is not limited to Dakota Electric. Our wholesale power supplier, Great River Energy, and its 26 other member cooperatives, are firmly committed to demand response and have program participation, and load shed abilities, that are similar to (and in some cases exceed) Dakota Electric. Beyond Dakota Electric, and other cooperatives, the

³² Great River Energy Comments, Pages 3-4:

Beginning in the 2022-23 Midcontinent Independent System Operator (MISO) planning year, a subset of these resources were formally registered as Load Modifying Resources (LMRs). Registration of LMRs was expanded for the upcoming 2023-24 planning year, providing even further value for GRE's member-owners through a net gain in accredited capacity. Imposing requirements on our member-owner's creates unnecessary duplication of the efforts that are already underway and creates potential confusion regarding the program rules and requirements. In addition, there would be a risk of reducing the retail benefits currently being realized by members who participate in the current suite of programs. The wholesale rate paid by the member-owners of GRE incorporates the benefits of these demand side management programs. In essence, a tariff already exists to serve as the foundation for the benefit of these demand side management programs, including demand response. Creating an additional tariff for aggregator of retail customers (ARCs) to take these participants out of existing programs opens the opportunity for rates to increase for non-participants across GRE membership. This could result in the creation of two tariffs- one for ARCs, and another to realign the wholesale rates with a new rate structure, and one that shifts costs. The decisions made by GRE's board of directors and member-owners have been made with intent, and any external policy changes that impact the resources of member-owners of GRE and ultimately the rates paid by other member-owners creates potential conflicts of governance between GRE's board and the Commission.

³³ Dakota Electric Comments, Page 5.

³⁴ Dakota Electric Comments, Pages 4-5.

commitment of other utilities to demand response, and the success of these programs, is underlined in an analysis conducted by the Department. The Department observed the following regarding potential demand response in Minnesota:

The data provided by the U.S. Energy Information Administration (EIA) shows that Minnesota currently ranks 1ST nation-wide in MW of potential DR for the residential class, 3RD for the commercial class, and 17TH for the industrial class. Overall, Minnesota has the 4TH highest level of potential DR among the states. Thus, Minnesota has substantial quantities of DR already available.³⁵

The Department's analysis clearly shows that Minnesota is successfully pursuing demand response and the public interest is benefiting from the current policy regarding demand response. This analysis, and data, supports and affirms the Commission's conclusions in its May 18, 2010 Order in Docket No. E999/CI-09-1449 that opted Minnesota utilities out of ARCs.³⁶ The Department's analysis does not mean that Minnesota utilities or policy makers should not pursue additional, cost-effective demand response, but it does not suggest that a market inefficiency or failure currently exists.

Despite Minnesota's strong demand response performance, many parties in this proceeding argue that ARCs have core competency and efficiency advantages that will allow them to increase demand response rates.³⁷ Related to this, SC&UCS argues that incumbent utilities use monopoly power to unreasonably decrease demand response participation:

There are a number of benefits of allowing ARCs to increase competition for cost-effective demand response programs to expand participation beyond current levels. Allowing utilities a monopoly over demand response produces less overall demand response than allowing competitive ARCs to supplement utility resources. Moreover, there are structural biases that inevitably hamper demand response programs operated by monopoly utilities because it conflicts with the utilities' inherent interest in meeting load with rate-based resources. State mandates and Commission oversight can partially counteract those

³⁵ Department Comments, Page 1.

³⁶ May 18, 2010 Order, Docket No. E999/CI-09-1449, Page 6.

³⁷ SunRun Comments, Page 1.

structural biases, but never as well or as completely as market competition.³⁸

In light of the available data, these arguments are a theoretical exercise, similar to what Dakota Electric noted in its comments,³⁹ and not based on Minnesota specific data or results. As noted in our comments, there can be value associated with third party aggregators if they are associated with utility programs.⁴⁰ The overall success of demand response in Minnesota underscores the balancing act that will exist if ARCs are allowed in Minnesota. This balance was acknowledged by the Commission in 2010:

It is important not to jeopardize these gains or to jeopardize utilities' ability to build on these gains- there is no room in the statutory scheme for slippage in existing levels of demand response. Statutes continue to require that utilities factor demand response into their long-term resource acquisition plans and that they demonstrate that any new generating or transmission facility they propose cannot be replaced more cost-effectively by conservation and load-management. To comply with these statutes, utilities must have meaningful influence or control over their customers' demand response. The Commission will therefore prohibit ARC operations at present.⁴¹

These conclusions still remain true today. The Department correctly observed that an important question, or distinction, in this proceeding is whether the Commission is interested in opening ARCs fully (in which case third party providers could erode existing participation) or is it only interested in using ARCs to target areas that the utilities have not already.⁴² This is an important distinction that needs to be considered within the

³⁸ SC&UCS Comments, Page 2.

³⁹ Dakota Electric Comments, Pages 1-3.

⁴⁰ Dakota Electric Comments, Page 8.

⁴¹ May 18, 2010 Order, Docket No. E999/CI-09-1449, Page 6.

⁴² Department Comments, Page 20:

Broadly speaking, assuming ARCs are permitted to operate independently, there are two potential sources of DR for ARCs. The first potential source of DR for ARCs is DR already participating in existing, utility-run DR programs. In this first scenario ARCs attempt to induce DR to switch programs from a utility-run program to the ARC program. The second potential source is to find load not currently participating in utility-run programs. In this second scenario ARCs recruit customers not participating in utility DR programs, organize them, and offer the resulting DR into the wholesale market. The Commission's notice did not specify whether it was focused on the first source, the second, or both.

broader topic of third-party aggregators. Given Minnesota's success with demand response, if the Commission determines that ARCs are appropriate, they must ensure that current programs and participation levels are maintained. The risk that independent ARCs will cannibalize existing demand response capacity is real and a risk that has been known for years. This is part of the reason why the Cooperative noted in its comments that, in the event ARCs are allowed, these entities should operate within the existing utility framework. Not only does this ensure adequate distribution system reliability, it also decreases the risk that ARCs will "increase" demand response only by taking from existing utility offerings or levels. Furthermore, this approach rightly recognizes the success of demand response in Minnesota. This success is no doubt tied to the long-standing regulatory policy of the Commission, and of other regulatory bodies (*e.g.*, cooperative boards), to consider demand response as utility service and include it in utility tariffs. The inclusion of demand response programs, both existing and potentially new, in a utility tariff gives consumers confidence that the rates and terms of service have been thoroughly reviewed, and they are just and reasonable.

Supporters of ARCs in this proceeding rely primarily on theoretical arguments to support the benefits of independent aggregation, rather than actual Minnesota data, and attempt to characterize Minnesota utilities as anti-demand response. This is not true, especially for Dakota Electric. Allowing ARCs to operate in Minnesota, especially outside of utility programs, is a significant policy decision and must be supported by sound analysis and facts. Supporters of ARCs have not shown bias by Minnesota utilities against demand response, and they have also not shown that third party aggregation will not harm existing demand response programs, Minnesota ratepayers, or the public interest. The State of Minnesota, the Commission, and utilities have a long, successful history of promoting demand response, as evidenced by the Department's analysis, and it is unclear how ARCs will further benefit Minnesota ratepayers and the public interest without risking existing programs. Until ARCs are able to provide more tangible evidence showing likely program success, and protection of existing programs, the Cooperative

agrees with the Department that it seems unwise to devote additional resources to this idea.⁴³

VI. Small Utility Exemption

There was significant discussion in comments regarding FERC Order 719 and 719-A and the opt out provision exercised by the Commission. Great River Energy, Dakota Electric, and SC&UCS were the only parties to address the small utility exemption. Great River Energy noted:

In particular, none of GRE's 27 member-owner cooperatives distribute more than 4 million MWh per year, the threshold at which utilities are to "opt-in" or "opt-out" of participation of demand response in distributed energy resource aggregations under Federal Energy Regulatory Commission ("FERC") rules adopted under Order No. 719. Specifically, FERC determined that an RTO/ISO must not accept bids from a distributed energy resource aggregator if its aggregation includes distributed energy resources that are customers of utilities that distributed 4 million MWh or less in the previous fiscal year, unless the "relevant electric retail regulatory authorities" affirmatively opts-in. For small utilities like GRE's members, FERC action allowed the members' boards of directors to make a decision regarding participation in demand response aggregation.⁴⁴

SC&UCS stated:

Second, the Commission should also explicitly "opt in" to allow third-party ARCs operating within the service territory of utilities within the Commission's jurisdiction who sell less than 4 million MWh.

In our comments, Dakota Electric noted that our regulatory position is unique because we are a cooperative but also rate regulated. FERC Order 719 and 719-A leave the question of ARCs to the relevant regulatory body and that any entity under 4 million MWh in annual sales does not require ARCs unless there is an explicit opt-in. Generally speaking, a cooperative's relevant regulatory body is its board of directors; however, in the case of Dakota Electric, the Commission is our relevant regulatory body.

⁴³ Department Comments, Page 22.

⁴⁴ Great River Energy Comments, Pages 1-2.

Dakota Electric continues to conclude that the Commission appropriately exercised its authority in its May 18, 2018 Order in Docket No. E999/CI-09-1449, and it correctly opted Minnesota regulated utilities out of ARCs bidding into independent markets. The Cooperative also respectfully disagrees with the conclusions and recommendations of SC&UCS. Dakota Electric meets the definition of a small utility at the FERC (the 4 million MWh threshold was used in FERC Order 719-A and in FERC Order 2222) and requiring the Cooperative to allow aggregators, if the Commission were to reverse its decision, would represent a significant resource burden for our operations. In addition, this affirmative opt-in would ignore Dakota Electric's proven, and on-going, success in the realm of demand response and could represent a detriment to our membership. The fact that the FERC includes a small utility threshold in their orders is a realization that it is unclear whether the public interest is served by requiring smaller utilities to engage in these types of services. Dakota Electric also notes that there is nothing preventing a third-party aggregator from working with the Cooperative, within the current framework, to offer services to Dakota Electric's membership. As noted in comments, Dakota Electric's demand response is an integral part of our operations and we are willing to work with any party, not just ourselves, if we can provide tangible benefits and cost savings to our members.

VII. Dakota Electric Approach to Demand Response

Dakota Electric is a member-owned distribution cooperative and our core function is to provide our membership with safe, reliable, and affordable electrical service. As part of this commitment to our members, we are constantly evaluating new programs and working with our membership to provide them with as much value as possible for their service, including demand response. As noted in our comments, the Cooperative has a long commitment to demand response and has had certain programs, approved by the Commission, in place for over 30 years.⁴⁵ This commitment to demand response is more than just an ancillary part of our service, it is a fundamental part of our operations and member service. In 2017, Dakota Electric petitioned the Commission for

⁴⁵ Dakota Electric Comments, Pages 4-6.

approval of our Advanced Grid Infrastructure (AGI) program. The Cooperative requested approval and recovery of our AGI Project through 216B.1636, Recovery of Electric Utility Infrastructure Costs. This Statute defines an electric utility infrastructure project as a project owned by an electric utility that: “replace or modify existing electric utility infrastructure, including utility-owned buildings, if the replacement or modification is shown to conserve energy or use energy more efficiently, consistent with section 216B.241, subdivision 1c.”⁴⁶ As part of this request, which was subsequently approved by the Commission, the function and operation of our load management and demand response programs were an integral part of our design and procurement of the system from the outset.⁴⁷ Our demand response offerings are available to all member types and around 40% of our approximately 115,000 members participate in at least one of these programs. Dakota Electric is currently able, depending on conditions, to shed 50-90MW of our winter peak load and 80-130MW of summer peak load. The Cooperative’s membership maintains a high level of compliance with requests for curtailment and demand response.

Dakota Electric’s position in this proceeding is clear, the Commission should not allow ARCs to operate in Minnesota at this time. The evidence is not compelling that ARCs will increase already high demand response participation in Minnesota, there are real risks that third-party aggregation could impact current demand response participation, and the overall legality of their operation is in doubt. However, as noted in our comments,⁴⁸ Dakota Electric is cognizant that the energy industry is evolving and transitioning, sometimes at a rapid pace, and for our membership to receive maximum value there may be future programs that will require, or be aided by, third party

⁴⁶ Minnesota Statute 216B.1636, Subdivision 1c(1).

⁴⁷ This integral function is underlined by the following quote from our most recent AGI petition in Docket No. E111/M-23-44, Pages 2-3:

Installation of load control receives continued throughout 2022 and approximately 75% of load control receivers were installed by the end of the year.

The equipment that has been placed into service, and new equipment that will continue to be installed throughout 2023, as identified in this filing for the AGI project, is owned by the Cooperative. The data collected and administered through the meter data management system will allow Dakota Electric to operate the distribution system more efficiently and size equipment properly, all of which will conserve energy and use energy more efficiently.

⁴⁸ Dakota Electric Comments, Pages 8-9.

involvement. Dakota Electric has a strong commitment to demand response, and if an aggregator is able to present us with a program that will provide our membership with cost-effective demand response, within the existing utility framework, we would be interested. This sort of collaborative approach was noted in comments:

ARCs can draw on their extensive expertise and experience throughout the United States and Canada to create demand response programs for utilities and improve upon existing programs. Many ARCs already have established relationships with customers across various ISOs/RTOs including large manufacturers, big box retail stores, national retail and restaurant chains, and many other regional organizations. ARCs can leverage these existing relationships to eventually register customers in areas where they are currently not allowed to participate in demand response opportunities.⁴⁹

Parties also noted specific, potential benefits, of aggregation:

When building a demand response portfolio, an aggregator can include customers who might not otherwise be able to meet all of a program's requirements by pairing those customers with others who can provide complementary requirements. For example, to reliably achieve a one-MW, eight-hour curtailment, an aggregator might bring three different customers. The first might be a chain of coffee shops whose load could be instantly and remotely controlled but might have a one-hour limitation on the control period. The second customer might be a large assembly line that requires some preparation prior to curtailment but can stay down for two hours without damaging its product. The third customer might be an industrial customer that requires several hours of advanced notice to safely and cost-effectively shut down some of its operations, but once down, can stay offline for the remainder of the day. Absent this portfolio management service, none of the three customers could participate in a demand response program that required an eight-hour curtailment commitment.⁵⁰

If the Commission were to allow aggregation through the current utility framework, these are examples of potential areas where Dakota Electric would be interested in cooperating with aggregators to explore options to provide value to our membership. Unfortunately, it is unclear, based on our experience with aggregators, whether this

⁴⁹ AEMA Comments, Page 11.

⁵⁰ AEMA Comments, Page 8.

collaborative process is likely. Dakota Electric has a similar experience to Otter Tail in that we have not been contacted by an aggregator regarding cooperation on demand response programs.⁵¹ ARCs will likely respond that the Commission's decision to opt-out of allowing ARCs to bid into the MISO market precluded them from working in the State. That is not accurate. There is nothing preventing an ARC from partnering with a utility and using their resources to produce cost effective programs. We noted in our comments that we have experience working with leasing companies for certain C&I generator program participants. These leasing companies perform many of the same services aggregators do, which means the Cooperative has experience working with third party vendors. However, Minnesota's high level of existing demand response participation likely means additional cost-effective measures do not exist or are not applicable to the Minnesota market. The logical conclusion from this lack of engagement is that ARCs are not interested in working through utility approved tariffs but are rather interested in direct contracts with consumers. These direct contracts will likely cannibalize existing demand response programs, in which case participation in demand response programs will not increase, as argued by aggregators, and will likely shift costs to other consumers without lowering overall utility rates.

The facts in this proceeding illustrate Dakota Electric's commitment to demand response and the success of our programs. Our membership benefits from our long-standing commitment to demand response through lower overall costs and access to different programs that help promote the efficient use of resources. Although the Cooperative does not believe the Commission should allow ARCs at this time, we want to reiterate that we are open to working with parties to improve programs and provide value to our membership, but this needs to be done in a way that does not harm the success of existing programs and provides real, quantifiable benefit to our members. Ultimately, the Cooperative (and the Commission) has a responsibility to our member-owners, and ratepayers, to provide adequate utility service, including demand response, in a just and reasonable manner.

⁵¹ Otter Tail Comments, Pages 1-2.

I. Conclusion

Dakota Electric appreciates the opportunity to respond to the comments of other parties and provide additional discussion on this important policy topic. The Cooperative has a long and proven commitment to demand response and energy conservation. We continually work with our membership and explore ways to improve existing offerings and explore new ideas to provide additional value to our membership. The arguments provided by parties in support of aggregation are largely theoretical in nature and do not recognize the commitment, and success, of utilities in Minnesota in terms of demand response or the data that supports Minnesota's success with deploying demand response. Dakota Electric believes that its current demand response and conservation offerings adequately serve our members' interest. The Cooperative believes that the Commission's Order in Docket No. E999/CI-09-1449 is still appropriate, and we do not support the Commission allowing third-party aggregators or requiring rate-regulated utilities to create third-party aggregation tariffs at this time. Dakota Electric remains open to working within the existing regulatory framework to improve programs and provide value to our membership, but we do not believe independent third-party aggregation provides our membership with tangible benefits and will likely have a negative impact on our existing, successful demand response offerings.

Dakota Electric and its representatives are available to answer any questions that the Commission may have.

Sincerely,

/s/ Adam Heinen

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Certificate of Service

I, Melissa Cherney, hereby certify that I have this day served copies of the attached document to those on the following service list by e-filing, personal service, or by causing to be placed in the U.S. mail at Farmington, Minnesota.

Docket No. E-999/CI-22-600

Dated this 10th day of April 2023

/s/ Melissa Cherney

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