

Comments

March 13, 2023

Mr. Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

RE: In the Matter of a Commission Investigation into the Potential Role of Third-Party Aggregation of Retail Consumers (22-600)

Dear Mr. Seuffert,

We thank you for the opportunity to provide initial comments on whether the Public Utilities Commission (Commission) should take action related to the third party aggregation of demand response (DR) for retail customers. While we bring a variety of perspectives to the issue, we submit the below comments jointly to outline our shared concern regarding third party DR aggregation.

1. Should the Commission permit aggregators of retail customers to bid demand response into organized markets?

No.

Third party aggregators of demand response lack the oversight and consumer protections inherent in Minnesota's regulated utility system. While basic consumer protections are important in all energy system contexts, this is especially important when it comes to DR—a product that most individual consumers are not familiar with and may not fully understand or be able to price accurately.

Minnesota residents rely everyday on universal access to electricity to run their appliances, keep their homes cool in the summer, and power lifesaving medical equipment. When an individual homeowner signs up with a third party DR provider, it will be hard to know if they fully comprehend what they are signing up for. DR products span a wide range, from incentives to reduce energy use during certain hours, to the automatic suspension of electricity service to retail customers during certain peak times. They could also impose severe financial penalties on individuals unable to reduce electricity use during peak times. These products could transfer varying levels of control over electricity access away from homeowners and regulated utilities to unregulated third parties. Furthermore, DR products will likely require the installation of new equipment. It is unclear whether 3rd party DR providers will require homeowners to absorb the financial costs of that equipment and be burdened with cost unless they choose to remain in the

DR program. Additionally, it will be very challenging for customers to understand if they are getting full value for their participation in a DR program. Individual residential customers are likely unaware of what the appropriate value for a given DR program is and with no capped rate of return for 3rd party aggregators, individual customers may miss out on a better valued DR option through the regulated utility. These factors raise significant concerns about the potential impact of 3rd party DR aggregators on customers—particularly those that are lower-income or more vulnerable.

The bidding of third party DR products directly into organized markets has the potential to undermine the utility integrated resource planning (IRP) process. This process involves a wide array of participants and frequently takes over a year to complete. It entails the utility forecasting future load and modeling alternative approaches to meet that load. DR is one of the options modeled. The IRP process allows the Commission to consider whether DR is more cost effective for rate payers as a whole than other alternatives. If DR products are allowed to be bid directly into organized markets, it will be more challenging for the utility to accurately assess future demand. Furthermore, there will be no way for the Commission to assess if the DR products are actually providing system benefits to utility ratepayers as a whole. This has the potential to shift costs onto non-participating ratepayers in a way that is inequitable.

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. To the extent that customers are required to pay for the installation of equipment, there is nothing prohibiting credit checks which can be used to screen out lower-income customers. There is also the potential risk of companies targeting lower-income individuals or those without proficiency in English with substandard products, thereby replicating inequities that exist in other consumer sectors.

2. Should the Commission require rate-regulated electric utilities to create tariffs allowing third-party aggregators to participate in utility demand response programs?

No.

In addition to the concerns laid out in response to question 1, we have serious concerns about whether such a requirement would serve the public interest. It also raises fundamental questions about the wisdom of potentially allowing unregulated private sector entities to insert themselves into the regulated monopoly utility system.

Despite modern developments in technology, electric utilities remain natural monopolies, and are regulated in our state as such. The insertion of third-party, for-profit entities between the regulated provider and the end-user in the stream of utility commerce raises the concerning potential for unnecessary and unacceptable risks for regulated utility consumers and is contrary to the public interest. When third-party, unregulated, for-profit entities intrude into the monopoly provision of utility service, there is an inherent and often unbridgeable chasm between the primary interests of those entities and the public interest goals of regulation: nondiscrimination,

uniformity of service, consumer protection, and equity. Because of these risks, even small steps in this direction should be scrutinized thoroughly and considered hesitantly.

Any time a policy change is under consideration that involves allowing an unregulated third-party to come between the regulated utility and the regulated utility consumer, the Commission's oversight authority and responsibility to protect those consumers has the potential to be compromised or even eliminated. It is imperative that proponents of such changes specify in detail in their proposal how the various utility service protections for Minnesota that are granted by law and rule will be overseen, preserved, and enforced.

Proposals like this one are inherently problematic for consumers because the Commission's authority is bypassed and those consumers lose the comprehensive menu of consumer protections offered by statute and rule. Low-income consumers are particularly vulnerable to unregulated third parties using the existing regulatory system as a profit center. The Commission should be extremely wary of third parties seeking personal gain at the expense of residential consumers. This scheme and similar proposals are often, if not invariably, contrary to the public interest.

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?

Yes, if the Commission chooses to allow third party aggregators, the Commission should verify and certify aggregators of retail customers for demand response or distributed energy resources. In addition, the Commission should require all aggregators to file a complete description of the products being offered in Minnesota, including a description of marketing materials, information about whether customers need to buy or lease equipment in order to participate in the program, and information about whether a credit check or any other form of pre-approval is required. Providers should also be required to submit compliance filings with a report of complaints received by customers.

4. Are any additional consumer protections necessary if aggregators of retail customers are permitted to operate?

Yes. Customers should be able to provide complaints directly to either the Department of Commerce or the Commission and either should be able to open an investigation or refer the investigation to the Attorney General's Office as appropriate. The Commission should set out clear guidelines about which types of products are allowed and require transparency in marketing materials. Providers should be required to make their products available to all customers on equal terms.

Sincerely,

Ron Elwood, Supervising Attorney, Legal Services Advocacy Project

Gary Van Winkle, Staff Attorney, Mid-Minnesota Legal Aid

Catherine Fair, Executive Director, Energy CENTS Coalition

John Pollard, Legislative Director, International Union of Operating Engineers Local 49

Adam Duininck, Director of Government Affairs, North Central States Regional Council of Carpenters

Kevin Pranis, Marketing Manager, LIUNA Minnesota & North Dakota