

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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In the Matter of Commission Consideration of
Demand Response Under the Federal
Infrastructure Investment and Jobs Act of
2021

PUC Docket No. E999/CI-22-268

In the Matter of a Commission Investigation
into the Potential Role of Third-Party
Aggregation of Retail Customers

PUC Docket No. E999/CI-22-600

INITIAL COMMENT

The Minnesota Large Industrial Group (“MLIG”), a continuing *ad hoc* consortium of large industrial end-users of energy in Minnesota spanning multiple utilities and functioning to represent large industrial interests before regulatory and legislative bodies, submits the following initial comment in response to the applicable notices of comment period issued by the Minnesota Public Utilities Commission (“Commission”) in the above-titled dockets.¹

I. INTRODUCTION

On December 9, 2022, and January 24, 2023, the Commission issued the respective Notices in the above-titled dockets. Collectively, the Notices seek comments on whether the Commission should take steps to permit aggregators of retail customers (“ARCs”) to bid demand response into organized markets, reversing or amending the Commission’s previous determination,² while also soliciting stakeholder feedback on what action it should take in response to the 2021 Infrastructure Investment and Jobs Act, which requires state regulatory authorities to consider demand response (or “DR”).³ To be sure, both of these proceedings represent important opportunities for customers

¹ Notice of Comment Period (Jan. 24, 2023) (eDocket No. 20231-192443-01) (the “DR Notice”) (pursuant to an extension request, the deadlines in this proceeding were subsequently modified by the Commission); Notice of Comment Period (Dec. 9, 2022) (eDocket No. 202212-191208-01) (the “Agg. Notice” and collectively, the “Notices”) (pursuant to an extension request, the deadlines in this proceeding were subsequently modified by the Commission).

² Agg. Notice.

³ DR Notice. For Minnesota and the Commission specifically, MLIG acknowledges that this means further consideration of demand response. Demand response is a tool that allows a utility to modify customer energy usage including the use of curtailments to reduce peak demand for grid stability and reliability purposes. If used effectively, demand response can also reduce system-wide costs for all ratepayers by reducing utilities’ need to procure or build resources for higher peak demands.

to curb continuing increases to electricity rates and bills, and MLIG is grateful for the opportunity to participate.

While MLIG acknowledges that the Notices were issued in separate dockets and may be conducted as separate proceedings, MLIG elects to cross-file this initial comment in both of the above-titled dockets for the following reasons. First, these dockets are very intertwined from the customer perspective in that decisions in each docket could further expand the options for demand response going forward, thereby increasing efficient use of utility generating resources and broadly benefiting all utility customers. Second, MLIG hopes that combining this conversation across both forums will promote efficiency in creating comprehensive consideration of demand response offerings in the state. Finally, bridging these dockets is important because there is not a one-size-fits-all solution in this matter, and it is important to weigh the pros and cons of each docket in a collective setting. To be clear, MLIG members are eager to explore avenues to work with utility partners and hopefully ARCs to further demand response offerings in the state. After providing background on utility offerings to date, and the various proceedings in which those offerings have been considered, MLIG addresses the specific questions pertinent to MLIG, with the overarching objective to facilitate additional demand response offerings reflecting the market value demand response provides. In so doing, MLIG respectfully asserts that the Commission should (1) establish a rate mechanism or mechanisms to allow utilities to timely recover costs of promoting and offering demand response or demand flexibility programs to customers; and (2) reverse its 2010 prohibition on ARCs and permit ARCs to bid demand response into organized markets.

II. ANALYSIS

A. Relevant Background on Demand Response Proposals on Various Utilities' Systems

1. Minnesota Power

As part of its filings during the Commission's last investigation into ARCs, Minnesota Power represented that it offered between 100 and 200 MW of interruptible demand programs for its large customers.⁴ Regardless of what was offered then, MLIG is concerned that this amount has not appeared to appreciably increase over the last decade plus. This lack of improvement is

⁴ *In the Matter of an Investigation of Whether the Commission Should Take Action on Demand Response Bid Directly into the MISO Markets by Aggregators of Retail Customers (ARCs) under FERC Orders 719 and 719-A*, PUC Docket No. E999/CI-09-1449, Comments by Minnesota Power at 2 (Mar. 24, 2010).

not, however, based upon lack of effort by MLIIG members, who have pushed for more demand response options across various dockets as highlighted below.

During Minnesota Power's 2015 IRP, customers requested the company analyze more demand-side resource options. In recognition of customers' and other parties' positions on demand-side resources, the Commission ultimately ordered the Company to propose a demand response competitive-bidding process within six months, and to include analysis of demand response among potential alternatives to natural gas.⁵

Shortly after the conclusion of the Company's 2015 IRP, Minnesota Power filed a rate case in late 2016. Once again, through its final order, the Commission reiterated its commitment to a successful demand response program by instructing the Company to do the following:

The Company shall work with LPI and other stakeholders to develop a demand response rider and corresponding methodology for cost recovery, based on stakeholder input, for submission to the Commission. The record to support the submission to the Commission may be developed in either Docket E015/AI-17-568 - OAH Docket 68-2500-34672 or a new miscellaneous docket. In the event the Company, LPI, and other stakeholders elect to proceed with a new miscellaneous docket filing, such filing shall be submitted for Commission approval within six months after the date of the final written order in this proceeding.^[6]

Demand response was analyzed again in the Company's Nemadji Trail Energy Center ("NTEC") docket, where Minnesota Power requested approval of certain affiliated interest agreements in connection with acquiring energy and capacity from a portion of a 525 MW natural gas combined-cycle facility in Wisconsin. In the NTEC order, the Commission confirmed its prior positions on demand response, noting that "Minnesota Power, LPI, and other stakeholders should continue to develop a demand-response rider and corresponding methodology for cost recovery in a new miscellaneous-docket filing."⁷

⁵ *In the Matter of Minnesota Power's 2016-2030 Integrated Resource Plan*, PUC Docket No. E-15/RP-15-690, Order Approving Resource Plan with Modifications at 8, 13 (July 18, 2016).

⁶ *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, PUC Docket No. E-015/GR-16-664, Findings of Fact, Conclusions, and Order at 115 (Mar. 12, 2018).

⁷ *In the Matter of Minnesota Power's Petition for Approval of the EnergyForward Resource Package*, PUC Docket No. E-015/AI-17-568, Order Approving Affiliated-Interest Agreements with Conditions at 23 (Jan. 24, 2019).

After this buildup, Minnesota Power submitted a proposal for approval of three different industrial demand response products. Products A (short-term, one-year commitment) and C (long-term, contract-based program) were emergency products allowing Minnesota Power to interrupt customers for reliability events. Product B was an economic product, allowing Minnesota Power to interrupt customers for both reliability and pricing events. Product B required a commitment of 10 years in exchange for monthly customer credits and a fixed cost per kWh if interrupted.⁸ Ultimately, the Commission approved Products A and C, but declined to approve Product B based on concerns with recovery from other customers.⁹

Following approval of demand response Product C, Minnesota Power filed a petition seeking approval of eight multi-year Product C agreements with MLIG members, which would collectively provide 100 to 202 MW of demand response each year until 2028.¹⁰ Despite creatively funding the Product C agreements using capacity sales, Minnesota Power's petition was heavily scrutinized. However, the Commission approved the Product C agreements subject to various reporting and compliance requirements.¹¹ While MLIG is grateful for the eventual approval of demand response Product C, the MP 2021 DR Order was issued almost three years after Minnesota Power's initial industrial demand response proposal filing in PUC Docket No. E015/M-18-735.

Recently, the Commission also authorized Minnesota Power to coordinate with its Large Power and Large Light & Power customers to pursue an additional 50 MW of long-term demand response between 2025 and 2030 as part of its recently approved IRP.¹² While MLIG finds additional demand response encouraging, implementation of the additional demand response authorized by the MP 2023 IRP Order will occur nearly a decade after customers began advocating for demand response product offerings, despite the same industrial customers' rates skyrocketing over the same period.

⁸ MP 2019 DR Order at 2-4.

⁹ *Id.* at 9-11.

¹⁰ *In the Matter of the Petition by Minnesota Power for Approval of Its Industrial Demand Response Product C Contracts*, PUC Docket No. E015/M-21-28, Order Establishing Pilot Program at 2 (Oct. 29, 2021) ("MP 2021 DR Order").

¹¹ *Id.* at 3-5.

¹² *In the Matter of Minnesota Power's 2021-2035 Integrated Resource Plan*, PUC Docket No. E015/RP-21-33, Order Approving Plan and Setting Additional Requirements at 13 (Jan. 9, 2023) ("MP 2023 IRP Order").

2. Xcel

MLIG is concerned that, like Minnesota Power, Xcel's implementation of demand response has lagged and failed to take advantage of opportunities to provide needed rate relief to customers. For example, in its 2015 IRP, Xcel was instructed to acquire 400 MW of additional demand response by 2023.¹³ Despite this approval, Xcel's failure to progress to the 400 MW requirement forced the Advanced Energy Management Alliance ("AEMA") to request the opening of a docket to "expedite Xcel Energy's implementation of 400 MW of incremental demand response ... [because] Xcel Energy is at risk of noncompliance with a Commission order."¹⁴ Following comments, the Commission dedicated a docket to monitor Xcel's compliance toward fulfilling the 400 MW demand response requirement, and Xcel was required to make various compliance filings to demonstrate its progress.¹⁵ Xcel's most recent compliance report indicates that it expects to achieve its 400 MW goal by 2023; however, MLIG notes that over 300 MW of the incremental demand response occurred between 2021 and 2023, after AEMA's petition.

In Xcel's most recent IRP, the Commission reiterated its direction to Xcel to acquire 400 MW of demand response by 2023. But the Commission did not instruct any new demand response at that time. Instead, Xcel is required to explore various opportunities for demand response and other supply-side resources and discuss those findings in its next IRP.¹⁶

MLIG is appreciative of the progress made thus far; however, industrial customers are facing real competitive pressures from increasing electricity rates and bills. Demand response expansion provides these customers with concrete opportunities to mitigate the large rate and bill increases they are receiving, and MLIG believes there are concrete steps that can be taken to encourage more demand response adoption, which will be elaborated on further below.

¹³ *In the Matter of Xcel Energy's 2016-2030 Integrated Resource Plan*, PUC Docket No. E002/RP-15-21, Order Approving Plan with Modifications and Establishing Requirements for Future Resource Plan Filings at 11 (Jan. 11, 2017).

¹⁴ *In the Matter of AEMA's Petition Requesting a Miscellaneous Docket to Address Demand Response*, PUC Docket No. E002/M-20-421, AEMA Petition (Apr. 14, 2020).

¹⁵ *In the Matter of Advanced Energy Management Alliance's Petition Requesting a Miscellaneous Docket to Direct Xcel Energy to Implement 400 Megawatts of Demand Response by 2023*, PUC Docket No. E002/M-20-421, Order Establishing Demand Response Compliance Docket and Filing Requirements at 4-5 (Dec. 15, 2020).

¹⁶ *In the Matter of the 2020-2034 Upper Midwest Integrated Resource Plan of Northern States Power Company d/b/a Xcel Energy*, PUC Docket No. E002/RP-19-368, Order Approving Plan with Modifications and Establishing Requirements for Future Filings at 32-35 (Apr. 15, 2022).

B. MLIG Supports Commission Action That Will Facilitate Added Demand Response Options in Minnesota

Below are MLIG’s responses to the relevant topics open for comment pursuant to the DR Notice.

- 1. “What, if any, actions should the Commission take to establish rate mechanisms to allow a rate regulated electric utility to timely recover the costs of promoting demand response and demand flexibility by commercial, residential, and industrial customers to reduce electricity consumption during periods of unusually high demand?”¹⁷**

MLIG supports Commission action that will establish rate-recovery mechanisms to allow timely recovery of costs associated with utility-managed demand response programs.

The Commission has continually acknowledged that demand response “is an important resource for keeping the evolving grid efficient and reliable by modifying customer usage to serve the electric system.”¹⁸ Effective demand response can lower electricity consumption during peak times, modify load profiles, help accommodate renewable resources, and lessen peak demand on the system. Ultimately, this may save ratepayers money by avoiding investment in unnecessary generation resources, which will also improve reliability and efficient system utilization.¹⁹ To be sure, MLIG agrees with these assessments and hopes that most, if not all, stakeholders comprehend the significant benefits demand response can provide.

Despite the touted benefits of demand response, MLIG remains puzzled as to why implementation on both Minnesota Power’s and Xcel’s system has proven to be an often difficult process. MLIG members are currently in the midst of extraordinary rate increases, which are placing increasing pressures on their large operations and which are often vital to the local and regional economies in which they operate.²⁰ MLIG members would welcome added demand response offerings to help mitigate these increases. But MLIG also recognizes that a potential hurdle to expanded utility demand response offerings may be utility cost recovery. Therefore, to

¹⁷ DR Notice Topic for Comment No. 1.

¹⁸ *In the Matter of Advanced Energy Management Alliance’s Petition Requesting a Miscellaneous Docket to Direct Xcel Energy to Implement 400 Megawatts of Demand Response by 2023*, PUC Docket No. E002/M-20-421, Order Establishing Demand Response Compliance Docket and Filing Requirements at 2 (Dec. 15, 2020).

¹⁹ *See id.*

²⁰ For further discussion of MLIG members’ electricity rates, *see In the Matter of a Joint Investigation into the Impacts of the Federal Inflation Reduction Act*, PUC Docket No. E,G999/CI-22-624, Reply Comment by MLIG (Mar. 13, 2023).

encourage and embolden the utilities in the state, MLIG supports the allowance of timely utility cost recovery for administered industrial demand response programs. By providing more immediate cost recovery, utilities may be further incentivized to bring expanded demand response offerings forward, which will further unlock the system benefits described above.²¹ MLIG members have a proven interest in partnering with utilities on effective demand response programs, and members stand ready to continue collaborations that benefit the utilities, industrial customers, other ratepayers, and the overall reliability of the grid.

2. “Are there other issues or concerns related to this matter?”²²

Yes, despite the significant benefits of demand response, MLIG remains concerned by the pace of adoption and amount/variety of utility-offered demand response available at this time. MLIG, therefore, also supports Commission approval of ARCs bidding demand response into organized markets to provide additional options for ratepayers. As noted above, MLIG cross-files these comments in both of the above-titled dockets because they are interrelated from the customer perspective – customer options, from both utilities and ARCs, should be available in Minnesota. Additionally, facilitating the discussion of both utility demand response and ARCs promotes regulatory efficiencies that MLIG hopes will result in faster implementation of demand response products. As such, MLIG addresses the relevant Agg. Notice topics open for comment, below.

C. Permitting ARCs to Operate in Minnesota Will Provide Additional Demand Response Opportunities for Ratepayers

Below are MLIG’s responses to the topics open for comment pursuant to the Agg. Notice.

1. “Should the Commission permit aggregators of retail customers to bid demand response into organized markets?”²³

Yes, MLIG supports Commission approval of ARCs bidding demand response into organized markets.

²¹ MLIG does not opine on the preferable method for utility cost recovery, and will defer to the utilities for these proposals. MLIG observes, however, that the automatic adjustment process may provide a reasonable avenue to recover these costs. MLIG acknowledges that passing through the capacity-related demand response costs may require a variance to the automatic adjustment process. Additionally, given the steady upward trajectory in fuel costs, MLIG suspects that added industrial demand response programs could potentially lessen fuel costs for ratepayers in certain instances.

²² DR Notice Topic for Comment No. 3.

²³ Agg. Notice Topic for Comment No. 1.

The analysis and information above demonstrate the Commission's and other stakeholders' interest in implementing additional effective demand response programs. While there have been some successes with utility-managed demand response programs, MLIG is concerned that the utility-only model has thus far restricted demand response expansion through delayed implementation and limited customer options. To encourage additional options and to accelerate demand response options in the state, MLIG urges the Commission to permit ARCs to operate, reversing the previous prohibition. Ratepayers with the ability to curtail consumption of electricity will likely do so if the benefits of curtailment exceed the costs. And allowing ARCs to operate in Minnesota will allow broader groups of customers to opt-in to these opportunities. Additionally, ARCs can create alternative solutions for industrial customers to further curtail load to provide system benefits while lowering their respective electricity bills.²⁴ The added optionality of ARCs is critical as the state embarks on its lofty goal to reach 100% carbon-free electricity generation by 2040 as maximized participation in demand response will: reduce wholesale pricing, lessen the need for natural gas peaking units or other non-renewable generation by flattening load profiles, and likely lead to reduced electricity prices for both retail and non-retail customers.²⁵

While MLIG does not take a definitive position on how ARCs would interact with existing utility demand response programs and within the state at this time, MLIG stresses that there is room for both models in Minnesota. Certain MLIG members are currently committed to Product C agreements on Minnesota Power's system; however, these members could also look for opportunities to partner with ARCs to deepen their demand response portfolios to reduce energy costs. Participation in both programs could be easily tracked, with non-compliance penalties being enforced under either option. Stated another way, fears about double-dipping benefits or conflicting curtailments should be alleviated. If a hypothetical customer commits to curtailing 10 MW in a utility-offered program and commits to another 10 MW through an ARC program, that customer knowingly commits to a 20 MW curtailment if both programs are called simultaneously.

Through its limited approval of ARCs and initiation of PUC Docket No. E999/CI-22-600, the Commission has already acknowledged many of the benefits of aggregation outlined above.

²⁴ One such solution could be allowing industrial customers who have large operations spanning multiple utilities to work with ARCs to nominate load from various facilities, which could be beneficial during statewide peak-demand events.

²⁵ MLIG reserves the right to respond to any opposition to allowing ARCs in reply comments.

In approving Xcel's Peak Flex Credit pilot, the Commission noted that "commenters made persuasive arguments that third-party aggregation of retail customers could facilitate broader participation and scale of demand-response programs and improve compliance with control events, potentially expanding the utility's demand-response capability and associated system benefits while advancing state energy policy goals."²⁶ MLIG agrees with the Commission's rationale, and encourages the Commission to broadly permit ARCs to operate in the state to facilitate additional and more diverse demand response offerings. Furthermore, MLIG looks forward to working with ARCs and stakeholders to benefit from the learnings of the Commission's conditional approval of aggregation with respect to Xcel's Peak Flex Credit pilot program.

2. "Should the Commission require rate-regulated utilities to create tariffs allowing third-party aggregators to participate in utility demand response programs?"²⁷

In the event that the Commission approves ARCs to operate in Minnesota, MLIG supports the additional requirement that utilities file new or updated tariffs to govern the relationship between ARCs, customers, and the utility. To promote efficiency, MLIG suggests that the Commission utilize this docket (PUC Docket No. E999/CI-22-600), requiring each utility to file tariff language within 60 days of the Commission's final order and providing stakeholders the opportunity to review and file comments.

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?"²⁸

MLIG does not take a position on this issue at this time; however, MLIG makes the following observations. First, as a threshold matter, it is not clear that the Commission has jurisdiction over ARCs, which operate in the wholesale market. Second, state laws and other regulatory bodies appear to provide reasonable oversight. Given the role of ARCs as market operators, protections provided by the Midcontinent Independent System Operator ("MISO") will apply to ARCs. Minnesota may also have laws in place to provide ARC customers with additional

²⁶ *In the Matter of Xcel Energy's Petition for Load Flexibility Pilot Programs and Financial Incentive*, PUC Docket No. E002/M-21-101, Order Approving Modified Load-Flexibility Pilots and Demonstrating Projects, Authorizing Deferred Accounting, and Taking Other Action at 8-9 (Mar. 15, 2022). The order also acknowledges that Xcel conceded that it did not have a legal argument that the Commission lacked authority to allow aggregation in the Peak Flex Credit pilot. *Id.* at 8.

²⁷ Agg. Notice Topic for Comment No. 2.

²⁸ Agg. Notice Topic for Comment No. 3.

protections as well (e.g., consumer protection laws). Third, rather than directly oversee ARCs, the Commission may still closely scrutinize retail utility tariffs to ensure adequate protections. While these are merely initial observations, MLIG looks forward to continued dialogue with stakeholders on this matter.

4. “Are any additional consumer protections necessary if aggregators of retail customers are permitted to operate?”²⁹

MLIG does not take a position on Topic for Comment No. 4. Similar to its reasoning with respect to Topic for Comment No. 3, it is unclear to MLIG that additional consumer protections are necessary. MLIG, however, is committed and open to working with other stakeholders who may have further concerns on this topic.

III. CONCLUSION

MLIG is appreciative of the opportunity to provide comments in the above-titled dockets. Indeed, MLIG hopes that its participation in these dockets lends support to both utilities and ARCs, and increases the potential for more and alternative demand response options for customers in the state. MLIG is also hopeful that these proceedings will expedite the implementation of more rate mitigation tools for customers. Therefore, MLIG encourages the Commission to (1) approve structures that allow for timely utility recovery of costs associated with utility-offered demand response programs; and (2) provide additional optionality for customers by approving the operation of ARCs in the state. With respect to other topics identified in the Notices, MLIG looks forward to engaging with stakeholders to address any potential concerns that are identified.

²⁹ Agg. Notice Topic for Comment No. 4.

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Respectfully submitted,

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