Xcel Energy®

414 Nicollet Mall
Minneapolis, MN 55401

March 13, 2023

—Via Electronic Filing—

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

RE: 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:

Northern States Power Company, doing business as Xcel Energy, submits the enclosed Comments to the Minnesota Public Utilities Commission in response to the December 9, 2022 Notice of Comment Period in this docket.

We have electronically filed this document with the Minnesota Public Utilities Commission, and copies have been served on the parties on the attached service list. Please contact Taige Tople at 612-216-7953 or taige.d.tople@xcelenergy.com or contact me at 612-330-7974 or christopher.j.shaw@xcelenergy.com if you have any questions regarding this filing.

Sincerely,

/s/

CHRIS SHAW
REGULATORY POLICY MANAGER

Enclosure
cc: Service List

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben	Chair
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John A. Tuma	Commissioner

IN THE MATTER OF A COMMISSION INVESTIGATION INTO THE POTENTIAL ROLE OF THIRD-PARTY AGGREGATION OF RETAIL CUSTOMERS

DOCKET NO. E999/CI-22-600

COMMENTS

INTRODUCTION

Northern States Power Company, doing business as Xcel Energy, submits these Comments to the Minnesota Public Utilities Commission in response to the December 9, 2022 Notice of Comment Period in this docket. We appreciate the opportunity to comment on this matter.

As further discussed below, the Company recommends that, at least at this time, the Commission continue to prohibit Aggregators of Retail Customers (ARCs) from operating in Minnesota outside the context of utility-structured retail demand response (DR) programs. The Federal Energy Regulatory Commission (FERC) is currently reconsidering whether states should have the ability to opt out of DR participation in wholesale markets. As a result, it is premature for the Commission to reconsider its prohibition on the provision of DR by ARCs in such markets, much less the state-level rules under which such participation should occur. Absent FERC reversal of the state opt out, the Company believes that lifting the current Commission prohibition is not in the public interest because it could reduce the efficiency of long-standing utility DR programs and increase costs to customers broadly.

FERC recently reopened the question of whether states should be able to preclude ARCs from providing DR in wholesale electric markets. On September 17, 2021, FERC issued Order 2222,[1] which requires each Regional Transmission Organization

[1] FERC Order No. 2222, *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Orgnaizations and Independent System Operators*, 172 FERC ¶ 61,247 at P 1 n.1 (Sept. 17, 2020).

and Independent System Operator (RTO/ISO) to revise its tariffs to remove barriers in market rules and ensure the participation of aggregators of distributed energy resources in wholesale electric markets. On March 18, 2022, FERC issued Order 2222-A,[2] which requires states to partially allow aggregated demand-response resources to participate in wholesale markets. This was a partial reversal of prior Orders 719 and 719-A, in which FERC found that states *could* prohibit participation of demand-response ARCs in wholesale markets. At the same time, FERC issued a Notice of Inquiry[3] to seek comments on whether to remove the DR opt-out provision from regulations altogether. Subsequently, on June 17, 2021, FERC issued Order 2222-B[4],which reversed the DR opt out holding in FERC Order 2222-A pending further consideration. FERC now plans to address the issue of aggregating DR with other distributed energy resources (DERs) when it considers the removal of the DR opt-out option in its Notice of Inquiry (NOI) proceeding.[5] This matter is still pending. Accordingly, at least until FERC resolves this matter, states continue to be able to prohibit ARCs from offering DR resources into wholesale markets.

Although FERC may decide to eliminate the opt-out provision, we recommend that the Commission not reverse its course on this issue in advance of the implementation of FERC Order 2222 by MISO.[6] The Company continues to believe that allowing ARCs to provide DR in wholesale electricity markets is not appropriate because it would cause ineffiencies in the retail markets and has the potential to increase rates for customers, as described more fully in these comments.

Regulated utilities in Minnesota—and in particular the Company—already effectively operate in a manner similar to an ARC to facilitate coordinated and effective retail DR, thereby enhancing efficient utilization of existing capacity and reserves. The Company's DR programs help reduce costs to customers by deferring capacity additions, while simultaneously compensating customers who can provide DR for the service they provide. Erosion of these programs could increase the Company's need for capacity additions, resulting in increased costs to customers. The Commission has recognized the importance of utility control of DR resources, the history of effective demand side management in Minnesota, and the existing regulatory structure in

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[2] FERC Order No. 2222-A, *Order Addressing Arguments Raised in Rehearing, Setting Aside Prior Order in part, and Clarifying Prior Order in Part*, 174 FERC ¶ 61,197 PP 5, 22 (Mar. 18, 2021).
[3] Notice of Inquiry, *Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organization and Independent System Operators*, 48 Fed. Reg. 15,933 (Mar. 25, 2021).
[4] FERC Order No. 2222-B, *Order Addressing Arguments Raised in Reearing, Setting Aside Prior Order n Part, and Clarifying in Part Prior Order*, 175 FERC ¶ 61,227 PP 27-28 (June 17, 2021).
[5] Notice of Inquiry, *Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 174 FERC ¶ 61,198 (2021) (NOI); see also Order No. 2222-B, at P 28.
[6] The effective date of FERC Order 2222 in the MISO markets is pending approval from FERC.

Minnesota, which requires that utilities consider demand side resources in their planning. Thus, the needs proposed to be met by new generation or transmission cannot be replaced more cost-effectively than by way of utility-structured retail demand side resources.[7] As a result, the Commission prohibited ARCs from providing DR in wholesale electricity markets in response to FERC Orders 719[8] and 719-A[9], and that prohibition remains in place today. The Company believes the considerations underlying the Commission determination in Docket E999/CI-09-1449 remain, and nothing in the market has changed in a way that would support reversing that decision.

Since that time, the Commission ordered the Company to acquire 400 MW of incremental DR.[10] The Company recently provided a compliance filing detailing our progress towards this requirement notwithstanding the challenges of COVID-19 and loss of critical customers, including actions taken to acquire this additional controllable load. These details can be found in our February 1, 2023 Compliance Filing in Docket No. E002/M-20-421, which lays out the specifics of our plan to meet or exceed the 400 MW requirement.

One of the elements of that plan is the Peak Flex Credit pilot targeting large commercial customers, which the Company launched in 2022. The Peak Flex Credit pilot has been approved to run for three years.[11] During this time, the Company expects to learn whether the proposed offering appeals to customers and reduces carbon emissions. The Commission also ordered the Company to allow third-party aggregators to participate in the second tranche of the Peak Flex Credit pilot,[12] which also launched in 2022. To date, we have not gathered sufficient information to determine whether there is substantial interest in either the aggregator and non-aggregator tranches.

[7] Order Prohibiting Bidding of Demand Response into Organized Markets by Aggregators of Retail Customers and Requiring Further Fillings by Utilities, Docket No. CI-09-1449 (May 18, 2010).
[8] *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281, 73 FR 61,400 (Oct. 28, 2008) (Order No. 719).
[9] *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292, 74 FR 37,776 (July 29, 2009) (Order No. 719-A).
[10] *In the matter of Xcel Energy's 2016-2030 Integrated Resource Plan*, Docket No. E-002/RP-15-21, Order Approving Plan with Modifications and Establishing Requirements for Future Resource Plan Filings, at 11 (January 11, 2017).
[11] *In the matter of Xcel Energy's Petition for Load Flexibility Pilot Programs and Financial Incentive*, Docket No. E-002/M-21-101, Order Approving Modified Load-Flexiiblity Pilots and Demonstration Projects, Authorizing Deferred Accounting, and Taking Other Action, at 27 (March 15, 2022).
[12] *In the Matter of Xcel Energy's Petition for Load Flexibility Pilot Programs and Financial Incentive,* Docket No. E002/M-21-101, Order Approving Modified Load-Flexibilit Pilots and Demonstratin Projects, Authorizing Deferred Accounting and Taking Other Actions (March 1, 2022).

With this background, below we respond to the specific questions posed in the Commission's December 9, 2022 Notice of Comment Period in this docket.

The Commission's first two questions focus specifically on DR, while the last two questions address DERs more broadly. Our answers reflect that context, splitting the two categories so that DR reflects the reduction or shifting of load, while DERs more broadly focus on distributed resources including assets like solar generation.

COMMENTS

I. SHOULD THE COMMISSION PERMIT AGGREGATORS OF RETAIL CUSTOMERS TO BID DR INTO ORGANIZED MARKETS?

As discussed above, FERC is in the process of evaluating whether states should retain the right to opt out of having ARCs represent DR in wholesale markets. Currently in Minnesota, ARCs are not allowed to offer DR into the MISO market because, in 2010, the Commission opted out under FERC Orders 719 and 719-A. Although FERC is considering reversing the ability of states to opt out with respect to ARCs providing demand response, it has not yet issued a decision in the matter. As a result, we believe that Minnesota's parallel consideration of the reversing the ARC opt out in Minnesota for DR is premature at this time. Further, widespread participation of ARCs in MISO raises a number of complex issues, all of which are bound up in the larger question of how to implement FERC Order 2222 in a manner that protects the safety and reliability of the distribution system while minimizing costs to customers.

For instance, we see FERC Order 2222 implementation as requiring systems to track and interact with DERs, potentially including DR resources; enhanced interconnection study capabilities; studies to evaluate the impacts of an aggregation on feeders; issues relating to meter data and data sharing; the potential need for improvements in MISO's measurement and verification processes for DR resources, and new distribution-level tariffs that will set out the rights and obligations of DERs in using the retail system for wholesale market gain. The Company is starting to work through these and other issues as we prepare for full FERC Order 2222 implementation.

We believe that it would be more appropriate for Minnesota to reevaluate ARC provision of DR in wholesale markets after (1) FERC resolves the question of whether state opt out for DR will be permitted at all and (2) the groundwork has been laid for broader FERC Order 2222 implementation. Should the Commission still wish to consider the issue now, however, the Company is concerned that its customers may be adversely affected should Minnesota ARCs be allowed to provide DR in wholesale markets. Participation of DR wholesale ARCs could have a series of implications for the Company, including creating uncertainty in load forecasting and reducing the amount of DR capacity available to the Company to offset capacity requirements in MISO. These implications would likely result in increasing costs to customers.

A. Existing DR is a Foundational Capacity Resource

Demand response has long been an important capacity resource in our Upper Midwest System. In the current planning year, our DR provided approximately 940 zonal resource credits (ZRCs) available to meet capacity needs in MISO. The Company used its ZRCs to meet its planning reserve requirements of approximately 9500 MW. The Company offered excess ZRCs into the annual MISO capacity auction, which were very valuable. Further, in our resource planning process, we plan to have sufficient capacity resources to meet our capacity obligations without reliance on the annual auction. Without the important capacity provided by our DR resource, we would need to procure additional peaking resources to meet our capacity needs.

If ARCs are allowed to offer DR directly into MISO, there is a risk that our system could lose important DR resources that we currently use to meet capacity obligations. This is because if DR is signed up with an ARC as a Capacity Resource or a Load Management Resource (LMR), the Company cannot include that capacity in its own suite of capacity resources as it does today. Thus, the potential operation of wholesale market ARCs in Minnesota could increase the price that retail customers pay for electricity and capacity due to the need to acquire additional resources and the loss of the price hedge provided by DRs.

The potential impacts of losing these important capacity resources were raised in Docket No. CI-09-1449 and recognized in the Commission's Order of May 18, 2010. The Commision's Order states:

> [Utilities] argued that permitting ARCs to compete with existing utility programs could have adverse consequences for ratepayers, including the following:
>
> - It could make utilities' long-term resource planning efforts more complex and less reliable, because utilities would no longer control the most effective demand-side management resources within their service areas. Instead, these resources would be sold into the regional wholesale market under terms and conditions designed to maximize profits to ARCs and the

large customers with whom the ARCs would contract.

- It could raise overall system costs by forcing utilities to build more peaking plants, because they could no longer control peak load by interrupting very large customers at predetermined system demand levels under interruptible tariffs adopted under utility demand-side management programs. Instead, they would have to treat these customers' loads as firm loads and build or buy generation to serve them.
- It could shift most of the costs of DR to customers too small or energy-dependent to be attractive to ARCs, while shifting nearly all the benefits to ARC customers. Large customers with flexible energy usage would forgo electricity available to them at regulated, averaged rates and sell the forgone energy into the regional wholesale market at unregulated, non-averaged, much higher prices. Under current demand-side management programs, costs and benefits are intentionally distributed more widely.
- It could raise costs to ratepayers by stranding utility investments in demand-side management infrastructure (e.g., radio transmitters, metering equipment, load limiters), abandoned by large customers for new, ARC-provided infrastructure.

In its Order deciding that Minnesota-focused ARCs should not be allowed to participate in MISO, the Commission explained that it was important not to jeopardize the important value existing DR resources provide, but states that "*[a]t the same time, it is critical not to miss opportunities for future gains through over-reliance on past successes.*"

The Company agrees. Since the Commission Order, we have developed an extensive portfolio of DR programs available to all customer classes across our service territory. Currently, there are several DR programs available for customers meeting a variety of customer desires for load control. Over 470,000 residential and small business customers are active participants in either Saver's Switch or AC Rewards programs. Approximately 23,000 commercial and industrial customers participate in an interruptible rate, and we anticipate that number to grow with the launch of Peak Flex Credit program. The Company has developed an extremely robust DR program that provides approximately 980 MW of system peak load control (more than 11% of the NSP System total requirements load).

That does not mean, however, that there is no place for aggregators in Minnesota. As mentioned in the Introduction, third-party aggregators have recently been allowed to participate in the second tranche of the Company's Peak Flex Credit pilot. That approach to aggregation is more reasonable, because it does not result in the loss of DR resources from a utility's system to the detriment of its customers. We believe it would be premature, however, to reach a decision regarding ARC provision of DR in MISO, or even other retail programs, before obtaining the results of lessons learned from the pilot or at least until FERC resolves the matter in its pending NOI proceeding.

B. Potential Disruption to Distribution Planning and Load Forecasting

One potential issue with allowing ARCs to provide DR in wholesale markets is the disruption ARCs' control of disparately-located load could have on utility distribution planning and load forecasting. Were ARCs allowed to provide DR in wholesale markets, the ARCs would be responsible for providing real-time meter data for their aggregation to the RTO at a transmission node-level. A transmission node, however, may contain individual DRs spread across multiple distribution feeders. When DR is registered directly by a utility, such as Xcel Energy, the utility can take account of those locations in its load forecasting. However, if the individual DRs are signed up with a third-party ARC, the utility likely would lack this specific locational information. Without sufficient locational granularity of aggregations by third-party ARCs at the distribution level, the utility will struggle to accurately forecast the load for planning purposes, especially if the utility's practice is to forecast loads based on historical measurements which would no longer be accurate with ARC provision of DR in the wholesale market.

Assumptions of generic load or generation profiles can be made based on physical characteristics, such as typical weather conditions and average usage/production at different times of the day and year, but the shape and scale of those profiles can vary between customers. Without knowing the locational specifics of the DR, those demand changes could still be mistaken for normal load behavior and impact the shape of those profiles. In addition, the operational status of the ARC's DRs would be determined by the economic incentives of the ARC, which would introduce intentional changes in operation status that may be agnostic of typical load or generation profiles.

The absence of this local level information and coordination could lead to inaccurate planning forecasts for the distribution system.

C. Required Close Coordination Between ARCs, Utilities, and MISO is Not Currently Achievable

Increased participation of ARCs in MISO may require extremely close coordination between the MISO, ARC, and utilities which does not currently exist. As demonstrated in MISO's work planning for Order 2222,[13] in the operating horizon coordination is required both day-ahead and in real-time. Existing tools and processes, however, do not provide the functionality needed to enable the required coordination between the ARC and the utility so that the utility is aware of the impacts to the distribution system based on the ARC's operating plan. An ARC may have to update its offers (both in terms of products and quantities/capabilities) on a day-ahead basis to allow the utility to review the impact of planned operations considering the impact of DR and DER aggregation dispatch to ensure that no safety or reliability problems will arise on the distribution system. In real-time, utilities may need to override a MISO dispatch of a DER aggregation when needed to maintain the reliability and safety of the distribution system.

D. Disruption of the Company's Well-Developed and Reliable DR Programs

Historically, DR initiatives in Minnesota were developed, implemented, and managed by utilities for the purpose of minimizing power supply costs for the benefit of their customers. More recently, the Company utilizes DR resources to impact customers by deferring capacity additions. These programs are developed pursuant to the terms and conditions of retail tariffs approved by the Commission or under our Conservation Improvement Program. These state-authorized DR programs:

(1) help reduce the need for, and therefore cost of, planning and operating reserves,
(2) provide solutions to customers to manage their energy consumption and energy bills,
(3) ensure the integrity of Minnesota's integrated resource planning regime; and
(4) help meet state-established DR goals.

Allowing ARC provision of DR in wholesale markets raises questions about the interplay and effects of MISO wholesale ARC programs. For instance, information

[13] See FERC Order 2222 Filing Framework Iteration 9 (March 17, 2022), https://cdn.misoenergy.org/20220317%20DERTF%20Item%2003c%20Compliance%20Framework623453.pdf at 116-17.

exchange systems and protocol between the ARC, the ISO, the Relevant Electric Retail Regulatory Authority (RERRA), and utilities will need to be established as well as Commission action to create rules that govern these interactions.

The MISO region includes states where electric utility service has been unbundled and where retail competition has been introduced, as well as states, like Minnesota, where electric utility service is fully integrated and subject to traditional cost-based regulation. While there can be benefits provided by ARCs in the MISO region where either retail competition or a lack of existing utility DR programs means that ARCs could increase efficiency in capacity use and operating reserves, that is not the case in Minnesota.

Utilities in Minnesota are subject both to extensive state-mandated, integrated resource planning processes and some of the most ambitious DR requirements anywhere in the United States. DR retail programs are subject to comprehensive state regulatory review and cost-effectiveness analysis. All customers benefit from DR mitigating peak load conditions, lowering capacity requirements (and associated costs), and responding to system emergencies, while still supporting a least-cost retail rate regime and the integrated resource planning policies. This retail market DR also benefits the entire MISO footprint by mitigating peak load conditions for the entire MISO system and by providing a source of load reduction that can be used for system emergencies.

The Company's DR program is extensive and reliable, having gone through numerous refinements and continued expansion over the past 30 years. Historically, for past events, the Company has met or exceeded its requested (dispatched) DR obligation, providing benefits to out retail customers and the MISO system.

The introduction of third party ARCs providing DR in the wholesale market could negatively impact a – perhaps large – portion of the Company's existing DR program customer base, thereby rendering the remaining base much less cost-effective. Furthermore, the Company also reflects the impact of deployment of their DR programs in their system load bids in the MISO energy and ancillary service markets, as well as the MISO's resource adequacy construct. Were ARCs to cannibalize participants in the Company's DR programs, the Company and its customers would suffer from the loss of these benefits. Fundamentally, the Company is concerned that ARCs may lead to negative impacts to existing robust retail DR programs through the functional replacement of those programs by ARC programs that may be less cost-effective or provide less benefit to customers.

Accordingly, consistent with the Company's position in Docket E999/CI-09-1449 where this question was previously raised, we continue to recommend that ARCs not be allowed to participate in organized wholesale markets at this time. Instead, we recommend that the Commission defer consideration of this issue until full implementation of Order 2222 by MISO.

E. Continued Regulatory Control of DR Resources Supports the State's Decarbonization Efforts

Efficiently matching customer usage to intermittent carbon free generation will continue to grow in importance as the Company continues its progress toward a clean energy future. Having visibility into and partnering with customers to dispatch their DR is an important tool to reach that clean energy future.

It cannot be assumed that the wholesale market price will reflect carbon intensity across the region and, therefore, that ARC use of DR will be optimized or even consider carbon in their dispatch of DRs. Since these situations are still under consideration at the regional and federal levels, the Company recommends proceeding cautiously as we implement critical state decarbonization policies.

F. Regulated Utilities should Remain the Distribution System Operators if ARCs are Allowed to Participate in Wholesale Markets

Should the Commission decide that Minnesota ARCs be allowed to participate in DR wholesale markets, it is vital that regulated utilities (such as Xcel Energy) remain the Distribution System Operators (DSO) because they will provide nondiscriminatory service to all parties operating within Minnesota's rules, as supported by the Commission's oversight. Keeping regulated entities as the DSO may be necessary to ensure the safety, reliability, and fairness of access to the distribution system if ARCs are allowed to provide DR in wholesale markets, depending on factors such as type of service, dispatch pattern, or other characteristics of aggregated DER.

G. Customer Protections

Customer protections need to be considered for these unregulated entities. Customers, particularly those most vulnerable, should have protections from predatory or strong armed practices to sign them up for such programs, as has occurred with other unregulated entities developing solar options. Customers should have an established channel to submit unresolved concerns or complaints. In addition, customer billing practices, eligibility and compatibility of resource requirements as well as verification procedures will need to be developed. As such, the

Commission will need to establish rules that govern these interactions.

II. SHOULD THE COMMISSION REQUIRE RATE-REGULATED ELECTRIC UTILITIES TO CREATE TARIFFS ALLOWING THIRD-PARTY AGGREGATORS TO PARTICIPATE IN UTILITY DEMAND RESPONSE PROGRAMS?

The Company believes that third-parties could play a role in developing DR resources. In 2022, the Company launched Peak Flex Credit in an effort to comply with the Commission's direction to obtain an additional 400 MW of DR capacity. The Peak Flex Credit pilot is a dispatchable load-shedding program for commercial customers designed to test various control options to increase customer participation in DR. As a reward to customers for adjusting their energy usage during an event, the Company offers monthly credits. The Company seeks to learn how a specific set of incentives, disincentives, and buy-through options affect large commercial customers' behavior. The first tranche of the pilot is expected to obtain 43 MWs.

In March 2022, the Commission directed the Company to allow third-party aggregators to participate in the second tranche of the pilot. To comply, the Company worked with Advanced Energy Management Alliance (AEMA) to create new processes and contractual obligation. To create a fair playing field, the Company launched both traunches at the same time in December of 2022. No data has yet been obtained regarding the pilots' effectiveness.

These pilots have been authorized to run for three years, from 2021 – 2023. However, because the pilots were not fully approved until September 2022, our timeline has adjusted to 2022 – 2024. We believe that it would be premature for a state policy shift requiring rate-regulated electric utilities to allow ARCs to participate in their demand-response programs now instead of waiting for the Company to provide synthesized report data and lessons learned back to the Commission.

To the extent that the Commission is asking if the best method for ARC participation in the demand-response programs of rate-regulated electric utilities is through tariffs, we note that the Commission has identified a role for third-party participants on a pilot basis, and that it did so understanding the protections that a tarrifed program structure provides to customers. We see no reason to alter that process at this time.

III. 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?

Regardless of whether ARCs participate at a wholesale or retail level, the Company believes that the Commission should adopt a verification and/or a certification process for ARCs. The Company notes that AEMA provided the following suggested resources for developing such processes in its Reply Comments in Docket No. E002/M-21-101:

> There are many resources available to develop a screening process. The Regulatory Assistance Project included a draft model certification process in its 2018 report, Enabling Third-Party Aggregation of Distributed Energy Resources, to the Public Service Commission of Arkansas.[14] The Maryland Public Service Commission requires aggregators to complete an application process that requires providing a certificate of good standing from its home jurisdiction; ownership and control disclosures; any license actions against the applicant and any affiliate; recent audited financial documents; copies of marketing materials, and in some cases, a $10,000 bond.[15] Note that the Maryland Public Service Commission issues licenses to entities to supply electricity and requires aggregators and electricity suppliers to go through the same registration process.

The Company recommends that the process reflect a reasonable certification period. In addition, the following are some criteria suggested by AEMA on behalf of its members, which the Company has required of ARCs participating in the Company's Peak Flex Credit pilot:

- Be an active DER aggregator experienced in DR aggregation in at least one retail market and two wholesale markets in the United States,
- Have a 24/7/365 Network Operations Center (NOC) capable of

[14] Janine Migden-Ostrander, et al., Regulatory Assistance Program, Enabling Third Party Aggregation on Distributed Energy Resources: A Report to the Public Service Commission of Arkansas, Appendix A (February 2018), https://www.raponline.org/wp-content/uploads/2018/04/enabling_third_party_aggregation_distributed_energy_resources2.pdf.

[15] Application for License to Supple Electricity or Electric Generation Services to the Public In the State of Maryland, https://www.psc.state.md.us/electricity/application-license-supply-electricity.

monitoring and dispatching aggregations of DR resources, and

- Not be banned from doing business in an RTO Independent System Operator.

IV. ARE ANY ADDITIONAL CONSUMER PROTECTIONS NECESSARY IF AGGREGATORS OF RETAIL CUSTOMERS ARE PERMITTED TO OPERATE?

In the event that Minnesota ARCs are allowed to operate in wholesale electric markets to provide DR, the Company believes that the following additional measures would, at a minimum, be necessary to provide customer protection.

The Company recommends the Commission consult with The Organization of MISO States (OMS) to ensure that MISO has appropriate processes in place to manage DER through ARCs. In addition, the OMS should have a dialogue with MISO about the effectiveness of its existing DR performance measurement and verification.[16]

If wholesale market participation is allowed, ARCs would engage and settle the value of services provided directly with customers through the ARC, to the MISO market. We recommend the Commission consider whether measures such as certification, data privacy, and truth-in-advertising requirements should apply to ARCs. Additionally, considerations for customer protections should be established through rules and procedures to ensure that customers are fairly compensated by the ARCs representing them in wholesale markets. The Commission should also consider setting up processes to regulate the sharing of customer information with ARCs. Under some circumstances, the Commission may also need to address cost allocation of upgrades necessary to accommodate increased DERs aggregated under ARCs, such as for costs

[16] While many ARCs operate legitimately, there is sufficient history with bad actors in the industry to warrant vigiliance by MISO and the states alike. See, for example, the following enforcement actions involving demand response providers: *Todd Meinershagen*, Docket No. IN23-4-000, Order approving Stipulation and Consent Agreement, December 21, 2022 (alleged to have registered demand response resources in MISO without the knowledge or consent of such resources and to have offered capacity into the market that would not have performed if the resources had been dispatched); 20221221-181FERC61251-IN23-4-000-Todd Meinershagen-Settlement | Federal Energy Regulatory Commission; *Enerwise Global Technologies, LLC d/b/a CPower*, Docket No. IN22-7, Order Approving Stipulation and Consent Agreement, August 25, 2022 (alleged failure to offer demand response resources into the market as required); 20220825-180FERC61126-IN22-7-000-Enerwise dba CPower-Approving SA | Federal Energy Regulatory Commission; *Competitive Energy Services, Inc.* Docket No. IN12-12, Order Assessing Civil Penalty, August 29, 2013 (alleged artificial inflation of demand response baseline); https://www.ferc.gov/sites/default/files/enforcement/civil-penalties/actions/2016/144FERC61163.pdf); *Lincoln Paper and Tissue, LLC*, Docket No. IN12-10, Order Approving Stipulation and Consent Agreement, June 1, 2016 (alleged artificial inflation of demand response baseline); and https://www.ferc.gov/sites/default/files/2020-05/20160601164307-IN12-10-000.pdf.

not previously accounted for under studied DER production parameters.

Finally, in Docket No. E002/M-13-867, the Commission required specific disclosures by solar garden developers as part of the contractual obligation for the DER.[17] We believe that any tariff or RFP for aggregated DR services should include similar protection requirements.

CONCLUSION

We appreciate the opportunity to provide these Comments on this matter, especially given the on-going FERC Order 2222 process which continues to unfold. We look forward to being able to provide additional information to the Commission regarding the Company's retail ARC pilot as it progresses.

Dated: March 13, 2023

Northern States Power Company

[17] Commission Order of April 7, 2014 in Docket No. E002/M-13-867.

Certificate of Service

I, Joshua DePauw, hereby certify that I have this day served copies of the foregoing document on the attached list of persons.

xx by depositing a true and correct copy thereof, properly enveloped with postage paid in the United States mail at Minneapolis, Minnesota

xx electronic filing

Docket No. E999/CI-22-600

Dated this 13th day of March 2023

/s/

____
Joshua DePauw
Regulatory Administrator

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Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_22-600_Official
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First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_22-600_Official
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