



## ORDER

Public Act 3 of 1939, as amended by Public Act 341 of 2016 (Act 341), MCL 460.6w(8), requires each electric utility, alternative electric supplier (AES), cooperative electric utility, and municipally owned electric utility to demonstrate to the Commission, in a format determined by the Commission, that each load serving entity (LSE) owns or has contractual rights to sufficient capacity to meet its capacity obligations as set by the appropriate independent system operator (ISO), or the Commission, as applicable.<sup>1</sup> This is known as a state reliability mechanism (SRM) capacity demonstration. Regulated electric utilities' capacity demonstration filings are due by December 1 each year;<sup>2</sup> filings by AESs, cooperatives, and municipally owned electric utilities are due by the seventh business day of February each year. MCL 460.6w(8)(a)-(b). In the July 2, 2021 order in Case Nos. U-21099 *et al.*, the Commission opened the docket in Case No. U-21099 for the purpose of receiving the LSEs' capacity demonstrations for the 2025/2026 PY<sup>3</sup> and directed the Commission Staff (Staff) to file its analysis of the filings no later than March 25,

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<sup>1</sup> MCL 460.6w(12)(a) defines the appropriate ISO as the Midcontinent Independent System Operator, Inc. (MISO). MCL 460.6w(11) also states that “[n]othing in this act shall prevent the commission from determining a generation capacity charge under the reliability assurance agreement, rate schedule FERC [Federal Energy Regulatory Commission] No. 44 of the independent system operator known as PJM Interconnection, LLC [PJM].”

<sup>2</sup> In the November 18, 2022 order in Case No. U-21225, the Commission extended the deadline for investor-owned utilities (IOUs) to file their capacity demonstrations for the 2026/2027 planning year (PY) from December 1, 2022, to December 21, 2022 and also granted IOUs the ability to supplement or amend their respective filings if necessary. November 18, 2022 order in Case No. U-21225, p. 4.

<sup>3</sup> MCL 460.6w(8)(a) states that, if an SRM is to be established, the Commission shall require each electric utility to demonstrate by December 1 of each year that, “for the planning year beginning 4 years after the beginning of the current planning year” the utility owns or has contractual rights to sufficient capacity to meet its load obligations. Thus, the statute requires the capacity demonstrations for four years out from the year the capacity demonstrations are required to be filed. As such, the capacity filings in Case No. U-21099 cover the 2025/2026 PY.

2022. Accordingly, the Staff filed the Capacity Demonstration Results Report in Case No. U-21099 (Staff Report) on March 25, 2022, addressing the capacity demonstrations for PY 2025/2026. *See*, Case No. U-21099, filing# U-21099-0060.

On June 23, 2022, the Commission issued an order (June 23 order) in the instant dockets (June 23 order) adopting the findings of the Staff Report and adopting the recommendations therein, in part. In the June 23 order, the Commission also requested comments from interested persons on the following topics:

1. In the August 8, 2019 order in Case No. U-20348 (August 8 order), the Commission continued the ban on Michigan retail electric customers (either individually or through aggregators) of Commission-jurisdictional electric utilities from bidding DR [demand response] resources into RTO [regional transmission organizations] wholesale markets. August 8 order, p. 23. In the October 29, 2020 order in Case Nos. U-20628 *et al.*, the Commission sought comments on whether to lift this ban on Michigan retail electric customers (either individually or through aggregators) of Commission-jurisdictional electric utilities from bidding DR resources into RTO wholesale markets, but thus far, the Commission has declined to take additional action. In light of the tightening capacity market within the MISO footprint and LRZ [local resource zone] 7 in particular, the Commission seeks comment on whether the ban on DR aggregation described in the August 8 order should now be lifted.
2. In the April 8, 2021 order in Case No. U-21032, the Commission sought comment regarding the effect of FERC Order 841,<sup>4</sup> which requires each RTO and ISO to revise its tariff to establish a participation model consisting of market rules that facilitate the participation of energy storage resources (ESRs) in RTO/ISO markets. In the August 11, 2021 order in the same docket, the Commission encouraged investor-owned utilities to propose pilot programs involving well-designed retail tariffs that facilitate the integration of ESRs into the electric grid and account for the full value stack of ESRs. In the context of the resource adequacy concerns expressed in this order and in the Staff Report, the Commission seeks comment on whether the Commission should now allow the simultaneous participation of ESRs in the wholesale and retail markets.
3. The Commission seeks comment on whether it should consider setting a four-year forward capacity obligation under Section 6w of Act 341 that is higher than MISO's prompt year PRMR [planning reserve margin requirement] to encourage the development of additional capacity resources with the aim of protecting the future resource adequacy

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<sup>4</sup> *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 162 FERC ¶ 61,127 (February 15, 2018) (Order 841).

and reliability of service for Michigan retail electric customers. The Commission seeks specific comment on how such a capacity obligation should be determined and calculated, and how the Commission should proceed in this manner.

4. As stated in the Staff Report, the Commission has not yet imposed an LCR [local clearing requirement] on individual LSEs pursuant to MCL 460.6w. Subsequent to the [August 20, 2020 order in Case Nos. U-20590 *et al.*], the Court of Appeals issued a decision in the remanded proceeding finding that the September 15 order (imposing an LCR on AESs individually in Case No. U-18197) did not equate to administrative rules in violation of the APA [Administrative Procedures Act of 1969] and did not exceed the Commission's authority granted by the Legislature. *In re Reliability Plans of Electric Utilities for 2017-2021*, unpublished per curiam opinion of the Court of Appeals, issued December 3, 2020 (Docket Nos. 340600 and 340607). While the Court of Appeals has upheld the Commission's authority to impose an LCR individually, litigation regarding the individual LCR continues at the federal level, and the stay in Case No. U-18444 remains in effect. However, in light of the resource adequacy concerns expressed in this order and the Staff Report, the Commission seeks comment on whether it should lift the stay in Case No. U-18444 and take further action to set an LCR for Michigan LSEs pursuant to Section 6w for future PYs.

5. The Commission seeks additional comment on what actions or policies may be taken to maximize the benefits to reliability of the state's transmission connections to not only the rest of MISO, but also to PJM and the Ontario Independent Electricity System Operator [OIESO], including ways to boost those transmission connections.

6. The Commission seeks comment on what improvements should be pursued in RTO markets to better account for and to send better market signals to merchant and/or non-utility-owned generators to inform both generation additions and retirements.

7. Considering that some incumbent utilities have tariff provisions that stipulate a waiting period before a choice customer can return to the electric service of the incumbent utility, the Commission seeks comment as to under what conditions or circumstances should a choice customer be automatically transferred back to the incumbent utility (as the provider of last resort) in the event the customer is without an electric service provider, and whether such a transfer provision should be included in utility tariffs.

8. The Commission seeks and encourages comment on any additional measures the Commission should consider to enhance the state's reliability and resource adequacy position.

June 23 order, pp. 14-15. The Commission directed comments to be filed no later than 5:00 p.m.

(Eastern time (ET)) on August 1, 2022. In the July 7, 2022 order in the instant dockets, the

Commission extended the deadline to file comments to September 1, 2022. This order

summarizes the comments received and provides further guidance and direction from the Commission moving forward.

### Comments

On August 30 and September 1, 2022, the Commission received comments in response to the June 30 order from the Foundry Association of Michigan (FAM) Wolverine Power Supply Cooperative, Inc. (Wolverine); DTE Electric Company (DTE Electric); Indiana Michigan Power Company (I&M); Michigan Electric and Gas Association (MEGA); Energy Michigan; Consumers Energy Company (Consumers); the Commission Staff (Staff); the Association of Businesses Advocating Tariff Equity (ABATE); the International Transmission Company (ITC); Michigan Energy Innovation Business Council with Advanced Energy Economy and the Advanced Energy Management Alliance (EIBC/AEE/AEMA); and the Michigan Chemistry Council (MCC). Additionally, Voltus, Inc. (Voltus) filed responsive comments in Case No. U-20348 on September 1 and October 31, 2022. All comments are available for public viewing in the Case Nos. U-21099 *et al.* and Case No. U-20348 dockets and, therefore, are only briefly summarized in this order.

#### 1. Foundry Association of Michigan

FAM begins its comments with a brief explanation of Michigan's foundry business and its energy intensive nature before responding to Questions 3 and 4 in the June 23 order. Addressing Question 3 regarding a higher four-year forward capacity obligation, FAM recommends that the Commission decline to implement a capacity obligation higher than MISO's prompt year PRMR because doing so would increase costs without any benefit to Michigan customers. FAM also cautions that raising the capacity obligation risks overbuilding at a cost of billions of dollars. A

preferable alternative, according to FAM, would be to use interruptible tariffs. FAM's comments, p. 2.<sup>5</sup>

In response to Question 4, FAM states that it does not support lifting the stay in Case No. U-18444 and imposing an LCR as the matter is currently pending before a federal court. However, should an LCR be found by the federal court to be permissible, FAM asserts that an LCR should not be imposed until a market analysis is conducted "to ensure regulated utilities with excess local resources cannot withhold them from the marketplace by simply offering them into the auction" thereby infringing on competition with AESs. *Id.*, p. 2.

## 2. Wolverine Power Supply Cooperative, Inc.

In its comments, Wolverine recommends that the Commission take the following action:

- A. Develop Demand Response accreditation methodologies tied to their proven and tested availability and actual performance.
- B. Prohibit duplicate compensation (or double counting) to resources for the same service.
- C. Ensure that all service providers demonstrate the ability to meet their Planning Reserve Margin Requirement within the Commission's Capacity Demonstration process.
- D. Advocate with regional RTOs and neighboring states for the development of new transmission interconnections between Michigan and the broader grid to create diversity.
- E. Provide guidance within Integrated Resource Plans and Capacity Demonstration plans as well as advocate for proactive market signals that keep existing resources online until viable and proven replacement resources are commercially operational[.]
- F. Establish clear return to tariff conditions that provide suppliers certainty for future capacity requirements and compensation certainty.

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<sup>5</sup> FAM's comments were unpaginated and therefore the Commission identifies the page number beginning with the first page of the comments and continuing in natural order.

G. Pursue RTO process improvements that provide a regional view for certainty and clarity on resource adequacy long-term (e.g., retirement analyses, availability-based seasonal accreditation, and extreme weather impacts).

Wolverine's comments, p. 2.

Responding to the Commission's request regarding DR aggregation, Wolverine expresses its support for DR participation in wholesale markets but cautions that doing so under the current accreditation and performance requirements will be unlikely to improve reliability as there is a disconnect between availability and accreditation that incentivizes DR resources to offer capacity but not necessarily deliver. *Id.*, p. 3. Wolverine also notes that DR resources must be restricted from selling the same service for duplicative compensation. *Id.* Commenting on ESRs, Wolverine contends that ESRs, with the restriction of avoiding double compensation, should be permitted to participate in any wholesale or retail market that makes sense for that ESR. *Id.*, pp. 3-4.

As to whether the Commission should establish a PRMR, Wolverine points to a history of Michigan's LRZ 7 to show that an increase in reliability and resource adequacy risk warrants the imposition of a PRMR. *Id.*, p. 4. Wolverine points to unrealistic demand forecasts, a declining PRMR in the face of an energy transition from dispatchable resources to renewable, weather-dependent resources, declining energy supply resulting from the retirements of dispatchable generation, and continued import reliance as considerations for the Commission in raising Michigan's long-term PRMR. *Id.*, pp. 5-6. Turning to the request regarding transmission interconnections, Wolverine states that the Commission should take any and all action to maximize the benefits of a diverse transmission system and encourages:

the Commission to pursue transmission interconnections that provide access to new and diverse resources, like Wolverine's proposal within MISO's Long Range Transmission Plan ("LRTP") effort to connect Michigan's transmission system in Ludington with Wisconsin's transmission system in Green Bay using a high-voltage direct-current ("HVDC") submarine cable (the "Lake Michigan Connector

project”).

*Id.*, p. 6. Wolverine then comments that, at the RTO level, market signals must appropriately incentivize the addition and retention of generation for all types of resource owners. *Id.*, p. 7.

Wolverine proposes two solutions:

(1) implement the MISO Independent Market Monitor’s recommendation to utilize a sloped demand curve that helps smooth this price volatility and send a clearer signal to generators as opposed to the current vertical demand curve, which is purely reactive, and (2) implement a multi-year capacity auction to further provide the necessary amount of time to take action.

*Id.*

Turning to the comment request regarding the conditions under which a choice customer should automatically be transferred back to the incumbent utility, Wolverine states that the return to tariff service should be clear, capacity should be compensated, and choice providers should not be required to provide service without compensation. *Id.* Lastly, in terms of additional measures the Commission should pursue to ensure reliability and resource adequacy, Wolverine proposes that the Commission should: (1) use information from RTOs regarding the regional impacts of generation retirements in the capacity demonstration and integrated resource plan (IRP) processes, (2) take part in MISO’s seasonal capacity construct implementation to ensure that accreditation treatment is based on the resources’ capabilities and availability throughout the year, and (3) consider the impacts of extreme weather on planning reserve margins (PRMs). *Id.*, p. 8.

### 3. DTE Electric Company

DTE Electric introduces its comments with an acknowledgement that resource adequacy is being challenged by the “fundamental industry transition and generation resource transformation” that is “ongoing and accelerating” in the MISO footprint. DTE Electric’s comments, p. 1. DTE Electric provides the following proposals discussed in further detail in its comments:

#### *Immediate Implementation*



- Maintain the existing ban on Demand Response (“DR”) aggregation for full-service utility customers[.]
- Facilitate the dual participation of Energy Storage Resources (“ESRs”) through utilization of utility retail tariffs[.]
- Decline to increase the Planning Reserve Margin Requirement (“PRMR”) for Local Resource Zone (“LRZ”) 7[.]
- For the upcoming capacity demonstration (filings to be made in December 2022 and February 2023, demonstrating for Planning Year 2026/27), remove the current 5% market purchase allowance[.]
- For the upcoming capacity demonstration, require enhanced specificity in Zonal Resource Credit (“ZRC”) contracts used for capacity demonstration purposes[.]
- For the upcoming capacity demonstration, lift the current stay and implement a forward locational requirement using the approved “incremental” approach, while simultaneously initiating a contested case to further evaluate necessary improvements to locational requirement methodology[.]

#### *Near-Term Considerations*

- Optimize the capabilities of the existing transmission systems by encouraging FERC and Regional Transmission Organizations (“RTOs”) to enact policies to employ technologies such as dynamic line ratings, while adopting a transparent process for evaluating transmission solutions and potential lower-cost alternatives[.]
- Advocate for accurate and timely capacity price signals through the MISO stakeholder process, including investigation and potential implementation of a sloped-demand curve, a forward auction (with enhanced capacity obligations), and a mechanism for the procurement of adequate flexible resources[.]
- Institute process improvements related to how Electric Choice receiving utility capacity service can be accommodated amid rapidly changing market conditions, including use of DR capabilities[.]

#### *Longer-Term Actions*

- Consider complex issues related to aggregation and dual participation through implementation of FERC Order 2222[.]<sup>6</sup>

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<sup>6</sup> Final Rule, *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Docket No. RM18-9-000, 172 FERC ¶ 61247 (September 17, 2020) (FERC Order 2222).

*Id.*, p. 2 (emphasis in original); *see also, id.*, pp. 3-26 (providing further detail with respect to each proposal).

#### 4. Indiana Michigan Power Company

Addressing DR aggregation, I&M maintains that the Commission should not lift the ban on retail customers, individually or through aggregators, from bidding DR resources into wholesale markets. I&M insists that the rationale for implementing the ban has not changed; namely, there are concerns regarding the Commission's jurisdiction over third-party aggregators and the need for DR aggregation "by anyone other than the regulated utility" has not been demonstrated. I&M's comments, p. 2. I&M goes on to state that all customers benefit from DR as it is set out in utilities' IRPs and that aggregators of retail customers (ARCs) should not have the authority to represent non-shopping retail customers in the RTO market when those customers remain in a vertically integrated utility structure. Rather, per I&M, the utility should represent and serve as the interface for non-shopping retail customers because such an approach allows the utility to meet the customer's needs and ensures that DR programs are designed with all customers in mind. However, I&M states that should DR aggregation be permitted, it should only occur under a Commission-approved tariff where the utility serves as the interface to the RTO market. *Id.*

Turning to ESRs, I&M asserts that the Commission should not allow simultaneous participation in retail and wholesale markets until there are safeguards in place to prevent double recovery. *Id.*, p. 3. In response to the topic of setting a four-year forward capacity obligation higher than MISO's PRMR, I&M states that such action by the Commission is not necessary because PJM has an adequate, FERC-approved forward capacity construct. *Id.* Addressing the Commission's request regarding the LCR, I&M contends that the Commission should not take action until the federal litigation of the LCR issue concludes but also notes that an LCR may be

acceptable “insofar as the resource should be deliverable to the load that it will be serving.” *Id.*, p. 4.

I&M further comments on actions for maximizing the benefits of Michigan’s transmission system, stating that no further actions are needed for the PJM/American Electric Power (AEP) transmission interconnections as the system operates adequately and with minimal constraints according to I&M. *Id.*, pp. 4-5. I&M explains that, in terms of its long-term transmission expansion planning, it coordinates with AEP and other PJM-member utilities in a regional transmission expansion plan process that considers local and regional needs, uses planning criteria that are filed annually with FERC, and identifies constraints and potential deficiencies. I&M also describes how the transmission planning methods are transparent and subject to stakeholder input. *Id.*, pp. 5-6. As to improvements in RTOs to send better market signals, I&M explains that PJM is currently reviewing price signals as part of its resource adequacy review and that it anticipates the review to be complete by the fourth quarter of 2023. *Id.*, pp. 6-7.

Addressing the conditions for choice customers to return to the incumbent utility, I&M recommends that the Commission develop a provider of last resort charge to be included in a utility tariff and to be paid by choice customers who return because of supplier default. *Id.*, p. 7. Lastly, speaking to any additional actions by the Commission to enhance reliability, I&M confirms its commitment to resource adequacy but states that:

I&M feels strongly that it would not be beneficial for Michigan to require I&M to undertake capacity demonstration requirements or create capacity obligations that conflict or extend beyond that required by PJM. Doing so could create confusion and additional costs for I&M’s customers and stakeholders and result in unnecessary and potentially additional work that is not useful to achieving our common goals related to resource adequacy.

*Id.*, p. 8.

## 5. Michigan Electric and Gas Association

In response to the Commission's first question, MEGA repeats its previously stated support for the ban on third-party DR aggregation contending that lifting the ban would create further complication in the wholesale market and would be premature considering MISO's implementation of Order 2222. MEGA's comments, pp. 2-3. Explaining the potential for complication further, MEGA states that with DR aggregation, "load would be retail, but the resource would be treated as wholesale[,] " which would "require separate metering and billing to ensure the retail customer is not using wholesale energy to serve load." *Id.*, p. 3. MEGA asks, however, that if the Commission lifts the ban, it establishes clear rules for aggregators to the best of its ability under the "unclear" statutory authority permitting oversight over third-party aggregators. *Id.*, p. 4.

Speaking to ESRs, MEGA asserts that dual participation of ESRs in the retail market at the distribution level is premature until MISO establishes clear rules and operating procedures to regulate dual participation which are not expected until MISO completes its Order 2222 implementation in 2029-2030. *Id.*, pp. 4-5. MEGA explains that such rules are needed to avoid double compensation and improper cost-shifting to non-ESR customers. MEGA suggests that, for utilities seeking to experiment with dual participation, the Commission authorize individual pilot programs with clearly defined operating parameters as opposed to state-wide authorization for dual participation. *Id.*, p. 5.

As to whether the Commission should set a four-year forward capacity obligation higher than MISO's PRMR, MEGA suggests that an alternative that avoids over-building capacity, such as including certain capacity provisions in utility-specific IRP requirements, is preferred. *Id.*, pp. 5-6.

MEGA also states that the Commission should not take action until it can consider the new seasonal accreditation construct that MISO has proposed to FERC. If the Commission were to change its capacity obligation requirements, MEGA asks that the Commission consider each MEGA member's unique circumstances such as multi-jurisdictional utilities and those that are members of PJM. *Id.*, p. 6. Similarly, MEGA asks that the Commission wait to impose an LCR until current federal litigation is resolved in order to prevent "duplicative and unnecessary investment in generation assets that could end up as stranded assets due to low utilization." *Id.*, p. 7. Further explaining that many MEGA members have generation resources in other states that could be utilized, MEGA recommends that any LCR should consider resources deliverable to load being served. Instead of a statewide LCR, MEGA also recommends that the Commission consider allowing utilities to assess where vulnerabilities exist on their system and to tailor programs such as distributed energy resource (DER) integration to address specified needs. *Id.*, pp. 7-8.

Responding to Question 6, MEGA notes again that MISO is awaiting FERC approval of its new seasonal accreditation construct and that MEGA members are open to MISO's exploration of market signals for dispatchable resources. MEGA also states that reforms to the planning reserve auction (PRA) within the resource adequacy construct may be required to send long-term price signals. *Id.*, pp. 8-9. Lastly, MEGA addresses the Commission's request regarding choice customers returning to the incumbent utility and recommends that the Commission implement policies to ensure that costs from returning customers are not shifted onto other utility customers and that AESs not be permitted to off load customers to incumbent utilities because market prices rise beyond expectations. *Id.*, p. 9.

## 6. Energy Michigan

In its comments, Energy Michigan recommends that the Commission lift the ban on third-party DR aggregation arguing that individual customers and aggregators should have the same ability as LSEs and AESs to bid DR into the MISO market. Energy Michigan explains that a DR aggregator would be a MISO market participant obligated to abide by MISO tariff procedures and credit requirements meaning that state regulators and distribution utilities would not be involved in the wholesale process. Energy Michigan's comments, p. 2. As to ESRs, Energy Michigan recommends that the Commission participate in the MISO stakeholder process for wholesale ESR implementation to work with stakeholders to resolve who is buying and selling stored energy and how those transactions should be regulated. *Id.*, p. 3.

Responding to Question 3 of the June 23 order, Energy Michigan contends that a forward capacity obligation higher than MISO's PRMR should not be imposed because part of Michigan is in PJM territory, and, therefore, benefits of increased reliability would not be Michigan specific—those benefits would go to out-of-state customers as well at a cost of approximately \$2.4 billion to Michigan customers. *Id.*, pp. 3-4. Energy Michigan also cites to MISO's and PJM's methods to balance reliability with cost to ensure over-building does not occur, current regulatory mechanisms such as authorized returns on equity to incentivize new investment in generation, and the lack of an intent by MISO and PJM to expand the PRMR to demonstrate that a higher forward capacity requirement is not necessary. *Id.*, pp. 4-5. Energy Michigan also recommends that the Commission decline to impose an LCR while federal litigation concerning the matter is still pending. Energy Michigan lends support to additional measures pursuant to MCL 460.6w (pertaining to the forward capacity demonstration requirements) but states that if the Commission moves forward with an LCR, a market power analysis is necessary and that issues mirroring those

found in MISO's minimum capacity obligation, such as the concentration of market power by incumbent utilities, would be raised in a Commission-imposed LCR. *Id.*, p. 6. As to Question 5, Energy Michigan recommends that the Commission partake in FERC's advanced notice of proposed rulemaking concerning transmission planning in FERC Docket No. RM21-17-000. *Id.*, pp. 6-7. Turning to the topic of ways to improve price signals in RTO markets, Energy Michigan advocates for greater transparency and clarity in the terms of MISO's PRAs and asks the Commission to work with MISO to achieve this. *Id.*, pp. 7-8.

As to the choice customer topic, Energy Michigan explains that the answer to this question under Michigan's four-year out capacity obligation construct is as follows:

The current supplier offers a financial guarantee promising to pay the ACP [auction clearing price] of the specified year if and when the customer becomes part of the LSE's load in year two, three, or four. If the customer signs a contract with a different supplier, then the new supplier offers the financial guarantee for the year the customer joins and the future years up to the fourth year. The financial guarantee from the original LSE is rescinded.

This approach is almost identical to the ZRC contract approach, except the anticipated money comes from the financial guarantee from the LSE rather than the payment of the Auction Clearing Price to the LSE from MISO.

*Id.*, p. 10. Commenting on any further action the Commission should take, Energy Michigan contends that the LCR calculated by MISO is in error and that correcting the error in 2022/2023 would have lowered Michigan's LCR in Zone 7 by 320 megawatts (MW). *Id.*, pp. 10-11.

#### 7. Consumers Energy Company

In its overview describing resource adequacy issues, Consumers asks the Commission to ensure that all LSEs, including AESs, are held accountable for resource adequacy; improve resource planning and visibility for AESs, including implementing an LCR; and, in collaboration with MISO, to utilize a sloped-demand curve and forward auction construct in tandem with enhanced capacity obligations. Consumers' comments, p. 3. Responding specifically to

Question 1, Consumers answers that the Commission should not lift the ban on DR third-party aggregation, stating that doing so could result in increased costs for DR resources and risk expansion of DR programs in that “[u]nregulated product offerings from entities that are not subject to the Commission’s oversight or jurisdictional authority may frustrate customers who are not used to wholesale market uncertainty and volatility.” *Id.*, p. 4. Consumers also cautions that lifting the ban will produce other challenges. For instance, per Consumers, curtailable load may no longer be netted from long-term forecasts and DR participants could move back and forth between ARCs and utility DR programs. Consumers also points out that allowing third-party DR aggregation would be contrary to the statutory 10% cap on retail electric choice in Michigan since DR is treated like a capacity resource. *Id.*, pp. 5-6.

Moving on to ESRs, Consumers comments that the Commission should not allow dual participation of ESRs in wholesale and retail markets because of the risk of double counting, an increased burden in administration, and exacerbating reliability risks. Consumers adds that compensation models and tariffs must be developed to achieve a proper cost of service without subsidization. As such, Consumers recommends that the Commission begin with retail programs for ESRs and continue its engagement with MISO in the implementation of Order 2222. *Id.*, pp. 6-7. As to setting a forward capacity obligation higher than MISO’s PRMR, Consumers states that the Commission should decline such action as it would result in an overbuild of capacity that would be used in other parts of MISO but paid for predominantly by Michigan customers. Consumers contends that when it comes to the responsibility to ensure resource adequacy for all LSEs, the gap between planning capacity four years out and when a choice customer can decide to use an AES or return to utility service must be addressed. *Id.*, pp. 7-8.



Responding to Question 4, Consumers states that the Commission should implement an LCR for all LSEs, including AESs, to ensure the reliability of the zone. Consumers asserts that circumstances in LRZ 7 have changed since the stay in Case No. U-18444 went into effect and, because AESs have not indicated a willingness to increase their LRZ 7 generation, an LCR is necessary, and the incremental approach adopted in Case No. U-18444 would be an appropriate methodology to do so. *Id.*, pp. 9-11. As to Question 5 concerning transmission, Consumers states that transmission interconnection to PJM and OIESO would produce negligible benefits and instead suggests that utilizing new technologies, such as reconductoring with advanced conductors or dynamic line ratings, would produce additional transmission capacity. *Id.*, p. 12.

Consumers further comments that, “[a] number of actions could be pursued in RTO markets to drive improvements” in market signals including: (1) incorporating a sloped-demand curve into MISO’s PRA and (2) the Commission advocating for MISO to increase its capacity obligations from 50% to a level compatible with Michigan’s four-year forward 95% capacity obligation (or 5% maximum reliance on the PRA for ZRCs). *Id.*, pp. 12, 13. Turning to the question of choice customers, Consumers contends that Commission regulations pursuant to MCL 460.10a must address this question. Consumers describes the legal requirements for choice customer framework that requires affirmative request from the choice customer before they are transferred back to the incumbent utility serving as the provider of last resort. Consumers then explains the return to service notice requirements in its current retail open access (ROA) tariff as well as compensation terms to ensure that choice customers do not unjustly use power supply resources without paying for them. Consumers recommends that the Commission add a tariff provision that clarifies that ROA tariff customers must properly select a power supply provider as a condition of taking utility

service within a specified time-period and that failure to do so may constitute a tariff default. *Id.*, pp. 13-18.

Responding to the Commission’s last question, Consumers repeats its recommendation for specified and extended timelines for utilities to make capacity adjustments for choice customers returning to service. Additionally, Consumers asks that the Commission’s annual capacity demonstration be conducted such that incumbent utilities “do not bear the burden of abrupt, short-notice breakdowns in the relationship between ROA customers and AESs.” Lastly, Consumers suggests that the Commission ensure that resource adequacy is addressed by AESs as well as utilities which may include an LCR. *Id.*, pp. 18-19.

#### 8. Commission Staff

Beginning with its response to Question 1, the Staff provides an update to the circumstances surrounding DR aggregation with Order 2222 and subsequent clarifying orders, Order 2222-A<sup>7</sup> that on rehearing removed the DR opt out for heterogeneous aggregations, Order 2222-B<sup>8</sup> that reinstated the DR opt out for heterogenous aggregations, and the opening of FERC Docket No. RM21-14-000 to further discuss the opt-out provision. Staff’s comments, pp. 1-2. The Staff then describes MISO and PJM’s progress in implementing Order 2222 and restates its previously made comments. While not taking a position on lifting the DR aggregation ban, the Staff considers the weighing of the pros and cons of lifting the ban “more impactful” than “responding

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<sup>7</sup> *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Docket No. RM18-9-002, 174 FERC ¶ 61,197 (March 18, 2021).

<sup>8</sup> *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Docket Nos. RM21-14-000 and RM18-9-003, 175 FERC ¶ 61,227 (June 17, 2021).

to short-term signals of the capacity market.” *Id.*, p. 3. Continuing, the Staff highlights the following issues regarding the DR ban: (1) two-way communication between utilities and aggregators must be improved to ensure proper registration and to avoid double counting, and improvement to retail systems/processes must be made to streamline reviews and reduce errors; (2) secure and timely third-party data access is needed to prevent DR aggregation registration errors; (3) increasing the Commission’s visibility into non-utility DR by getting information from the confidential MISO registration process and ZRC contracts included in capacity demonstrations, (4) implementing licensing requirements for DR aggregators, and (5) addressing all DR aggregation issues prior to Order 2222 implementation. *Id.*, pp. 3-5.

As to ESRs, the Staff references its comments submitted in Case No. U-21032 and states that:

The increased value to ESRs that could be possible through dual participation, which may result in additional ESR development and additional associated capacity, would be an extension to the benefits described in Staff’s previous comments. However, there are still uncertainties and outstanding issues that should also be considered when making such a decision.

*Id.*, p. 6 (footnote omitted). The Staff cautions that dual participation does not necessarily guarantee additional capacity unless allowing dual participation leads to additional ESRs coming online and ESR capacity value is not already captured in a retail tariff. The Staff recommends that utilities interested in doing so develop pilot programs to test dual participation. *Id.*

Turning to Question 3, the Staff explains that it consulted with MISO in preparation of its comments and is confident that the Commission could set a PRM different from MISO without impacting the PRA but that additional process related details, such as the timing of when the Commission would need to notify MISO of its PRM, would need to be developed. *Id.*, p. 7. The Staff suggests that any consideration of a different four-year forward capacity obligation should be done in a contested docket and timed so that the Commission would issue an order prior to

September 1, 2023, allowing three months before the next capacity demonstration to revise PRMR calculations and allow for LSE compliance. Lastly, the Staff states that it:

does not recommend that the Commission direct a higher PRM to be applicable in the MISO PRA. Staff acknowledges that increasing the PRMR in the 4-year forward capacity demonstration process for all Michigan Load Serving Entities (LSEs) would likely improve the capacity position of the state over time. That said, there is no clearly apparent basis for increasing the PRMR for Michigan LSEs in the 4-year forward capacity demonstration that would not be considered arbitrary. . . . Second, increasing the PRM for Michigan LSEs to something higher than is required in the rest of MISO would place additional costs on Michigan customers that do not exist for customers in other states; however, because Michigan is the only state in MISO with 4-year forward capacity requirements, Michigan customers are already paying more for capacity than customers in any other part of MISO, putting Michigan at a competitive disadvantage compared to other states. Increasing the PRMR could exacerbate that competitive disadvantage to the extent that Michigan providers are not able to sell their excess capacity at prices that will cover the costs of that capacity in the future prompt year when it arrives. Other reasons to hold off on considering implementing a higher PRM for Michigan providers include the pending changes to MISO's resource adequacy construct that are currently under review, including MISO's seasonal accreditation proposal, MISO's minimum capacity obligation proposal, the potential implementation of a downward sloping demand curve, or potentially even a forward capacity market. Holding off until some of those proposals are implemented or procedurally detailed further is recommended.

*Id.*

On the LCR question, the Staff first states that a contested case should be opened to consider this issue but does not recommend that the Commission lift the stay in Case No. U-18444 at this time considering that federal litigation regarding the matter is still pending. The Staff adds that setting an LCR would be unlikely to improve Michigan's capacity position in the short-term as many LSEs are already in compliance with the capacity obligation that would be set by an LCR, building new generation may not be feasible for AESs not in compliance who would then be assessed an SRM charge and the incumbent utility would be responsible for providing the lacking capacity. *Id.*, pp. 8-9.

In response to Question 5 pertaining to transmission, the Staff describes the efforts by MISO and PJM for long-term transmission planning focused on examining industry trends around resource and technology developments that highlight resource availability, flexibility, and the ability of a resource to meet future energy needs. The Staff also discusses MISO's recent efforts to expand the capacity import limit for LRZ 7 with expanded transmission in the eastern Upper Peninsula as well as studies conducted of Michigan's transmission capabilities. *Id.*, pp. 9-10. The Staff also notes FERC's notice of proposed rulemaking regarding transmission<sup>9</sup> and how the Staff supports FERC mandating some level of inter-region transfer capability as a means of increasing inter-RTO connections with the caveat that transfer capabilities may be dependent on each region's needs and existing interconnections between region neighbors. *Id.*, pp. 10-11.

As to improvements in RTO markets for better market signals, the Staff first states that coordination with the Organization of MISO States (OMS) is necessary. The Staff then recommends that the Commission advocate for a downward sloping demand curve to replace the current vertical demand curve which has sent the signal for generation resources to retire up to the point that MISO has lost enough capacity to reach a shortfall so that the 2022/2023 PRA now signals that capacity is needed. The Staff notes that the price signal may then again flip to encourage retirements. The Staff contends that a sloped demand curve removes this volatility "by sending a non-zero price signal to market participants who rely on the market to meet their needs, which would help to delay retirements and possibly incentivize new generation or bi-lateral contracting." *Id.*, p. 12. The Staff also suggests reforms to energy and ancillary services markets

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<sup>9</sup> *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, FERC Docket No. RM21-17-000 (April 21, 2022).

as a way to increase the revenue for generation units and consideration for implementing a forward capacity auction in MISO similar to that of PJM. To explain, the Staff provides an example:

For instance, if one assumes that MISO had a 3-year forward capacity auction in this year's PRA, units that cleared in this year's PRA would be committed to delivering capacity in 2025. Three incremental auctions would be held in 2023 and 2024 to sell back or buy extra capacity for the same delivery year. The concept behind a forward capacity auction is to provide additional time to attract resources and see capacity shortages coming.

*Id.*, p. 14. The Staff highlights some drawbacks as well that lead it to conclude that a forward capacity auction should not be implemented at this time and that further exploration of its adoption should be done with OMS and MISO as well as improvement to the OMS-MISO survey. *Id.*, pp. 14-15. Lastly, the Staff describes MISO's proposed seasonal capacity construct, which was approved by FERC, and MISO's minimum capacity obligation, which was rejected.

As to the customer choice return to service question, the Staff provides a summary of the electric choice customer tariffs for DTE Energy Company, Consumers, I&M, Upper Peninsula Power Company, Upper Michigan Energy Corporation, and Cloverland Electric Cooperative. The Staff states that each utility has different rules and requirements which makes coming up with a common return to service provision more difficult and that it is supportive of current tariff provisions. *Id.*, pp. 19-20. Responding to the Commission's last question, the Staff recommends that the Commission could consider eliminating the ability of LSEs to serve up to 5% of the PRMR through the PRA as a means to increase the amount of capacity LSEs need to procure. The Staff also recommends considering a load forecast adjustment to capture future load changes for capacity demonstrations. *Id.*, pp. 20-21.

#### 9. Association of Businesses Advocating Tariff Equity

ABATE begins with three general comments on resource adequacy: (1) although the capacity shortfall in the 2022/2023 planning year MISO PRA increased the risk of firm load curtailment, no

actual curtailment has happened or is likely occur; (2) the MISO 2022/2023 PRA capacity shortfall result was not driven by any situation in Michigan; and (3) the capacity problem in the MISO North/Central subregion cannot be solved in Michigan outside of the Commission ensuring that it is not inhibiting the entry of new capacity sources. ABATE's comments, pp. 2-3. Responding to the specific requests for comment, ABATE states that the Commission should lift the ban on DR aggregation considering that there has been an increase in power costs for Michigan customers which could be addressed, in part, by bringing the additional capacity and other benefits DR aggregation could provide onto the market. *Id.*, pp. 4-6. ABATE argues that the concerns cited by the Commission in 2019 when it continued the ban do not justify keeping the ban in place and that the ban constitutes discriminatory action towards bundled retail customers that wish to offer DR service into the wholesale market. *Id.*, pp. 6-8.

As to ESRs, ABATE contends that the Commission should lift the ban on simultaneous participation because ESRs can provide numerous services including: (1) capacity; (2) energy arbitrage; (3) regulation; (4) frequency response; (5) contingency resources (spinning, synchronous and supplemental operating reserves); (6) short-term reserves; and (7) reactive supply and voltage control. *Id.*, p. 8. In response to Question 3, ABATE opposes setting a four-year forward capacity obligation higher than MISO's PRMR because the statutory language in MCL 460.6w does not empower the Commission to do so, the results of the 2022/2023 MISO PRA do not support the need for a higher four-year forward capacity obligation as the shortfall was not driven by the Michigan capacity situation, and setting a higher four-year forward capacity obligation would not effectively reduce the risk of firm load curtailment. *Id.*, pp. 9-13. Similarly, ABATE also opposes the imposition of an LCR, explaining that it would be harmful to AESs and their customers, the legality of an LCR is still pending in federal litigation, and the results of the

MISO 2022/2023 PRA were not because of Michigan’s LRZ 2 or LRZ 7 capacity situations. *Id.*, pp. 14-16.

ABATE indicated that it had no comment in response to Question 5 regarding transmission connections. *Id.*, p. 16. Speaking to RTO market signals, ABATE asserts that exploring MISO’s current resource adequacy construct for improving market signals should be done in the MISO stakeholder process. Addressing the customer choice question, ABATE recounted that DTE Electric and Consumers have tariff sheets addressing their customer choice programs and that ABATE finds the current tariffs to be adequate. Lastly, ABATE states that Michigan’s reliability and resource adequacy position can be improved through the IRP process in detailed proposed courses of action (PCAs) that definitively demonstrate that a utility’s resource plan will meet or exceed “remaining below the applicable loss of load probability target under resource dispatch assumptions vastly similar to actual operations with the utility’s RTO rather than assuming the utility’s balancing area is an island with access to outside resources via transmission. *Id.*, p. 18.

#### 10. International Transmission Company

Responding to Question 1, ITC comments that it does not have a position on whether the DR aggregation ban should be lifted but emphasizes that there should be an understanding of DR capabilities and provides an explanation of DR characteristics as follows:

As additional DR is developed, it has the potential to displace generation at the Bulk Electric System (“BES”) level. While DR does bring value, this displacement is not a one-for-one swap. BES-level generation and DR have distinct characteristics and tradeoffs that utilities and RTOs should consider. BES-level generation operates within the guidelines established by MISO, PJM, and the North American Electric Reliability Corporation (“NERC”). BES-level generation has defined requirements (standards) for interconnection and operation that include—to varying degrees—capabilities that support BES operation. BES-level generation is characterized by its ability to respond to deviations in system voltage and frequency, its ramp-capable capacity, the provisioning of reactive power, and—in some instances—provisioning of inertia to the BES. These characteristics help



operators of the BES manage the transmission system. Typically, DR does not share these same characteristics, neither alone nor in aggregate.

ITC's comments, p. 2.

Regarding the transmission topic, ITC states that the Commission should encourage the development and enhancement of Michigan's transmission system, specifically suggesting the following actions:

- Recognize these regional projects are critical for the State to access low-cost renewables and meet reliability requirements in a cost-effective manner.
- Support the development of further MISO Transmission Expansion Plan ("MTEP") projects within Michigan leveraging 10-year future scenarios and the visibility provided by the utilities' IRPs.

*Id.*, p. 4. ITC emphasizes the importance of MISO's long range transmission planning in terms of resilience and reliability in the face of severe weather events as well as the increased penetration of renewable energy sources. ITC goes on to state that the capacity and resource adequacy issues are better addressed by a diverse resource mix, as opposed to a homogenous generation fleet made of renewables and gas, and a robust transmission plays a vital role in reliability through large volume energy transfers between regions. ITC further notes that planning between neighboring RTOs to identify possible interconnection projects is important for ensuring reliability. *Id.*, pp. 4-6.

In response to Question 8, ITC restates the importance of transmission in maximizing the capabilities of diverse resources. *Id.*, p. 7. ITC indicates that it had no responsive comment to Questions 2, 3, 4, 6, and 7.

11. Michigan Energy Innovation Business Council, Advanced Energy Economy, and the Advanced Energy Management Alliance

EIBC/AEE/AEMA comment that the Commission should lift the ban on DR aggregation in light of tightening energy supply conditions; changes to MISO's capacity market, including the seasonal capacity construct; the growth of DERs on the distribution system; and the transition to a

decarbonized grid. EIBC/AEE/AEMA's comments, pp. 2-3. Speaking to the experience and technologies available with DR aggregators, EIBC/AEE/AEMA contend that DR aggregation provides energy and ancillary service dispatches that are aligned with under-production of intermittent renewable energy. EIBC/AEE/AEMA argue that traditional utility DR programs are limited to commercial and industrial customers while DR aggregation taps into to the residential customer base that makes up 37% of electric consumption. *Id.*, pp. 3-4. EIBC/AEE/AEMA describe lifting the ban as a positive first step but go on to state that additional action must be taken to take full advantage of DR resource potential; namely, providing DR aggregators means to overcome MISO market and PRA barriers such as allowing aggregators to "use the existing MISO enrollment mechanism to have MW accredited as Zonal Resource Credits ('ZRCs'), and then sell these MW to utilities." *Id.*, p. 5. EIBC/AEE/AEMA also ask the Commission to consider the capacity request for proposals model, the DR aggregator feed in tariff, and turn-key programs as different models to facilitate DR aggregation. Acknowledging that some regulation by the Commission over DR aggregators may be necessary, EIBC/AEE/AEMA provide regulatory examples from California, New York, Ohio, and Maryland and ask the Commission to be mindful that requiring new regulation prior to lifting the ban could significantly delay DR aggregation and the benefits it could bring to reliability. *Id.*, pp. 7-8.

In response to Question 2, EIBC/AEE/AEMA support dual participation of ESRs in wholesale and retail markets contending that ESRs can directly respond to dispatch signals which increases value to the distribution and bulk energy systems. EIBC/AEE/AEMA recount the unique characteristics of ESRs including their ability to serve as a generator and load, making it a load management resource. EIBC/AEE/AEMA ask for additional transparency in data that would enable ESRs to fully quantify the monetary benefits they prove, as well as a competitive bidding

or RFP process, bidding parameters in the wholesale markets, and operational requirements for retail services. *Id.*, pp. 8-9.

As to the four-year forward capacity obligation, EIBC/AEE/AEMA assert that if a higher capacity obligation is necessary to meet the MI Healthy Climate Plan goals, then the Commission should do so. However, an increased capacity obligation should be proportionate to increases in such resources as defined in utility IRPs and consider impacts on ratepayers. *Id.*, p. 10.

Responding to the topic of RTO market signals, EIBC/AEE/AEMA describe how the current MISO registration and valuation process is not likely to result in the development of new resources to fill shortfalls due to the volatility and lack of certainty in the PRA. EIBC/AEE/AEMA ask that the Commission advocate for MISO's compliance with Order No. 2222 ahead of the 2030 proposed timeframe and also address the barriers to energy waste reduction resources (EWR) in MISO's capacity market. *Id.*, pp. 10-11.

In response to Question 8, EIBC/AEE/AEMA recommend that the Commission encourage the deployment of clean capacity resources like energy storage to maintain reliability and to improve the methods for DERs and other customer-owned resources to provide capacity. Specifically, EIBC/AEE/AEMA state that DERs should be modeled as supply- and demand-side resources in utility IRPs and that the Commission should consider how DERs could be aggregated to address capacity shortfalls. EIBC/AEE/AEMA also note that the growth of electric vehicle (EV) and integration capabilities that can address capacity needs through managed charging and storage resource of EV batteries. Lastly, EIBC/AEE/AEMA point out the importance of customer education and participation in DER and EV proliferation. *Id.*, pp. 12-13.

## 12. Michigan Chemistry Council

In response to Question 1 pertaining to DR aggregation, MCC expresses its general support for the increased ability for customers to utilize DR, including third-party aggregation, which would lead to increased competition, innovation, and customer-focused products. MCC's comments, p. 1.<sup>10</sup> Speaking to Question 3, MCC opposes the establishment of a capacity obligation higher than MISO's PRMR explaining that it does not believe resource adequacy issues are attributable to a faulty PRMR and that there are, rather, other factors leading to the result of the recent MISO PRA. MCC contends that a higher capacity obligation would increase costs for Michigan customers without an increase in reliability. MCC also points out that regulated utilities already have an incentive to build out capacity to receive a return on equity and that there should be consideration of the balance between reliability and affordability. *Id.*, p. 2.

MCC comments in response to Question 4 that it remains concerned regarding the impact an LCR would have on the electric choice market and asks the Commission to act with restraint and to consider the structural challenges of bilateral contracting in MISO and Michigan's incumbent utility and choice hybrid market. Further, MCC states that while it prefers the incremental approach to an LCR proposed by the Staff, "there remain[s] concerns about the validity of utility projections of generation retirements and additions." *Id.*, p. 3. Turning to the transmission topic, MCC notes that there are ongoing discussions before the FERC-National Association of Regulatory Utility Commissioners Joint Federal-State Task Force on Electric Transmission and asks that the state continue to engage in these discussion and advocate for short- and long-term reforms to increase Michigan's import capabilities. *Id.* Lastly, responding to Question 8, MCC

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<sup>10</sup> MCC's comments were unpaginated. Therefore, the Commission identifies the page number beginning with the first page of the comments and continuing in natural order.

implores the Commission to do more to improve resource adequacy through the IRP process by requiring more detailed analyses of capacity performance and weighing the impacts of siting challenges, supply chain disruptions, and MISO generation queue reviews for new renewable projects. MCC also notes its support for the Commission's recent direction to the utilities to consider the impacts of their PCAs on the entire MISO zone. *Id.*

13. Voltus, Inc.

Voltus supports eliminating the ban. Being what it believes to be the only DR aggregator working with Michigan choice customers, Voltus asserts that it can provide perspective on operational considerations in Michigan and “attest to how load resources can help address capacity shortfalls, ensure grid reliability, integrate intermittent renewables, and reduce consumer costs.” Voltus's September 1, 2022 comments, p. 2.

Voltus mentions its prior participation in the Case No. U-20348 docket and, though a member of AEMA and AEE, comments separately at this time because it “believes that eliminating the aggregator ban is sufficient, without the need for further policy revisions as proposed by AEMA and AEE.” *Id.*

Voltus refers to comments it submitted in the Case No. U-20348 docket in November 2020 and states that the projected supply shortages have since materialized; thus, “it is legally indefensible to maintain that the aggregator ban is truly in the public interest.” *Id.*, p. 3. Considering significant work that Michigan has done to integrate aggregators, along with a rapidly changing energy landscape, Voltus contends that now is an ideal time to allow for aggregation across Michigan. Voltus then discusses, if the aggregator ban were lifted, how aggregators could quickly bring additional capacity to Michigan, including with integration of higher levels of variable renewable resources; how existing MISO processes could enable

aggregators to sell capacity to utilities, with new resources potentially enrolled in the 2023/2024 MISO PRA if the ban were lifted by November 1, 2022; how DR could be enlisted as a resource while MISO undergoes a series of market changes; and the development of operational processes regarding aggregator participation in Michigan since 2017. *Id.*, pp. 3-9.

Voltus concludes:

Only demand response can stand up a (virtual) power plant overnight. If the Commission acts now to eliminate the ban, third-party aggregators will begin enrolling customers in MISO's energy and ancillary services programs in a matter of weeks, and will be able to participate in the next MISO PRA for the 2023/2024 MISO Planning Year. Given the capacity shortfalls and the increasingly unpredictable array of grid catastrophes, further delay is unnecessary and contrary to the public interest. The Commission should opt in for consumer savings, grid reliability and a lower carbon future.

*Id.*, p. 9.

In its supplemental comments filed on October 31, 2022, in Case No. U-20348, Voltus requests that the Commission consider its supplemental out-of-time comments and issue an order by year end 2022 allowing aggregators of third-party DR resources to contract with Michigan consumers who are not AES customers. Per Voltus:

A prompt decision would give aggregators the lead time necessary to register MW of new capacity before the February 28, 2023 deadline for the 2023/24 MISO Planning Resource Auction. Despite being limited to 10% of Michigan's electric customers, Voltus has already been able to register over 100 MW of capacity resources. If aggregators were able to contract with the other 90% of Michigan's [electric customers], they would be able to bring an additional 500-1000 MW into market.

Voltus's supplemental comments, pp. 1-2 (based on natural sorting order).

Voltus contends that eliminating the aggregator ban by the end of the year would bring on additional resources and mitigate the risks associated with capacity issues and excessive pricing with the MISO PRA. With this, Voltus notes that Case No. U-20348 has been open for years,

highlights the progress made in the docket, and “asserts that now is the time to allow any of Michigan’s customers to contract with demand response aggregators.” *Id.*, p. 2.

While it believes that the DR opt-out could be eliminated entirely, Voltus states that “the Commission could alternatively take the interim step of eliminating the opt out for one year [beginning on January 1, 2023]. This would allow resources [to] participate in MISO’s 23/24 Planning Resource Auction, while not committing Michigan to a single course of action.” *Id.*

### Discussion

The Commission thanks the Staff, utilities, and stakeholders that provided thorough and informative responses to the Commission’s request for comments. The Commission is aware of the complexity and nuance of these issues and appreciates the efforts by the commenters to provide meaningful contributions to developing improvements and solutions to not only Michigan’s capacity demonstration process and its capacity position but the MISO region’s capacity position as a whole.

The Commission addresses each comment request *ad seriatim* and provides further guidance on its next steps.

1. In the August 8, 2019 order in Case No. U-20348 (August 8 order), the Commission continued the ban on Michigan retail electric customers (either individually or through aggregators) of Commission-jurisdictional electric utilities from bidding DR resources into RTO wholesale markets. August 8 order, p. 23. In the October 29, 2020 order in Case Nos. U-20628 *et al.*, the Commission sought comments on whether to lift this ban on Michigan retail electric customers (either individually or through aggregators) of Commission-jurisdictional electric utilities from bidding DR resources into RTO wholesale markets, but thus far, the Commission has declined to take additional action. In light of the tightening capacity market within the MISO footprint and LRZ 7 in particular, the Commission seeks comment on whether the ban on DR aggregation described in the August 8 order should now be lifted.

In recent years the Commission has revisited and examined DR resources in a number of proceedings and stakeholder workgroups such as the MI Power Grid Demand Response

Stakeholder Workgroup in response to changes in regulations promulgated by FERC,<sup>11</sup> emergency weather events in which load modifying resources were called upon to reduce load, and tightening capacity outlooks within the MISO footprint. The Commission implemented the DR aggregation ban in the December 2, 2010 order in Case No. U-16020 and continued the ban in the March 29, 2016 order in Case No. U-16020, following the conclusion of litigation before the U.S. Supreme Court which upheld the right of state regulatory authorities to prohibit participation in the wholesale DR market within the state's boundaries. *See, Federal Energy Regulatory Comm v Electric Power Supply Ass'n*, 577 US 260; 136 S Ct 760; 193 L Ed 2d 661 (2016). In Case Nos. U-18369 and U-18197, the Commission continued its discussion on DR providing, *inter alia*, guidance on how DR offerings by AESs were to be bid into the wholesale markets and how AESs could use DR resources to meet their forward capacity obligations pursuant to MCL 460.6w. *See*, September 15, 2017 order in Case No. U-18369 (September 15 order) and November 21, 2017 order in Case No. U-18197 (November 21 order). In 2018, the Commission opened Case No. U-20348 to examine outstanding issues left unaddressed by the September 15 and November 21 orders associated with DR aggregation programs for customers served by AESs. On August 8, 2019, the Commission rescinded the requirement set forth in the September 15 order requiring AESs to be the entity to bid DR into RTO wholesale markets for their customers but retained the ban on aggregated DR for bundled retail load, while however endorsing a Staff recommendation to encourage utilities to either develop an ARC-utility collaboration model or present an ARC-utility

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<sup>11</sup> *See, Wholesale Competition in Regions with Organized Electric Markets*, 125 FERC ¶ 61,071 (2008) (Order 719); *see also, Demand Response Compensation in Organized Wholesale Markets*, 134 FERC ¶ 61,187 (Order 745); Order 2222.



proposal to expand DR opportunities for their bundled customers in upcoming cases. *See*, August 8, 2019 order in Case No. U-20348.

In an effort to gain insight from utilities and interested stakeholders, the Commission has sought comments on the potential prerequisite actions and conditions as well as the impacts of lifting the DR aggregation ban for bundled retail load in the October 29, 2020 order in Case Nos. U-20628 *et al.* (October 29 order). Responsive comments were filed in Case No. U-20348 on November 25, November 30, and December 1, 2020, with reply comments filed on December 14, 2020 by the Staff, DTE Electric, Consumers, I&M, and several other stakeholders. The Commission declined to take further action in Case No. U-20348, and, given the amount of time that had passed since comments were filed in Case No. U-20348, found that updated responses were necessary in Case Nos. U-21099 *et al.* to inform the Commission's current consideration of the ban on aggregated DR for bundled retail load.

In the comments submitted in the instant proceeding, Consumers, DTE Electric, I&M, and MEGA opposed lifting the ban on DR aggregation for bundled retail customers citing concerns regarding the double counting of DR resources, the potential for confusion and added complexity in monitoring load being treated as retail but the load resource being treated as wholesale, and that the conditions necessitating the ban have not changed. While not taking a strong position in favor of or in opposition to the ban, Wolverine and the Staff raised additional concerns such as: (1) the need for two-way communication between utilities and aggregators to ensure proper registration of DR resources and to prevent double counting; (2) the need for secure and timely access to third-party data to prevent registration errors; (3) the issue of the Commission's limited visibility into non-utility DR; (4) licensing requirements for third-party aggregators; and (5) the low likelihood that lifting the ban would improve reliability or availability.

EIBC/AEE/AEMA, Energy Michigan, ABATE, Voltus, and MCC expressed support for lifting the ban arguing that individual customers and aggregators should be afforded the same opportunity as LSEs to bid DR into the MISO market, that the tightening of capacity resources within MISO calls for the expansion of capacity resources like DR, and that the MISO construct is sufficient to regulate the participation of DR aggregators in the wholesale market.

The Commission has considered the concerns expressed in comments as well as the support expressed for lifting the ban and is persuaded that the prohibition on DR aggregation by retail electric customers of Commission-jurisdictional utilities should be lifted for some commercial and industrial (C&I) customers with the ban remaining in place for residential customers. However, at this time, the Commission finds it appropriate to enact a temporary size minimum for participation in order to address consumer protection issues and to minimize the administrative burden on utilities. Therefore, the Commission is setting a temporary size minimum of 1 MW of enrolled load for C&I customers registering load with ARCs. This threshold aligns with the “extra large” segment of C&I customers in the most recent MI Demand Response Potential Study and includes those C&I customers that would be similarly situated to retail open access customers that already have the option to participate in DR aggregation. The Commission finds that allowing for DR aggregation for similarly situated utility customers will allow some experience with the aggregation of utility customers while introducing the least amount of issues, since similarly situated customers are already being aggregated. The Commission also intends to work with stakeholders to develop appropriate consumer protection policies for resources smaller than 1 MW, which will include residential customers, and may revisit the ban on aggregation for bundled retail loads smaller than 1 MW as it continues to gain experience with DR aggregation of retail electric customers.

In further support of allowing larger C&I customers to bid and aggregate DR into the wholesale market, the Commission finds that the timing is right to partially lift the ban further as doing so now enables LSEs to account for any DR adjustments in their upcoming capacity filings. As to how LSEs will account for capacity in the capacity demonstration proceedings, the Commission notes that, currently, MISO LSEs can meet their resource adequacy obligations by securing sufficient ZRCs through a combination of Fixed Resource Adequacy Plans (FRAPs), self-supplied MW, and purchasing capacity from the MISO PRA.<sup>12</sup> DR resources backed by ARCs<sup>13</sup> can be utilized under all three methods. To account for ARC DR in Michigan's four-year capacity demonstration, aggregators may sell LSEs forward ZRCs bilaterally that the LSEs may then use to meet capacity planning requirements. Alternatively, LSEs may identify a portion of capacity to procure via the PRA, up to 5%, which could be backed, in part, by ARC DR.

Speaking to the question of the Commission's jurisdiction over third-party aggregators, the Commission is limited by statutory constraints. Per *Consumers Power Co v Pub Serv Comm*, 460 Mich 148, 155-156; 596 NW2d 126 (1999), the Commission has no common-law powers. It possesses only that authority granted by the Legislature. *Union Carbide v Pub Serv Comm*, 431 Mich 135; 146, 428 NW2d 322 (1988). While the Commission has broad authority over rate-regulated utilities and more limited authority over other entities such as municipally owned utilities, cooperatives, and AESs, that legislatively granted authority does not extend to third-party DR aggregators. See, e.g., MCL 460.6, 460.6a, 460.10a, 460.10q, 460.1051. For instance, the Commission has licensing authority over AESs, but the Commission does not, as pointed out by

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<sup>12</sup> See, MISO Business Practice Manual 11: Resource Adequacy, Section 5: Resource Adequacy Requirements.

<sup>13</sup> MISO uses the term ARCs, while PJM uses the term curtailment service providers (CSPs).

commenters, have licensing, registration, or other statutorily defined authority over DR aggregators directly. *See*, MCL 460.10a(1)(k), (2), 460.10q. However, MISO and PJM maintain authority through FERC-approved tariffs over DR aggregators,<sup>14</sup> as market participants and have detailed registration processes and requirements outlined in the tariffs applicable to ARCs/CSPs as well as additional procedures set out in MISO’s Business Practice Manuals<sup>15</sup> and PJM’s Manuals. The MISO tariffs also provide consequences for failure to abide by MISO’s established requirements and in no way prohibit any party from filing a complaint with FERC pursuant to the Federal Power Act, Pub. L. 95-617, 92 Stat 3148. *See*, MISO-FERC Electric Tariff, Attachment X, Appendix 8, 44.0.0, Section 14.2 (providing for the rights under the Federal Power Act in the event of disputes between parties), available at <https://www.misoenergy.org/legal/tariff/> (last accessed December 21, 2022).

While the Commission is lifting the ban on DR aggregation for bundled C&I customers with enrolled load of 1 MW or higher, the Commission is not persuaded to lift the ban on bundled residential customers or C&I customers with enrolled loads smaller than 1 MW at this time. While there has been success to date with the aggregation of choice customer load, the Commission finds that, prior to lifting the ban on DR aggregation for bundled residential and smaller C&I customers that additional work surrounding customer protections is warranted. Specifically, the Staff advocated for the implementation of a licensing process for aggregators similar to the licensing

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<sup>14</sup> PJM’s effective tariff and further extensive information regarding its DR program are available on PJM’s DR website at <https://www.pjm.com/markets-and-operations/demand-response.aspx> (last accessed December 21, 2022). For the purposes of providing general explanation and examples, the Commission refers to MISO, as the majority of the Michigan’s electric service areas are contained in the MISO footprint.

<sup>15</sup> MISO’s effective tariffs are available on its website at: <https://www.misoenergy.org/legal/tariff/> (last accessed December 21, 2022).

process that the Commission has specific authority to implement for AESs and the Commission finds merit in this recommendation. Prior to lifting the DR aggregation ban for bundled residential and smaller C&I customers, the Commission will endeavor to outline the desired consumer protections to guard against deceptive marketing tactics that have been employed in the past by certain AESs and their third-party marketers. Authority to implement licensing procedures that include consumer protections will be needed prior to the implementation of Order 2222 for the aggregation of DERs<sup>16</sup> more broadly in addition to DR aggregation for bundled residential and smaller C&I customers. The Commission will work with its stakeholders and aggregators to outline a proposed licensing process before seeking authority, and intends to do so in 2023.

As to the concern regarding double counting and double compensation, MISO's aggregation tariff has in place a process to identify and prevent double counting, which the Commission finds sufficiently addresses and ensures that double counting and double compensation is avoided such that moving forward with lifting the DR aggregation ban for C&I customers is advisable.

Furthermore, the load balancing authority (LBA), transmission provider (i.e., MISO), and relevant electric retail regulatory authority (RERRA) (i.e., the Commission) play a role in receiving and verifying registration information from the ARC regarding the DR resource(s) including the ARC name, LSE name(s), resource type, end use customer account number(s), effective date, termination date, and customer's maximum level of participation (all subject to MISO's

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<sup>16</sup> PJM's proposed implementation date is February 2026. *See, Order No. 2222 Compliance Filing of PJM Interconnection, L.L.C.*, available at <https://www.pjm.com/directory/etariff/FercDockets/6522/20220201-er22-962-000.pdf> (last accessed December 21, 2022). MISO's proposed implementation date is October 2029. *See, Midcontinent Independent System Operator, Inc. Order No. 2222 Compliance Filing*, available at <https://elibrary.ferc.gov/eLibrary/filedownload?fileid=C26E4006-63DA-C97A-A70C-8029A8000000> (last accessed December 21, 2022).

procedures for confidential information). The RERRA is given a 10-day window in which to contest the ARC registration prior to approval (although the RERRA is then free to contest the registration at any time). MISO-FERC Electric Tariff, Aggregators of Retail Customers, 34.0.0 (A)(i)-(iii), <https://www.misoenergy.org/legal/tariff/> (last accessed December 21, 2022). The Commission, as the RERRA that coordinates with the LBA, with access to this registration information, would be able to confirm that a customer account number requested by the ARC has not already been assigned to a utility program. If the account number has already been assigned to a utility program, then the Commission would be able to contest the ARC registration.

This relevant information is also made available, subject to confidentiality terms, to LSEs as well as the LBA, the CPNode, EPNodes that comprise the resource, Load Zone CPNode, meter identification number(s), measurement and verification methodology, coincident peak information for use in Peak Load Contribution calculations, and the RERRA.

While the MISO tariffs provide for information sharing from the ARC, the Commission is aware of the gaps in information sharing between the utility or LSE and the DR aggregators or ARCs as discussed in comments. In basic terms, it is vital for the utility to make available on a sufficiently frequent basis the information that allows a DR aggregator to know which C&I customers have already designated load to a DR utility program. The Commission finds that the concerns the utilities have expressed regarding sharing customer information and data and the protection of that information to be well-taken but these concerns can be resolved through the use of non-disclosure agreements that maintain confidentiality and protect customer's proprietary information. Therefore, the Commission encourages rate-regulated utilities to work in good faith to expedite consumer access to the DR market and provide aggregators access to the required data on an as-needed basis. Specifically, in the September 8, 2022 order in Case No. U-20959

(September 8 order), the Commission recognized Green Button as an industry standard and encouraged its adoption stating, “[t]he Commission recognizes Green Button, including Green Button Download My Data and Green Button Connect, as the nationally recognized industry standard for energy data sharing platforms, and therefore, strongly encourages utilities under its jurisdiction to adopt Green Button and seek certification for standards compliance through the Green Button Alliance.” September 8 order, p. 23. The Commission reiterates that adopting Green Button Connect or an alternative with similar functionality allowing third parties access to data as needed is strongly encouraged for all utilities in order to facilitate the timely and accurate DR registrations from ARCs.

Further, while the Commission does not have direct authority over third-party aggregators, the Commission regulates IOUs with respect to the treatment and protection of customer information. *See*, Mich Admin Code, R 460.153. Therefore, the sharing of any C&I customer information for DR wholesale market participation purposes shall comply with the utilities’ approved privacy tariffs. The Commission agrees with the Staff that addressing all DR aggregation issues prior to Order 2222 implementation is a worthy goal and finds that the issues surrounding sharing customer data with aggregators similar for DR aggregation and Order 2222 implementation and revisions to data privacy tariffs may be warranted. The Commission will continue to monitor this issue and may recommend technical conferences or other stakeholder discussions to consider such issues in the future.

The Commission acknowledges that lifting the ban to allow larger bundled C&I customers to aggregate DR load through ARCs will require further refinement and filling the gaps identified in the comments regarding adequate information sharing practices between utilities and aggregators, as well as ensuring that MISO’s measures to prevent double counting and double compensation

are adequate. The Commission notes that MISO has an ongoing stakeholder process dedicated to improving MISO's tariff language and business processes for the aggregation of retail customers. The Commission will continue to engage with this process as utilities, aggregators, and bundled C&I customers gain experience with DR aggregation going forward. As experience is gained with DR aggregation among bundled C&I customers, the Commission anticipates that problem areas and issues will be identified with greater specificity as to how the Commission, with utility, aggregator, and customer involvement, can improve DR aggregation among bundled C&I customers, with the potential to expand DR aggregation to smaller-sized C&I and residential bundled retail customers. The Commission finds that the MI Power Grid DR Workgroup has served as a helpful forum for navigating DR aggregation in the past and may direct additional meetings of this workgroup and/or a technical conference to discuss and troubleshoot any issues relating to DR aggregation that may arise. Should it become necessary, the Commission may direct a formal technical conference to be held focused on DR aggregation, with adequate notice provided to interested persons well in advance.

2. In the April 8, 2021 order in Case No. U-21032, the Commission sought comment regarding the effect of FERC Order 841,<sup>17</sup> which requires each RTO and ISO to revise its tariff to establish a participation model consisting of market rules that facilitate the participation of energy storage resources (ESRs) in RTO/ISO markets. In the August 11, 2021 order in the same docket, the Commission encouraged investor-owned utilities to propose pilot programs involving well-designed retail tariffs that facilitate the integration of ESRs into the electric grid and account for the full value stack of ESRs. In the context of the resource adequacy concerns expressed in this order and in the Staff Report, the Commission seeks comment on whether the Commission should now allow the simultaneous participation of ESRs in the wholesale and retail markets.

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<sup>17</sup> *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 162 FERC ¶ 61,127 (February 15, 2018) (Order 841).



Order 841, issued on February 15, 2018, specifically addressed ESRs in that it amended regulations under the Federal Power Act (FPA), 16 USC 791a *et seq.*, to “remove barriers to the participation of electric storage resources in the capacity, energy, and ancillary service markets operated by Regional Transmission Organizations (RTO) and Independent System Operators (ISO) (RTO/ISO markets).” Order 841, p. i. Order 841 requires each RTO and ISO to revise its tariff to establish a participation model consisting of market rules that facilitate the participation of ESRs in the RTO/ISO markets. FERC did not include a state opt-out provision in Order 841, which would have permitted states to broadly prohibit ESRs that are located behind the meter or on the local distribution system from participating in wholesale markets.

On May 16, 2019, FERC issued *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 167 FERC ¶ 61,154 (2019) (Order 841-A) wherein it denied rehearing regarding the lack of a state opt-out provision for local ESRs in Order 841. In a subsequent appeal, the D.C. Circuit Court of Appeals upheld Order 841, finding that it does not unlawfully regulate matters left to the states. *See, Nat’l Association of Regulatory Utility Comm’rs v Federal Energy Regulatory Commission*, 488 US App DC 133 (2020). In the April 8, 2021 order in Case No. U-21032, the Commission sought comments on the effect of Orders 841 and 841-A and received responsive comments from DTE Electric, Consumers, EIBC, and the Staff.

In its implementation of Order 841, MISO carried out an extensive stakeholder process. On December 3, 2018, MISO submitted its Order 841 compliance filing to FERC to establish a market participation model for ESRs, effective June 6, 2022. On June 2, 2022, MISO submitted an amended filing to FERC clarifying tariff provisions for ESRs and, on October 13, 2022, MISO indicated that its ESR participation model is in production as of September 1, 2022, and is

performing as expected. *See*, MISO Dashboard, Storage Participation – FERC Order 841 Compliance (f/k/a IR062) MSC-2018-6, <https://www.misoenergy.org/stakeholder-engagement/MISO-Dashboard/storage-participation--ferc-order-841-compliance/> (last accessed December 21, 2022).

Order 2222, issued on September 17, 2020, required RTO/ISO market operators to ensure DERs such as ESRs, distributed generation, DR, energy efficiency, thermal storage, and EVs, are able to participate with traditional resources in wholesale markets through aggregation. In its compliance efforts, MISO created a coordination framework for engagement between RERRAs, electric distribution companies, and DER aggregators and created a DER task force that meets on a monthly basis. In its stakeholder process, MISO hosted several meetings and sought comments on several aspects of Order 2222 implementation. As required by FERC, MISO submitted proposed revisions to its Open Access Transmission Energy and Operating Reserve Markets Tariff on April 14, 2022. FERC sought additional information, to which MISO subsequently responded on October 11, 2022. Notable among its proposed revisions is MISO's proposed October 1, 2029 effective date for its tariff revisions, meaning DER participation would likely occur in 2030. MISO is currently awaiting a response from FERC regarding its proposed tariff revisions.

For its part, PJM filed its Order 2222 compliance filing on February 2, 2022, proposing an effective date of February 2, 2026, for its revisions to its Open Access Transmission Tariff, Operating Agreement, and the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region, and an effective date of July 1, 2023, for a limited subset of revisions, including a proposed revision specific to a DER Aggregator offering a Planner DER Capacity Aggregation Resource. *See, Order No. 2222 Compliance Filing of PJM Interconnection, L.L.C.*, available at

<https://pjm.com/directory/etariff/FercDockets/6522/20220201-er22-962-000.pdf> (last accessed December 21, 2022).

As an initial matter, the Commission acknowledges the concerns expressed in the comments regarding ESR dual participation in retail and wholesale markets and notes that many of these concerns were also expressed in the comments responsive to the April 8 order. Those concerns include significant complexity in tracking, metering, and billing for these participants; establishing mechanisms to prevent double counting and double compensation of ESR resources; compensation methods for ESRs; the burden on and ability of utilities and the Commission to verify RTO information on ESR participants cross-checked against state retail programs; and the determination of participation models and verification of the availability of resources during grid emergencies. In its comments responding to the June 23 order, the Staff referenced its comments submitted in Case No. U-21032, explaining that its comments in that docket are still relevant as there has been “limited advancement on this topic” since those comments were submitted on May 6, 2021. Staff’s comments, pp. 5-6.

While opposition to ESR dual participation was not unanimous in the comments, these concerns were prominent along with the suggestion that the Commission continue to engage in RTO stakeholder discussions to carry out and implement Order 841 and Order 2222 and develop participation models. The Commission agrees with this suggestion, finds that more work needs to be done in establishing participation details and requirements for ESRs in these markets prior to allowing dual participation, and commits to continued involvement with the implementation of Order 2222 and Order 841 by both PJM and MISO. The Commission will continue to work with PJM and MISO as it implements Order 841 and Order 2222 and gains experience, knowledge, and data with ESR wholesale market participation.

In the August 11, 2021 order in Case No. U-21032 (August 11 order), the Commission encouraged IOUs to propose pilot programs facilitating ESR participation in wholesale markets with the utility acting as the market participant on behalf of the customer-owned ESR or as a proxy. August 11 order, p. 24. The Commission notes that, while there have been ESR pilot proposals put forward by IOUs, the Commission has not yet approved an ESR pilot for varying reasons including flawed program design or insufficient supporting evidence. *See*, November 18, 2022 order in Case No. U-20836 (November 18 order), pp. 51, 357-359 (partially disallowing DTE Electric’s proposed Slocum Battery Pilot and denying approval of DTE Electric’s proposed residential battery pilot); December 22, 2021 order in Case No. U-20963, pp. 323-326 (denying approval of Consumers’ proposed Home Battery Pilot program); September 24, 2020 order in Case No. U-20694, pp. 55-56 (denying approval of Consumers’ proposed Bring Your Own Bright Field pilot program). The Commission again encourages IOUs to develop well-designed tariffs for ESR participation and to submit pilot programs meeting the criteria specified in the February 4, 2021 order in Case No. U-20645, to the Commission for approval. To aid utilities in the development of storage pilot programs, as noted in the November 18 order, the Commission intends to hold a technical conference on residential battery storage to identify national best practices in utility battery storage pilot design, identify continuing areas of disagreement between stakeholders, and seek to identify opportunities for greater alignment that will allow a clearer path to Commission approval for future residential battery storage pilots. The Commission will be forthcoming with additional details regarding such a technical conference in early 2023.

3. The Commission seeks comment on whether it should consider setting a four-year forward capacity obligation under Section 6w of Act 341 that is higher than MISO’s prompt year PRMR [planning reserve margin requirement] to encourage the development of additional capacity resources with the aim of protecting the future resource adequacy and reliability of service for Michigan retail electric customers. The Commission seeks specific comment on how such a

capacity obligation should be determined and calculated, and how the Commission should proceed in this manner.

There was a consensus among several of the comments received on this issue that a Michigan-specific PRMR is not a prudent or effective way to meet capacity and reliability needs. The Commission acknowledges concerns raised in comments that imposing a PRMR higher than MISO's required PRMR could result in costly over-building of capacity that disproportionately impacts Michigan ratepayers without the certainty of deliverable improvements to reliability for Michigan as opposed to MISO as a whole. Further, as noted by the Staff, changes are currently underway to implement MISO's seasonal resource adequacy construct. The Commission finds that, for the reasons articulated by the commenters and the desire to avoid unnecessary confusion in the shift to a seasonal resource adequacy construct, imposing a PRMR higher than MISO's prompt year PRMR is not advisable at this time.

4. As stated in the Staff Report, the Commission has not yet imposed an LCR on individual LSEs pursuant to MCL 460.6w. Subsequent to the August 20 order, the Court of Appeals issued a decision in the remanded proceeding finding that the September 15 order (imposing an LCR on AESs individually in Case No. U-18197) did not equate to administrative rules in violation of the APA and did not exceed the Commission's authority granted by the Legislature. *In re Reliability Plans of Electric Utilities for 2017-2021*, unpublished per curiam opinion of the Court of Appeals, issued December 3, 2020 (Docket Nos. 340600 and 340607). While the Court of Appeals has upheld the Commission's authority to impose an LCR individually, litigation regarding the individual LCR continues at the federal level, and the stay in Case No. U-18444 remains in effect. However, in light of the resource adequacy concerns expressed in this order and the Staff Report, the Commission seeks comment on whether it should lift the stay in Case No. U-18444 and take further action to set an LCR for Michigan LSEs pursuant to Section 6w for future PYs.

With the exception of Consumers and DTE Electric, all commenting parties recommended that the Commission should wait for conclusion of the pending federal litigation pertaining to the application of an LCR to AESs before making a decision on the stay in Case No. U-18444. The Commission finds this to be an advisable course of action. While the Commission remains dedicated to ensuring long-term resource adequacy and to fulfilling its statutory duties under Act

341, the Commission agrees with the Staff that lifting the stay is unlikely to improve capacity positions in the short-term. While there are concerns regarding long-term capacity outlooks in MISO LRZ 7, the Commission acknowledges that LRZ 7, LRZ 2, and LRZ 1 met their LCR in the most recent MISO PRA, tamping down concerns that MISO is facing an imminent capacity shortfall.<sup>18</sup> *See*, Staff Report, pp. 7-8, 12. As discussed in comments, imposing an LCR may lead to investment in generation that could be rendered unnecessary in the event the federal court determines that the application of an LCR to AESs is unlawful.

Therefore, the Commission declines to lift the stay in Case No. U-18444 at this time. The Commission will revisit this issue once a final decision is rendered by the federal court.

5. The Commission seeks additional comment on what actions or policies may be taken to maximize the benefits to reliability of the state's transmission connections to not only the rest of MISO, but also to PJM and the Ontario Independent Electricity System Operator, including ways to boost those transmission connections.

DTE Electric and I&M did not support additional action by the Commission at this time, with DTE Electric citing the excessive cost of new transmission and its preference to optimize existing transmission infrastructure. Other responsive commenters, however, encouraged the Commission to participate in or submit comments in FERC dockets dedicated to proposed rulemakings or implementation of FERC orders. The commenters also encouraged the Commission's participation in MISO's and PJM's transmission planning processes. Specifically mentioned were the Lake Michigan Connector Project; supporting the Clean Energy Coalition's comments on the

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<sup>18</sup> Specifically, LRZ 7 was projected to meet its LCR requirements for the prompt year (2022/2023) and the compliance year (2025/2026). Staff Report, pp. 7-8. LRZ 1 and LRZ 2, as multijurisdictional zones, include LSEs outside of Michigan, and, therefore, the Staff does not have a complete capacity data picture for the entire zone. However, the Staff indicated that all Michigan LSEs in LRZ 1 and LRZ 2 had met their capacity demonstration requirements. *Id.*, p. 12.

FERC advanced notice of proposed rulemaking pertaining to transmission planning, transmission cost allocation, and generator interconnection;<sup>19</sup> new technologies enabled through FERC Order 841;<sup>20</sup> and continued MTEP improvements.

While the Commission's regulatory authority centers on electrical retail distribution and generation, the Commission acknowledges the importance of its continued participation in transmission planning at the regional and national scale. As such, the Commission will continue to participate in relevant FERC dockets, which may include submitting comments or intervening in particular cases, as well as participating as a stakeholder in MISO's and PJM's transmission planning processes. The Commission similarly encourages the commenters in this docket to continue their participation, as applicable, in these matters as well. The Commission will also continue to investigate opportunities to maximize transmission linkages to the benefit of Michigan electric customers.

6. The Commission seeks comment on what improvements should be pursued in RTO markets to better account for and to send better market signals to merchant and/or non-utility owned generators to inform both generation additions and retirements.

With the exception of I&M, that spoke to the adequacy of PJM's current process for improvements via PJM's Resource Adequacy Senior Task Force, all other commenters encouraged the Commission to continue its engagement with MISO to improve long-term market signals and address specific topics such as MISO's sloped demand curve (as mentioned by Wolverine, DTE Electric, Consumers, and the Staff in comments), increasing MISO capacity requirements from 50% (as discussed in Consumers' comments, p. 13), and the participation of DERs, DR, and EWR

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<sup>19</sup> A notice of proposed rulemaking was issued in this FERC docket on April 21, 2022. *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, FERC Docket No. RM21-17-000.

<sup>20</sup>

resources in MISO's capacity market. The Commission agrees that further participation and engagement with MISO's and PJM's resource adequacy stakeholder processes represents the most effective means of bringing about better market incentives for energy providers in the MISO and PJM footprint. The Commission encourages participation by the commenters in these dockets in the MISO and PJM stakeholder processes as well.

7. Considering that some incumbent utilities have tariff provisions that stipulate a waiting period before a choice customer can return to the electric service of the incumbent utility, the Commission seeks comment as to under what conditions or circumstances should a choice customer be automatically transferred back to the incumbent utility (as the provider of last resort) in the event the customer is without an electric service provider, and whether such a transfer provision should be included in utility tariffs.

The Staff, ABATE, DTE Electric, and Consumers explained in their respective comments, that each utility has tariff provisions that address return-to-service to the incumbent utility by the choice customer. In part requesting that its existing tariff be continued, DTE Electric also explained that there are no circumstances when a choice customer is automatically and fully returned to incumbent utility service without some action by the customer or the power supplier to do so, nor should there be. DTE Electric's comments, pp. 22-24. Generally, commenters also described concerns with procuring capacity for customers returned to incumbent utility service and ensuring that a utility can meet its resource planning needs and capacity demonstration requirements.

The Commission finds that the existing tariffs of each utility adequately address the circumstances under which a choice customer is transferred back to the service of the incumbent utility. The Commission is not aware of any circumstances that justify a change to the status quo at this time.

8. The Commission seeks and encourages comment on any additional measures the Commission should consider to enhance the state's reliability and resource adequacy position.



The Commission received a variety of responses on this topic including participating in RTO proceedings to improve resource adequacy through MISO's seasonal construct and extreme weather examinations, correcting MISO's LCR calculation in its capacity demonstrations, examining resource adequacy in IRPs with more detailed analyses of utilities' PCAs, encouraging energy storage and behind-the-meter resources, and changing the PRA and forecasting requirements in the annual capacity demonstration process. The Commission finds that the best avenue to address these suggestions and any other revisions to the annual capacity demonstration process is within the capacity demonstration technical conference that was directed by the June 23 order and is currently being held at the Commission.<sup>21</sup> *See*, June 23 order, pp. 16-17.

THEREFORE, IT IS ORDERED that the prohibition established in the December 2, 2010 order in Case No. U-16020, with respect to demand response resources, Michigan retail customers, or aggregators of retail customers on behalf of retail customers against participating in any regional transmission organization wholesale power market is lifted with respect to Michigan bundled retail commercial and industrial customers and aggregators of retail customers on behalf of retail commercial and industrial customers with a minimum enrolled load size of 1 megawatt registered with an aggregator of retail customers. The prohibition remains in place with respect to Michigan bundled retail residential customers and aggregators of retail customers on behalf of retail residential customers.

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<sup>21</sup> The most recent meeting date for the capacity demonstration technical conference was December 20, 2022. Interested persons may refer to the contact information on the Commission's website for additional information: <https://www.michigan.gov/mpsc/commission/workgroups/2016-energy-legislation/capacity-demonstration> (last accessed December 21, 2022).

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel.

Electronic notifications should be sent to the Executive Secretary at [mpscedockets@michigan.gov](mailto:mpscedockets@michigan.gov) and to the Michigan Department of Attorney General - Public Service Division at [pungp1@michigan.gov](mailto:pungp1@michigan.gov). In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

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Daniel C. Scripps, Chair

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Tremaine L. Phillips, Commissioner

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Katherine L. Peretick, Commissioner

By its action of December 21, 2022.

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Lisa Felice, Executive Secretary


# PROOF OF SERVICE

STATE OF MICHIGAN )

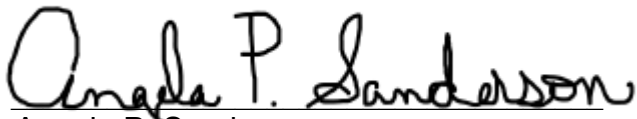
Case No. U-21099 *et al.*

County of Ingham )

Brianna Brown being duly sworn, deposes and says that on December 21, 2022 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

  
Brianna Brown

Subscribed and sworn to before me  
this 21<sup>st</sup> day of December 2022.



Angela P. Sanderson  
Notary Public, Shiawassee County, Michigan  
As acting in Eaton County  
My Commission Expires: May 21, 2024

**Service List for Case:**

**U-20348**

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Benjamin J. Holwerda	MPSC Staff	holwerdab@michigan.gov

**Service List for Case:**

**U-21099**

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