

STATE OF MICHIGAN  
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission's own motion,	)	
to address outstanding issues regarding demand	)	Case No. U-20348
response aggregation for alternative electric	)	
supplier load.	)	
_____	)	

At the August 8, 2019 meeting of the Michigan Public Service Commission in Lansing,  
Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman  
Hon. Norman J. Saari, Commissioner  
Hon. Daniel C. Scripps, Commissioner

**ORDER**

History of Proceedings

On September 29, 2009, the Commission issued an order in Case No. U-16020 (September 29 order), in response to a request<sup>1</sup> for the Commission to initiate an investigation into the rules and regulations governing the direct participation of Michigan retail customers into a regional transmission organization (RTO) wholesale market, including those customers defined as load modifying resource market participants (MPs) and those associated with aggregators of retail customers (ARCs). In the September 29 order, the Commission considered a relevant Federal

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<sup>1</sup> The request was from The Detroit Edison Company (n/k/a DTE Electric Company (DTE Electric)), Indiana Michigan Power Company, and Michigan Electric and Gas Association (MEGA) on August 13, 2009. On August 21, 2009, Consumers Energy Company (Consumers) filed a letter in support, joining the request.

Energy Regulatory Commission (FERC) ruling,<sup>2</sup> along with the positions of the parties set forth in the request, and agreed that an investigation should be commenced into the matter. The Commission also held that, commencing immediately and until further order of the Commission, the participation of Michigan retail customers in any RTO wholesale market shall be temporarily restricted during the pendency of the proceeding.<sup>3</sup>

On December 2, 2010, the Commission issued a subsequent order in Case No. U-16020 (December 2 order) following receipt of requested comments and, in clarifying the scope of the proceeding, held that Michigan retail customers, or ARCs on behalf of retail customers, shall not participate in any RTO wholesale power market with respect to demand response (DR) resources only until further order of the Commission. The Commission also set forth guidance and deadlines for further proceedings on the matter, dependent on the issuance of final FERC orders in Docket Nos. ER09-1049-000 and ER09-701-000, regarding the integration of ARCs in the Midcontinent Independent System Operator, Inc. (MISO)<sup>4</sup> and PJM Interconnection, L.L.C. (PJM) markets,

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<sup>2</sup> Final Rule, Wholesale Competition in Regions with Organized Electric Markets, Docket Nos. RM07-19-000 and AD07-7-000, 125 FERC ¶ 61,071 (2008) (Order 719). In Order 719, FERC established reforms to improve the operation of organized wholesale electric power markets and, among other things, amended its regulations requiring RTOs and independent system operators (ISOs) “to amend their market rules as necessary to permit an ARC to bid demand response on behalf of retail customers directly into the RTO’s or ISO’s organized markets, unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate.” Order 719, p. 83. In subsequent orders in Case No. U-16020, the Commission also considered and discussed FERC’s Order on Rehearing, Docket No. RM-07-19-001, 128 FERC ¶ 61,059 (2009) (Order 719-A), wherein FERC revised its ARC requirement for small utilities (those that distributed 4 million megawatt-hours or less in the previous fiscal year). *See*, Order 719-A, pp. 38-39.

<sup>3</sup> On January 25, 2010, the Commission clarified the September 29 order and held that all curtailment service provider (CSP) contracts with retail customers existing on September 29, 2009, would remain in effect during the pendency of the Commission’s investigation in the matter. *See*, January 25, 2010 order in Case No. U-16020.

<sup>4</sup> At the time, MISO stood for Midwest Independent Transmission System Operator, Inc.

respectively, as a result of the directives set forth in Orders 719 and 719-A and the RTOs' subsequent compliance filings with FERC.<sup>5</sup>

After the December 2 order, FERC issued a subsequent ruling,<sup>6</sup> which the Commission expressed concern over in its December 6, 2012 order in Case No. U-16020 (December 6 order). In its December 6 order, the Commission set aside a portion of its December 2 order and reopened Case No. U-16020 for additional public comments but explicitly continued the temporary restriction with respect to DR resources being bid into the MISO and PJM markets.

Thereafter, Order 745 was challenged and appealed. On January 25, 2016, the United States Supreme Court reversed and remanded the United States Court of Appeals, District of Columbia Circuit's May 23, 2014 decision that primarily found that Order 745 violated the Federal Power Act (FPA), 16 USC 791a *et seq.* *See, Fed Energy Regulatory Comm v Electric Power Supply Ass'n*, 136 S Ct 760; 193 L Ed 2d 661 (2016). The United States Supreme Court held, in relevant part, that FERC's rule in Order 745 was within the agency's authority under the FPA to implement rules that directly affect wholesale electricity rates and that FERC's rule did not regulate retail electricity sales in violation of the FPA, which reserved such authority to the states. *See, id.*, p. 784.

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<sup>5</sup> On February 22, 2011, the Commission clarified its December 2 order and held that CSP customers are allowed, as before, to complete the term of any existing contracts but are restricted from renewing or entering into new contracts to participate in any RTO's DR wholesale market. *See*, February 22, 2011 order in Case No. U-16020.

<sup>6</sup> Final Rule, Demand Response Compensation in Organized Wholesale Markets, Docket No. RM10-17-000, 134 FERC ¶ 61,187 (2011) (Order 745). Order 745 requires that DR resources, participating in an organized wholesale energy market administered by an RTO or ISO, be compensated at the market price for energy, or locational marginal price, in accordance with certain criteria.

On March 29, 2016, the Commission issued another order in Case No. U-16020 (March 29 order), considering the above, and stated:

[F]ederal regulations continue to provide that RTOs shall accept bids from demand response resources on a basis comparable to any other resource that is at or below the market-clearing price, “unless not permitted by the laws or regulations of the relevant electric retail regulatory authority.” 18 CFR 35.28(g)(1)(i)(A).

In light of the U.S. Supreme Court’s decision and the filings in this docket, the Commission remains unpersuaded that it should now lift the ban that was placed into effect by the prior orders in this docket. The following concerns were raised regarding aggregation of demand response resources for sale in the wholesale market: (1) operational issues for Michigan jurisdictional utilities, on both the real-time and long-term bases, especially with respect to capacity planning and procurement as well as emergency operations; (2) lack of Commission oversight of third-party aggregators; (3) the possibility that customers may enroll a demand response resource in more than one demand response program; and (4) cross-subsidization. The comments did not adequately address these concerns, and therefore the Commission believes the prohibition should remain in place. The Commission does not intend by this order to foreclose the possibility of third party aggregation forever, but finds that, for the present, the prohibition should remain in place.

March 29 order, p. 7. The Commission thus 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 and closed the docket, agreeing that closing the docket would provide an opportunity for meaningful conversations on DR outside of a contested case.<sup>7</sup>

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<sup>7</sup> On February 8, 2018, the Michigan Court of Appeals affirmed the March 29 order, and on July 3, 2019, the Michigan Supreme Court denied the Association of Businesses Advocating Tariff Equity’s (ABATE’s) application for leave to appeal. *See, In re Application of Detroit Edison Company re Licensing Rules*, unpublished per curiam opinion of the Court of Appeals, issued February 8, 2018 (Docket No. 332605), lv den \_\_\_ Mich \_\_\_; \_\_\_NW2d \_\_\_ (2019).

On September 15, 2017, the Commission issued an order in Case No. U-18369 (September 15 order), wherein the Commission, after receiving and considering input, adopted the Commission Staff's (Staff's) proposed three-phase framework for addressing DR resources for regulated electric utilities, with some modifications. The Commission also affirmed that alternative electric suppliers (AESs) may offer DR programs to their customers through a CSP or other third-party (such as an ARC) as long as the AES, as the load serving entity (LSE), bids the DR into the wholesale market.<sup>8</sup> The Commission, however, declined to address whether an AES could use DR capacity from another AES's customers to meet its forward capacity demonstration pursuant to MCL 460.6w, finding such issue to be outside the scope of that proceeding.

On November 21, 2017, the Commission issued an order on rehearing in Case No. U-18197 (November 21, 2017 order). In the November 21, 2017 order, the Commission addressed the previously declined issue described above and held that AESs can use DR capacity resources from another AES's customers to meet their forward capacity demonstration obligations under MCL 460.6w provided satisfaction of three criteria.<sup>9</sup>

On November 21, 2018, the Commission issued an order in the instant case (November 21, 2018 order). In the November 21, 2018 order, the Commission acknowledged that several important issues had been left unaddressed by the March 29; September 15; and November 21, 2017 orders. The Commission thus directed the Staff to commence a collaborative process for

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<sup>8</sup> DR programs offered by AESs are not regulated by the Commission.

<sup>9</sup> The three criteria are: "a) Affidavits supporting the resource are provided by both AESs involved, b) The demonstrating AES provides evidence that the customer's distribution utility was notified of the arrangement, and c) Customer contracts are made available for the Staff to review." November 21, 2017 order, pp. 14-15.

examining outstanding issues associated with DR aggregation programs for customers who are served by AESs, specifically on issues related to:

1. whether the ability to aggregate DR for customers of Michigan AESs for bidding into RTO markets should be limited to AESs, or be extended to non-AES third parties such as CSPs;
2. how to adequately track DR resources being used for capacity demonstration purposes under MCL 460.6w;
3. the appropriate treatment of aggregated DR outside the capacity demonstration framework that may affect capacity requirement allocations to LSEs, such as aggregated DR for capacity, ancillary services, and/or energy; and
4. what are appropriate reporting requirements related to DR and aggregation, and whether the capacity demonstration filing requirements need revision.

November 21, 2018 order, pp. 6-7 (footnote omitted). The November 21, 2018 order further directed the Staff to “examine the status of DR aggregation in Michigan over the 2017-2019 time period with a view to identifying barriers or other issues warranting guidance from the Commission” and concluded with direction for the Staff to file a report detailing its findings and recommendations for the Commission no later than May 30, 2019. *Id.*, p. 7.

On May 30, 2019, the Staff timely filed its report in this case (Staff’s report).

On June 7, 2019, the Commission issued a subsequent order in this case acknowledging the Staff’s timely report and providing an opportunity for interested persons to comment on the report by 5:00 p.m. (Eastern time) on June 21, 2019.

On June 21, 2019, ABATE, Consumers, Advanced Energy Management Alliance (AEMA), DTE Electric, and MEGA filed comments.

## The Commission Staff's Report

In its report, the Staff, following background information and review of its assigned task, provides an overview of the DR aggregation stakeholder meetings held on February 13, March 12, and May 3, 2019, at the Commission's Lansing office. The Staff identifies the various stakeholders that participated in each meeting, along with topics discussed and presentations made, and also discusses and summarizes the circulation of, and written feedback in response to, specific questions provided by the Staff to those stakeholders following the meetings; the opportunity that was provided to the stakeholders to provide edits and comments to a draft Staff report outline; and the added opportunity for any stakeholder to attach any additional comments and materials as an appendix to the Staff's report filed in this docket on May 30, 2019.<sup>10</sup>

The Staff discusses aggregated DR participation in Michigan,<sup>11</sup> explaining how ARCs can register aggregated DR involving Michigan AES load with MISO, with MISO then finalizing and assigning appropriate capacity credits if such registration, after review by MISO, is approved by the applicable utility and the Commission.<sup>12</sup> In this discussion, the Staff identifies the following challenge:

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<sup>10</sup> Appendix A attached to the Staff's report filed on May 30, 2019, contains additional comments and materials from AEMA; Consumers; DTE Electric; Energy Michigan, Inc.; and ABATE.

<sup>11</sup> According to the Staff, "DR aggregation typically involves a third-party aggregator that contracts with customers for DR curtailment services or load reduction where ultimately that combined DR load is offered or sold into the wholesale market." Staff's report, Executive Summary, p. i.

<sup>12</sup> Per the Staff, this process only occurs during the prompt-year shortly before MISO's annual planning resource auction (PRA). "For an aggregated DR resource that is four years forward, only the customer and the ARC are aware of the resource because MISO does not register resources on a forward basis . . . ." Staff's report, pp. 10-11.

The AESs do not receive any notice or information when any of its customers sign a contract with an ARC nor do they receive any notice or information when any of its customers are included in part of an aggregated DR registration at MISO.

Currently, there is approximately 2,000 MW [megawatts] of retail choice load, or AES load, in Michigan that would be allowed to participate in aggregated DR programs. Staff discovered that some of Michigan's AES customers either are participating in, or have expressed interest in participating in aggregated DR. Michigan currently does not have any regulatory oversight of third-party DR aggregators, ARCs, or the services they offer to their customers. The approved Michigan capacity demonstration process and requirements contain specific provisions for any LSE utilizing new or existing DR resources, however these provisions do not address the scenario in which an AES customer executes a contract with an ARC whom is not subject to the capacity demonstration requirements or any other reporting requirements. Likewise, once a ZRC [zonal resource credit] is created by MISO as part of its resource adequacy construct, it may be sold via a forward ZRC contract that does not specify the originating source of the ZRC or even whether it is a supply-side resource or a demand-side resource. In fact, because ZRCs are created by MISO in the prompt-year, forward ZRCs don't actually exist and could be sourced from existing resources or potentially new resources that have not yet been developed or put into service. This creates transparency challenges in forward capacity demonstrations as further discussed later in this report.

Staff's report, pp. 5-6 (footnotes omitted).

While the Staff states that it did not find any evidence of aggregated DR for AES load in any capacity demonstrations filed in early 2018, or with any LSE procuring aggregated DR on a four-year forward basis and including those resources within its capacity demonstration at that time, the Staff indicates that this third-party aggregated resource did show up (within local resource zone 7) during its audit of the ZRC transfers in the MISO Module E Capacity Tracking (MECT) Tool in 2019 for the 2019/20 planning year. Specifically, the Staff states:

During the auditing process of LSE prompt-year ZRC transfers in the MISO Module E Capacity Tracking Tool (MECT), Staff observed ZRC transfers of aggregated DR to AESs. The transfers observed were for the prompt-year, planning year 2019/20, because MISO's capacity construct is an annual prompt-year construct as opposed to a four-year forward construct employed in Michigan's capacity demonstrations. Forward ZRC contracts were the likely vehicle for procuring the aggregated DR resources. Although Staff observed the prompt-year transfer of aggregated DR resources to AESs for planning year 2019/20, Staff's



review of the AES forward contracts did not reveal any aggregated DR resources. Forward ZRC contracts typically specify the zone from which the ZRCs will be sourced, however, they do not specify whether those ZRCs will come from supply-side or demand-side resources. Additionally, capacity demonstrations required in 2019 for planning year 2022/23 also did not indicate that any AES customer load was participating in DR aggregation with an ARC. This will not be determined until Staff reviews LSE prompt-year ZRC transfers in the MISO MECT in 2022.

*Id.*, p. 6.

Against this backdrop, the Staff's report culminates in the following recommendations to the Commission:

- 1) Staff recommends that the Commission allow the direct participation of third-party aggregators in the capacity, energy and ancillary services markets on behalf of DR resources aggregated from Michigan-based AES load, aligning with FERC-approved RTO tariffs and processes, effectively removing a barrier to allowing third-party aggregators to fully utilize registered DR resources.
- 2) Staff recommends continuing to allow forward ZRC contracts, which may include aggregated DR resources, to qualify for Michigan's forward capacity demonstration requirement. In addition, Staff will endeavor to open up lines of communication with third-party aggregators operating in Michigan to better understand their product offerings. Staff will combine information from DR aggregators operating in this state with other information obtained in Michigan capacity demonstration filings to monitor the use of aggregated DR for meeting Michigan's forward capacity requirements.
- 3) Staff recommends that the Commission direct Staff and the Michigan regulated utilities to work with MISO on developing proposed changes to the MISO process, wherein MISO would provide the amount of dispatched aggregated DR at the time of the MISO peak to be utilized by the utilities in the calculation of peak load contributions (PLCs).
- 4) Staff recommends an update to Michigan's capacity demonstration requirements to include a requirement for LSEs to comply with Staff auditing of all prompt-year ZRC transfers in the MISO market for ZRC contracts submitted in previous Michigan capacity demonstrations.
- 5) Due to lack of support and specific concerns expressed related to resource planning and distribution operations, Staff recommends maintaining the status quo relative to banning DR aggregation for bundled retail load.

6) Because the aggregated DR market and framework is still under development, Staff recommends that aggregated Energy Efficiency Resources (EERs), aggregated storage, and aggregated Distributed Energy Resources (DERs) not be accepted as capacity resources in any Michigan four-year forward capacity demonstration, unless they have been qualified by MISO and appropriate documentation is provided. Additionally, Staff recommends that the Commission direct the Staff and the Michigan regulated utilities to continue to work with MISO on any tariff provisions that may be proposed related to [these] third-party aggregated resources in the market, to ensure that the impact of those resources on PLCs is captured appropriately and that communication protocols are put in place to ensure that entities calculating the PLCs will be provided with data reflecting adjustments appropriate due to dispatched resources at the time of the MISO peak.

Staff's report, Executive Summary, pp. i-ii. *See also*, Staff's report, pp. 6-20, for these recommendations and further discussion/associated recommendations surrounding them.<sup>13</sup>

Comments in Response to the Commission Staff's Report Filed on May 30, 2019

Association of Businesses Advocating Tariff Equity

ABATE strongly supports the Staff's first recommendation. ABATE also supports the Staff's second recommendation, along with the associated recommendation that the Commission not pursue a Michigan forward capacity tracking tool at this time. However, ABATE strongly opposes the Staff's fifth recommendation.

When discussing its opposition, ABATE initially takes issue with the way the Staff couched its fifth recommendation, asserting that it "is completely inconsistent with the positions expressed by several parties in this proceeding and incorrectly suggests that there was no stakeholder support for lifting the ban on DR participation for bundled retail customers." ABATE's comments, p. 5. To underpin its assertion, ABATE highlights the three sets of written comments it submitted,

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<sup>13</sup> Staff's report also includes Appendix B containing updated capacity demonstration filing requirements for planning year 2023/24.

included within Appendix A, along with the acknowledged stakeholder support discussed within the Staff's report itself.

ABATE avers that there is no justification as to why utilities could not incorporate DR participation by bundled retail customers into their planning processes the same way that they have dealt with other planning uncertainties over the years. ABATE specifically suggests that utilities "could incorporate a range of potential DR penetration levels into their planning processes to ensure that their plans adequately capture a range of potential outcomes." ABATE's comments, p. 6. ABATE further posits that the concerns raised about bundled retail customer DR participation in RTO markets can be addressed and resolved through a collaboration model between utilities and CSPs, similar to the tariff-based Indiana model described in the Staff's report, which, as a regulated DR tariff, would allow for Commission review and approval in a contested proceeding and would also preserve an intermediary role for utilities in the DR participation process.

ABATE recalls its prior comments about how the current ban on DR participation by bundled retail customers in the RTO markets is discriminatory and how it unnecessarily limits the scope of DR in Michigan simply because of a customer's power supply source. ABATE contends that "this artificial barrier to the expansion of DR hinders Michigan's efforts to meet its energy conservation and environmental goals." *Id.*, p. 7.

ABATE concludes with a summation of benefits DR can provide and urges the Commission to reject the Staff's fifth recommendation and require utilities to expeditiously file proposed DR tariffs akin to those in Indiana.

### Consumers Energy Company

Consumers states that many of the Staff's recommendations are consistent with its views and merit careful consideration by the Commission, particularly the Staff's third and fifth recommendations. Consumers asserts that, because of utilities' DR knowledge and control, utility-administered DR programs "provide the highest system performance and broadest financial benefits to customers." Consumers' comments, p. 2. Consumers notes the immediate implementation of its integrated resource plan (IRP) following Commission approval in Case No. U-20165 and states that retaining the DR aggregation ban on bundled retail load ensures that its IRP goals remain attainable. Consumers further supports the Staff's suggested MISO revisions given the utility information gap that exists with regard to aggregated DR resources in the market.

### Advanced Energy Management Alliance

AEMA generally agrees with the Staff's first through fourth and sixth recommendations. While also agreeing with the Staff's fifth recommendation, AEMA nevertheless urges the Commission to consider the comments it submitted regarding directing utilities to develop an ARC-utility collaboration model or to describe their current partnership with ARCs to deliver DR opportunities to customers today.

In more detail, AEMA contends that "[t]he knowledge, experience, and technology that ARCs have can be leveraged to ensure [utility DR] program goals are achieved in a cost-effective, reliable manner and maximize customer participation in these programs for the benefit of both the RTOs and Michigan ratepayers." AEMA's comments, p. 3.

AEMA discusses the falling costs, and resulting increased use, of flexible and grid-connected technologies and posits that, in order to leverage the benefits of, and manage, these new technologies, aggregation and technology platforms that can manage and optimize everything in

one location will become essential. According to AEMA, “DR aggregation frameworks that flow through utilities will help enable this more dynamic and interconnected future and maximize benefits and minimize costs during the transition.” *Id.*, pp. 3-4.

AEMA encourages both Consumers and DTE Electric to expand the use of DR platforms for optimizing flexible resources onto their systems and to take maximum advantage of the capabilities of third-party providers if such relationships do not currently exist. AEMA avers that the resource siting trend noted on page 90 of the June 7, 2019 order in Case No. U-20165 “will only increase the importance of aggregation,” which AEMA states is recognized in a report commissioned by the Public Service Commission of Arkansas. AEMA’s comments, p. 4. AEMA opines that “[d]eveloping successful utility-ARC partnership models for DR programs will ensure . . . benefits are leveraged today and will set Michigan up for success in the future.” *Id.*

#### DTE Electric Company

DTE Electric agrees with the Staff’s recommendation to retain the prohibition on third-party aggregation of bundled utility load but disagrees with the Staff’s recommendation regarding third-party aggregation of choice load. In this regard, DTE Electric reiterates its comments set forth in Appendix A to the Staff’s report, specifically that issues identified by the Staff should be resolved prior to third-party aggregators being allowed to act as MPs for choice load, not after.

#### Michigan Electric and Gas Association

MEGA supports the Staff’s recommendations regarding technical and policy matters concerning the use of DR aggregation in Michigan, particularly highlighting its support for the Staff’s third and fifth recommendations. According to MEGA, maintaining the prohibition on third-party DR aggregation for other than AES load “is key to preserving the integrity and continued robust development of utility DR programs in the state,” and “additional insight from

MISO can . . . be used to adjust the utilities['] and AESs['] peak load contribution as appropriate to ensure those resources are properly considered in the evaluation of Michigan capacity requirements.” MEGA’s comments, pp. 1-2.

### Discussion

The Commission appreciates and thanks the stakeholders involved in this docket for their time and collaborative efforts. The Commission is very pleased with the robust discussions that took place with regard to these additional aggregated resource issues. As discussed in further detail below, the Commission finds that the Staff’s recommendations set forth in its report are reasonable and sound and should largely be adopted at this time.

In its first recommendation set forth above, the Staff recommends that the Commission allow third-party aggregators the ability to directly bid aggregated DR for choice load into the RTO markets, a variance from what the Commission previously decided in the September 15 order. ABATE, AEMA, MEGA, and Energy Michigan support the recommendation, while Consumers and DTE Electric oppose it.

Following the September 15 order, unintended interpretation issues arose, where ARCs were, as a result of the order, questioning if they needed to be licensed as an AES in Michigan. Also, as identified by the Staff, there is at least one third-party aggregator who is currently, and has been, directly registering aggregated DR for retail choice load into the market as a third-party aggregator, despite the Commission’s September 15 order. Staff’s report, p. 7. Given this; jurisdictional concerns, including the Commission’s present lack of jurisdiction over third-party

aggregators; the ineffectiveness of the limitation set forth in the September 15 order;<sup>14</sup> and the fact that the Staff's recommendation aligns with current RTO practices and removes a barrier to DR participation, the Commission finds rescinding this limitation to allow third-party aggregators to directly bid aggregated DR for retail choice load into the market to be appropriate at this time. By doing this, particularly within a capped retail choice load environment,<sup>15</sup> more learning can be achieved to see if the ability to aggregate DR should be expanded to bundled retail load in the future.

In its second recommendation, the Staff recommends the continued allowance of forward ZRC contracts in capacity demonstrations. As part of this, the Staff also recommends that the Commission not pursue a Michigan forward capacity tracking tool at this time and further discusses how it will endeavor to open up lines of communication with third-party aggregators to better understand product offerings and to monitor the use of aggregated DR in capacity demonstrations. ABATE, Consumers, AEMA, and MEGA support the recommendations. No opposition was filed.

Considering the acceptability of ZRC contracts in the market, the significant financial penalties set forth in such contracts for non-delivery (i.e., non-performance), and the low 6%

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<sup>14</sup> In its report, p. 7, the Staff also states:

Limiting the participation of aggregated AES load in RTO markets to AESs as opposed to ARCs or CSPs does not solve technical or transparency related issues as will be discussed further in this report, primarily because AESs are not involved in the registration or dispatch of third-party aggregated DR products, nor are they privy to such information.

<sup>15</sup> *See*, MCL 460.10a(1)(a), which states, "Except as otherwise provided in [MCL 460.10a], . . . no more than 10% of an electric utility's average weather-adjusted retail sales for the preceding calendar year may take service from an alternative electric supplier at any time."

occurrence of ZRC contracts present in current capacity demonstrations before the Commission,<sup>16</sup> the Commission finds it appropriate to adopt the Staff's recommendation to continue the acceptance of forward ZRC contracts in capacity demonstrations at this time. Although, as mentioned by the Staff, forward ZRCs do not actually exist until the prompt year when created by MISO, the Staff's fourth recommendation provides a way to monitor the illusiveness associated with these resources. The Commission also agrees with the Staff's recommendation to not pursue a Michigan forward capacity tracking tool at this time, because, with or without the tool, the Staff would still need to undergo its own due diligence to review customer contracts and obtain customer load data from the utilities to verify that the aggregated DR resource is feasible when compared to the customer's previous peak load levels. The cost of the tool, lack of stakeholder support, and other limited benefits also support this recommendation from the Staff. *See*, Staff's report, p. 9.

For its third recommendation, the Staff recommends that the Commission direct it and the regulated utilities to work with MISO on developing proposed process changes relative to the sharing of amounts of dispatched aggregated DR at the time of the MISO peak with utilities for those utilities to determine appropriate PLC requirements. According to the Staff:

MISO's capacity requirement in the prompt-year is based upon the PLC. Michigan capacity demonstration requirements adopt MISO's prompt-year PLC as the forward capacity requirement as well. MISO's PLC is based upon the customer's actual load during the single hour of MISO's coincident peak in the previous year. So, if an aggregated DR resource is dispatched at the time of the MISO peak, it would effectively reduce that customer's PLC in the following year, reducing the capacity requirement for that particular customer's AES in the following planning year, even though that AES may not even be aware of the aggregated DR resource. At the same time, the same load reduction would be available on the supply-side in the aggregated DR resource, effectively allowing the same load reduction to be counted twice.

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<sup>16</sup> *See*, Staff's report, p. 10.



When an aggregated DR resource is registered at MISO, the EDC [electric distribution companies] and the RERRA [relevant electric retail rate authority (i.e., the Commission)] are notified of the aggregated DR resource in the prompt-year shortly before MISO's annual Planning Resource Auction (PRA). In most cases, the AES is not, however it is possible that the ARC could inform the AES and/or sell the capacity directly to an AES via ZRC contract. For an aggregated DR resource that is four years forward, only the customer and the ARC are aware of the resource because MISO does not register resources on a forward basis; therefore, there is no process for the EDC and the RERRA to receive notification.

When an aggregated DR resource is dispatched, either by MISO or by the ARC, only the customer and the ARC have first-hand information regarding any dispatched customer load reductions. The EDC, RERRA and the AESs are not aware of dispatch information.

Currently, the EDC provides PLCs to AESs and MISO each year based upon the actual load of the AES customers during MISO's coincident peak hour in the previous year. . . . However, neither the AES nor the EDC have the dispatch data to adjust the PLC for any dispatched load reductions happening during the previous peak as outlined in MISO's tariff. When MISO calls a load reduction, the MP, the ARC in this case, is notified to reduce load accordingly. The MP then decides which customers to call upon to reduce load and tracks that reduction accordingly. The MP is not obligated to inform the AES or the EDC which customers were dispatched. However, MISO should have this information as well as whether the dispatch occurred on peak. If the EDC is unable to adjust the PLC for any load reductions happening during the previous peak, a single load reduction could be counted twice; on the load side in the reduced (unadjusted) PLC and on the supply side as an aggregated resource; potentially creating a reliability problem.

Staff's report, pp. 10-11. Consumers, MEGA, AEMA, and DTE Electric support the recommendation. No opposition was filed; however, MISO verbally indicated opposition at the February 13, 2019 stakeholder meeting where the RTO presented and claimed that there was no issue with its tariff or processes related to PLC calculations.

The Commission believes that those entities that are part of this PLC equation should also be part of any conversations directly impacting PLC amounts, particularly when this information gap could also impact electric reliability. The Commission thus finds that the Staff's third recommendation should be approved to ensure that any dispatched DR, or customer curtailment, is properly communicated to the relevant utility so that the utility has the information necessary to

appropriately add that load back into that customer's PLC amount, in accordance with MISO's FERC Electric Tariff.<sup>17</sup>

For its fourth recommendation, the Staff recommends that the capacity demonstration filing requirements be updated to require any LSE that utilized ZRC contracts in previous capacity demonstrations to provide prompt-year ZRC transfer documentation, as an auditing measure. AEMA generally supports the recommendation. No opposition was filed.

The Commission agrees with this recommendation and finds that it is prudent and should be approved. Given the illusiveness of forward ZRCs, as mentioned above, auditing these resources would allow the Staff to reconcile and verify resources submitted in Michigan's four-year forward construct for capacity demonstrations with those later officially created by MISO as part of the RTO's annual prompt-year capacity construct.

The Staff's fifth recommendation is for the Commission to maintain the ban on DR aggregation for bundled retail load. In its report, the Staff discusses DR aggregation models in Indiana and Pennsylvania, along with the polarized stakeholder viewpoints that came to light when the Staff asked about any other suggestions that would make stakeholders comfortable with lifting the ban on DR aggregation for all customers in Michigan. The Staff also highlights the presentations made by Consumers and AEMA on this topic on May 3, 2019, and states that there were no *verbal* statements made during that stakeholder meeting in support of lifting the current

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<sup>17</sup> Per MISO's FERC Electric Tariff, Module E-1, Section 69A.1.2.1.d., Preferred and Daily Peak Load Default Methods, 31.0.0:

The Prior Summer Retail Customer Coincident Peak shall be adjusted (upward) to reflect any demand that was reduced during the Coincident Peak hour through the effect of a Load Modifying Resource, or through the effect of an Energy Efficiency Resource during the first four (4) full Planning Years of the EE [energy efficiency] Resource's existence.

ban. The Staff further agrees with the utilities that allowing aggregation of bundled retail load “would introduce additional uncertainty and complexity into the integrated resource planning process, the distribution planning process, [and] provide operational challenges that would need to be worked through and could result in fluctuating costs to ratepayers if not implemented in a controlled, transparent manner.” Staff’s report, p. 17. The Staff does however state that, “[i]n the meantime, should the Commission wish to explore expanding DR opportunities for bundled customers utilizing ARCs, the utilities could be encouraged to develop an ARC-utility collaboration model and/or directed to present proposals in IRP cases, rate cases, or DR reconciliation cases.” *Id.* Consumers, DTE Electric, and MEGA support the Staff’s recommendation to not lift the ban, while ABATE opposes the recommendation, and AEMA supports the Staff’s added recommendation to explore expanding DR opportunities without lifting the ban.

While the Commission agrees with the Staff’s recommendation to not lift the current ban on aggregated DR for bundled retail load at this time, the Commission endorses the Staff’s recommendations to encourage utilities to either develop an ARC-utility collaboration model or present an ARC-utility proposal to expand DR opportunities for their bundled customers in upcoming cases. Such a collaborative approach could assist in identifying additional options for the scaling up of aggregated DR for all customers—an issue of increasing importance considering

trends in recent FERC rulings/dockets involving other resources.<sup>18</sup> As other DR-related recommendations are included in the Commission’s initial draft of the Statewide Energy Assessment (SEA) in Case No. U-20464, the Commission finds that addressing the recommendation to investigate pursuing ARC-utility collaboration models may be better addressed with stakeholders alongside the other DR-related recommendations made in the SEA. Therefore, the Commission is deferring this ARC-utility collaboration recommendation for consideration until it can be combined with other DR-related recommendations made in the SEA. In the interim, proposals made by utilities to either develop an ARC-utility collaboration model or present an alternative ARC-utility proposal to expand DR opportunities in their next IRP case, rate case, or DR reconciliation case, wherever most practicable, would be welcomed and evaluated within those cases. Such proposals could assist utilities in reaching their DR goals, while still under their own control, and will also help to start putting a system in place should FERC reconsider the current opt-out provision for states relative to aggregated DR set forth in Order 719.

For its sixth recommendation, the Staff recommends that, because the aggregated DR market and framework are still under development, aggregated EERs, aggregated electric storage, and

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<sup>18</sup> On February 15, 2018, FERC issued an order establishing reforms to remove barriers to the participation of electric storage resources (those resources capable of receiving electric energy from the grid and storing it for later injection back into the grid as electric energy) in the capacity, energy, and ancillary service markets operated by RTOs/ISOs. Final Rule, Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators, Docket Nos. RM16-23-000 and AD16-20-000, 162 FERC ¶ 61,127 (2018) (Order 841). In its Order on Rehearing and Clarification, Docket Nos. RM16-23-001 and AD16-20-001 (2019) (Order 841-A), FERC affirmed its decision in Order 841 to not include, in contrast to Order 719, an electric storage resource opt-out provision for states (for electric storage resources connected to the distribution system or behind the meter). FERC stated, “Order No. 841 concluded that states cannot directly prohibit electric storage resources from participating in the wholesale market because doing so would invade [FERC’s] ‘exclusive jurisdiction over the wholesale markets and the criteria for participation in those markets.’” Order 841-A, p. 42. Here, FERC distinguished electric storage resources from DR resources. *Id.*, pp. 45-48.

aggregated DERs not be accepted as capacity resources in Michigan’s four-year forward capacity construct, unless such resources have been qualified by MISO and appropriate documentation, including an affidavit, is provided. The Staff also recommends that the Commission direct it and regulated utilities to continue to work with MISO on any proposed tariff provisions related to these third-party aggregated resources in the market to ensure that any impacts from these resources are communicated to those entities charged with calculating appropriate PLC amounts. In its report, the Staff discusses a recent FERC ruling concerning the participation of EERs in wholesale markets<sup>19</sup> and mentions that 313 ZRCs of energy efficiency cleared in the PRA for MISO’s recent 2019/20 planning year. The Staff also discusses Orders 841 and 841-A and the current status of aggregated DER participation in wholesale markets and whether the opt-out provision for states in Order 719 will also be included in FERC’s ruling for DER participation, which the agency has yet to decide. According to the Staff, there are “similar operational, planning, tracking, and jurisdictional concerns between DR and DER aggregation,” and “DER aggregation could have a widespread impact on EDCs and would involve complex interactions between aggregators, LSEs,

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<sup>19</sup> See, Order on Petition for Declaratory Ruling, 161 FERC ¶ 61,245, Docket No. EL17-75-000 (2017). In this order, p. 26, FERC found that it:

has exclusive jurisdiction over the participation of EERs in wholesale markets; that RERRAs may not bar, restrict, or otherwise condition the participation of EERs in wholesale electricity markets unless [FERC] expressly gives RERRAs such authority; and that Order No. 719 does not provide for a RERRA to exercise an opt-out and bar or restrict the sale into the wholesale electricity markets of EERs originating in their state or local area.

In distinguishing EERs from DR resources, FERC stated, “Unlike demand response resources, EERs are not likely to present the same operational and day-to-day planning complexity that might otherwise interfere with an LSE’s day-to-day operations.” *Id.*, p. 29.

the EDC, and the RTO.” Staff’s report, pp. 19-20. AEMA generally supports the recommendations. No opposition was filed.

The Commission agrees with these recommendations. If aggregated EERs, aggregated electric storage, and aggregated DERs are acceptable to MISO and are able to be delivered in MISO’s PRA, the Commission finds that they, too, should be accepted as a capacity resource in Michigan’s four-year forward capacity demonstration, subject to the additional prompt-year documentation requirements set forth in the revised Capacity Demonstration Process and Requirements for Planning Year 2023/24 (Appendix B to Staff’s report), which the Commission finds should be approved and attached to today’s order in Case Nos. U-20154 and U-20590,<sup>20</sup> being the more appropriate dockets to house these filing requirements.<sup>21</sup> The Commission also agrees that the Staff and utilities should be directed to work with MISO on tariff provisions that may be proposed in the future related to these third-party aggregated resources, for the same reason as above—to ensure those part of the PLC equation are also involved in any conversations directly impacting PLC amounts, in order to guarantee accuracy and to safeguard against any potential electric reliability issues in the future. With this, and the additional documentation being requested for all third-party aggregated resources, including DR for choice load, the Commission finds that the Staff and utilities should work with the relevant RTO (whether it be MISO or PJM), to reduce barriers related to providing documentation in Michigan’s capacity demonstration process.

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<sup>20</sup> Case Nos. U-20154 and U-20590 are the dockets that had/have been assigned for electric utilities to file their required capacity demonstrations pursuant to MCL 460.6w(8) for the 2022/23 and 2023/24 planning years, respectively.

<sup>21</sup> Minor changes to these filing requirements, to make clear the applicability of these filing requirements for planning year 2023/24 and beyond, are discussed in today’s order in Case Nos. U-20154 and U-20590.

THEREFORE, IT IS ORDERED that:

A. The requirement set forth in the September 15, 2017 order in Case No. U-18369, requiring alternative electric suppliers to be the entity to bid demand response into regional transmission organization wholesale markets for their customers, is rescinded.

B. The ban on Michigan retail electric customers (either individually or through aggregators) of Commission-jurisdictional electric utilities from bidding demand response resources into regional transmission organization wholesale markets shall continue at this time.

C. The revised Capacity Demonstration Process and Requirements for Planning Year 2023/24, attached as Appendix B to the Commission Staff's report, are approved and attached to the August 8, 2019 order in Case Nos. U-20154 and U-20590 as Attachment A.

D. The Commission Staff and Commission-jurisdictional electric utilities are directed to work with the relevant regional transmission organization in accordance with this order.

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 the Attorney General – Public Service Division at [pungpl@michigan.gov](mailto:pungpl@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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Sally A. Talberg, Chairman

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Norman J. Saari, Commissioner

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Daniel C. Scripps, Commissioner

By its action of August 8, 2019.

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Barbara S. Kunkle, Acting Executive Secretary



# PROOF OF SERVICE

STATE OF MICHIGAN )

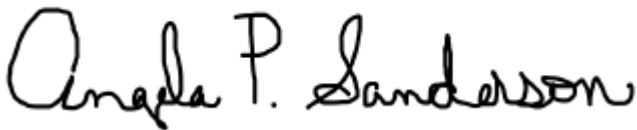
Case No. U-20348

County of Ingham )

Brianna Brown being duly sworn, deposes and says that on August 8, 2019 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 8<sup>th</sup> day of August 2019.



\_\_\_\_\_  
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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