STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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

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MICHIGAN PUBLIC SERVICE COMMISSION STAFF COMMENTS

I. Introduction

The Michigan Public Service Commission Staff (Staff) submits the following responses to the Michigan Public Service Commission's (MPSC or Commission) questions listed in its October 29, 2020 Order in Case No. U-20348. Staff submits additional comments that the Commission may wish to consider when making its decision.

II. Comments

Q: Should the partial ban on DR aggregation maintained in the August 8 order be lifted to allow full participation of aggregated DR resources in the wholesale markets?

A: Staff does not take a position on whether the partial ban on DR aggregation should be lifted. Instead, Staff provides an analysis of the pros and cons of lifting the ban, as well as highlights potential issues for the Commission's consideration. Below, Staff responds to the questions posed by the Commission as well as offers additional thoughts that the Commission may find useful in their decision-making.

Q. Should the Commission delay its final decision on lifting the partial ban on DR aggregation until the Commission receives greater clarity from the RTOs and FERC, including around implementation of Order 2222? If the Commission determines the ban should be lifted, should the effective date coincide with the implementation of Order 2222?

A: Currently, there are several Requests for Clarification and/or Rehearing pending in RM18-9, which may impact the ultimate outcome of Order 2222. The Commission may wish to continue to track this proceeding, as well as any court challenges to Order 2222, before issuing a final decision on whether to lift the DR aggregation ban for bundled retail load. However, there has been robust discussion surrounding DR aggregation through several MPSC stakeholder processes and Commission Orders in recent years, so the lack of clarity surrounding Order 2222 should not preclude Commission action on this issue.

Should the Commission determine the ban should be lifted, alignment with the implementation of Order 2222 would help ease coordination, information/data sharing, double counting, and other concerns. As the RTOs head towards Order 2222 compliance, they will be developing DER participation models and addressing many of the issues above, all of which will interact with state regulatory efforts on demand response, should the Commission allow aggregation to occur through that model.

Should the Commission wish to lift the DR ban ahead of the implementation of Order 2222, at a minimum, the Commission should ensure that any outstanding concerns surrounding DR aggregation be addressed before implementation. Staff would note that these concerns, detailed further below, are multi-jurisdictional and would likely require

action by both the MPSC and the relevant RTO. Staff would note that preliminary efforts to improve MISO's Aggregator of Retail Customer (ARC) tariff procedures are underway and MISO has stated its intent to make further improvements, tentatively in 2021. To the extent that MISO's new rules improve upon and address ARC coordination, information/data sharing, double counting, and other concerns; this may enable the MPSC to lift the ban at an earlier date than otherwise would have been feasible.

Q. Are the safeguards put in place for aggregation of DR for customers participating in the retail open access market sufficient or are additional measures needed if the current ban is lifted?

A: The current safeguards put in place for aggregated open access customers are sufficient, as data and information flow are dictated by the RTO tariff and/or Business Practice Manuals. To the extent that the RTO tariff is updated as an impact of Order 2222 compliance, particularly with regards to metering and settlement data and privacy, Staff recommends tracking that process and adapting accordingly. As detailed in Staff's response to question 4 below, currently the MPSC only receives a limited amount of confidential data during the registration process.

Should the MPSC choose to lift the ban, Staff recommends that regulated utilities should publicly post information and send out mailers stating that DR aggregation is not regulated by the Commission. Both methods should include information to contact the Better Business Bureau or the Attorney General's Office if the customer wishes to report

the aggregator for any misleading or poor business practices. While the aggregator will not be under the MPSC's jurisdiction, this will help provide the customer with additional resources to mitigate dishonest activity.

Q. Are current Commission processes and procedures, including capacity demonstrations, sufficient to ensure visibility into DR aggregator activity and related accounting for maintaining operational reliability and supporting utility resource planning and procurement? If not, what changes are needed?

a. How should double counting of DR be avoided, particularly for customers currently enrolled in utility DR programs?

A: Avoidance of double counting will largely occur through RTO procedures, primarily through the DR registration process. As noted in the May 2019 Staff report and MISO tariff,[1] the aggregator is required to submit a variety of information to the RTO upon registration, including retail customer account number and full address, load reduction amount, Load Zone CP Node, selected measurement and verification methodology, and the relevant Local Balancing Authority (LBA), Load Serving Entity (LSE) and Relevant Electric Retail Regulatory Authority (RERRA) for each DR resource. This information is verified by the RERRA, LBA, or LSE and each entity gives MISO their recommendation to

[1] MPSC Case No. U-20348, Demand Response Aggregation Staff Report and Recommendations, May 30, 2019; see also MISO Tariff Module C, Section 38.6. Similar requirements are in place at PJM.

approve or not approve the DR registration. Reasons for rejection might include incorrect customer account numbers or infeasible MW reduction capability. If a registration is rejected, MISO will take this under advisement and give the aggregator a chance to revise and update the flawed information. Ultimately, it is MISO's responsibility to ensure this data is accurate and give final approval for the DR resource to register.

As aggregators begin to develop programs that target small commercial and residential customers, identification of double counting will become more challenging because the RTO does not verify customer specific data outside of the verification steps above. This verification burden largely falls on the LSE and LBA, who must check that aggregated customers are not already participating in a retail utility demand response program. The sheer number of small commercial and residential customers that could sign up for a utility program and then subsequently sign up for an aggregation program would create challenges that make double counting very hard to identify in a timely manner. The larger commercial customers are interconnected at higher voltages and are more easily identifiable by utilities, aggregators, and the RTO. However smaller commercial and residential customers are not as easily identifiable, especially at an RTO level, because they are interconnected on the distribution system at lower voltages. While the relevant LBA and LSE will still have the opportunity to review these registrations before RTO approval, robust communications channels must be in place to ensure these entities are able to complete their review within the ten

business days as outlined in MISO's tariff.[2] This is particularly important because if the LSE/LBA does not take action with the ten business days, MISO's practice is to approve the aggregated DR registration by default. While these communication channels do currently exist in RTO tariffs and are in the process of being improved, the MPSC may wish to consider any actions it could take to facilitate information flow or delay removal of the ban until the RTO has the opportunity to complete its improvements. As noted elsewhere, these improvements will likely occur in 2021, possibly in coordination with Order 2222 compliance.

b. To what extent should Commission processes and procedures interact and/or overlap with RTO processes to ensure proper registration, information sharing, and transparency? Are RTO processes alone sufficient to provide visibility into DR aggregator activity?

A: As detailed above, the RTO would handle most aspects of aggregated DR registration and information sharing, though the MPSC, as the RERRA, would play a role in the verification process. However, as an added step, MPSC Staff recommends continuing to require LSE's to provide forward ZRC contracts, coupled with signed affidavits, for capacity demonstration purposes. This provides the MPSC with an added layer of visibility into aggregated DR and gives the MPSC the ability to determine whether enough ZRCs already exist in the prompt-year market

[2] MISO Tariff Module C, Section 38.6, pp 83-88.

to cover the total amount of ZRCs submitted in capacity demonstrations via forward ZRC contracts.

As lifting the DR aggregation ban would mean more DR resources would be FERC jurisdictional and participate in wholesale markets, Staff recommends coordinating the MPSC's efforts with changing RTO rules surrounding DR aggregation. In particular, Staff recommends continuing to track the progress of ER20-2591, MISO's preliminary update of Aggregator of Retail Customer (ARC) tariff procedures, as well as future updates that MISO has stated it intends to make. MISO's preliminary update is currently pending FERC approval and MISO intends to update its rules further in 2021 and/or in coordination with Order 2222 compliance. The creation of robust wholesale DR aggregation market rules may render additional MPSC regulations unnecessary. Staff expects additional RTO rules to be developed under FERC Order 2222 compliance, and those rules may easily apply to both existing DR aggregators as well as the DER aggregators. In fact, as FERC notes, DR aggregators may choose to participate as DER aggregators, in which case they would certainly be subject to developing RTO tariff requirements.

c. If it is found that more information or oversight is needed for operations, planning, or customer protection and disclosure; are there statutory limitations that would stymie the Commission's ability to obtain sufficient information on DR aggregation?

A: The MPSC does not have explicit statutory authority to regulate DR aggregators. In Staff's May 2019 Report in this docket, Staff noted that it is unclear if the Commission has the authority to require participation in a registration process for DR aggregators. While this concept may be worth pursuing, particularly as DER aggregators begin to form under Order 2222 compliance, legislative action would likely be required should the Commission be interested in pursuing this option. While an MPSC DR aggregator registration process may help alleviate concerns, it is also worth noting that this authority may conflict with federal jurisdiction if the ban was lifted, particularly considering DER aggregators are FERC jurisdictional entities under Order 2222.

However, the MPSC will be able to obtain visibility into DR aggregations through the RTO processes, though such information is subject to confidentiality provisions. The MPSC would also be able to request additional confidential information (such as peak load contributions of aggregated DR resources) from the RTO upon request. As above, if the MPSC chooses to allow DR aggregation of bundled customers, most of the duties surrounding operations, planning, and customer protection will be transferred to the RTO and become FERC jurisdictional.

III. Additional MPSC Staff comments

Currently, the Commission bans third-party aggregation of DR for full service electric customers. In its 2016 order prohibiting such a practice, the Commission enumerated the following concerns:

> (1) operation 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.[3]

While the Commission addressed some of these concerns in the 2019 DR aggregation stakeholder process and subsequent Order,[4] some remain unresolved and will be discussed below. Staff compiled the following arguments for and against allowing third-party aggregators of DR, as well as a detailed list of steps the Commission should consider taking if it decides to lift the prohibition.

<u>Pros</u>

1. Competition allows more options to customers from which to choose.
    a. For example, third-party aggregators may pursue DR capacity from customers that are typically difficult to enroll in DR, such as small commercial customers.

[3] MPSC Case No. U-16020, 3/29/2016 Order, p 7.
[4] MPSC Case No. U-20348, 8/8/2019 Order.

b. Competition may also motivate utilities to increase their DR efforts.

2. Smaller companies may be more innovative and could offer novel DR products to customers.
    a. Smaller, DR-focused companies may be more responsive to their customers' needs and able to dedicate more time to help customers understand their DR options and explore different strategies and enabling products to help lower their demand.
3. Aggregators from outside of Michigan may have more proven success with DR from experience in other jurisdictions.
4. Aggregators' business models are difference from those of utilities, and likely do not require special incentives or regulatory mechanisms beyond ensuring communication and information sharing.
    a. Aggregators are inherently driven to increase their DR portfolio and may be able to sign up additional DR customers that utility programs have missed.
5. MISO already confirms DR load with the customer's energy supplier (Load Serving Entity) at the customer level. The retail wires company (Electric Distribution Company) is also involved and provides a further check against double counting upon aggregated DR registration at MISO.
6. Allowing DR aggregation would align better with FERC policy on DER aggregation and allow DR to be aggregated with the rest of DERs.
    a. This would also eliminate a wholesale market barrier and potentially enable greater DER participation in Michigan.

b. Coordination, information sharing, data sharing, double counting procedures, and a DER participation model are all under development per Order 2222 and would likely help resolve DR aggregation concerns brought up by the MPSC in this docket.

Cons

1. Lifting the ban on aggregation is irrevocable.
    a. Customers would already be contractually obligated to provide DR to aggregators
    b. Load serving entities (LSEs) have to guarantee their DR capacity 4 years out
2. The Commission loses oversight and rate regulation over a potentially significant number of customers and amount of load.
    a. Lifting the ban may make it challenging to offer a utility program as a non-wires alternative that aids with operational challenges and differs traditional investment due to the potential that customers are part of an aggregator program instead of a utility program.
    b. Lose the benefits of the DR framework for aggregated customers, such as reporting, cost tracking, and monitoring customer engagement. This may lead to increased complaints and customer dissatisfaction, which the Commission could not do anything about.
    c. The Commission would have much more limited insight into DR activity in the State, as much of the information would be confidential and only accessible to limited Commission Staff. This greatly complicates the ability of

the customer assistance division in processing complaints or answering questions.

   i. Aggregators would likely increase the number and types of unregulated DR programs available to customers, but Staff would have to refer customer complaints to FERC.

d. If the Commission desired reporting or licensing requirements for aggregators, then legislation granting the MPSC that authority would likely be necessary. That authority may conflict with federal jurisdiction if the ban was lifted, particularly considering DER aggregators are FERC jurisdictional entities under Order 2222.

   i. Requiring aggregators to report to the MPSC and inform the incumbent utility of their activity may be ideal to avoid double counting. However, it is unclear whether the MPSC has the authority to do so.

e. Aggregated DR may still be a capacity resource in IRPs if they have utility programs or have contracted for capacity with an aggregator, but the utility would no longer be allowed to collect costs for that DR through rate cases.

   i. This would add some uncertainty to the planning process, as any aggregated DR contracts would have to accounted for closer to the Delivery Year (as late as four years ahead during the capacity demonstration), instead of being able to project utility DR program growth in IRP models.

f. MISO would be solely responsible for the burden of measurement and verification, including avoiding double counting, of DR resources.

3. Utilities already have access to customer data and have an established relationship with customers.
4. Absent using a platform such as industry standard Green Button Connect My Data, third-party aggregators would have to meter DR load separate from the utility's existing meter or pay the utility for access to customer data.

IV. A Potential Roadmap to Lifting a Ban on Third-Party Aggregation for Demand Response

Staff offers its thoughts on the steps needed to lift the current ban on DR aggregation, should the Commission make that decision. While this is not an exhaustive list, Staff hopes the listed challenges and steps needed to mitigate them will assist Commission decision-making.

1. Require utilities to notify customers that DR programs are unregulated by the MPSC, and request aggregators to do likewise.
2. Aggregated DR resources must still meet all RTO requirements and will need to respond to the RTO's instructions when called upon, just like RTO-participating utility DR resources today.
    a. If the Commission chooses to allow third-party aggregation, then the decision should be communicated to the RTO.
3. The RTO will ensure that any DR resource attempting to register with the RTO will avoid double enrollment and cross-subsidization. Compensation for participation in

DR programs would be agreed upon between the aggregator and the customer at rates not regulated by the Commission.

4. Customer data should be made available and easily accessible via Green Button Connect My Data (CMD), the energy-industry standard for easy and secure sharing of utility customer energy data.
5. The utility would have to acquire capacity for all customers, including aggregated DR load.
    a. That capacity could come from aggregated DR, utility affiliate DR, or anywhere else. The incumbent utility could purchase DR from any of these parties to fulfill their capacity commitment.

V. Limited effects on Michigan's PJM footprint

Indiana Michigan Power uses the Fixed Resource Requirement (FRR) under PJM's tariff[5] to demonstrate that it has enough capacity to serve load. Per the PJM tariff, I&M submits a FRR Capacity Plan to serve ***all*** load in its footprint, including choice load.

According to the PJM Resource Adequacy Agreement, Alternative Electric Suppliers (AES) must either:[6]

1) Pay I&M for capacity through the State Compensation Mechanism (SCM), established by the MPSC in Case No. U-17032; or

[5] PJM Manual 18: PJM Capacity Market, https://www.pjm.com/-/media/documents/manuals/m18.ashx, pp 211-231.
[6] PJM Resource Adequacy Agreement, Schedule 8.1.D-FRR Capacity Plans.

2) Avoid paying the SCM by providing their own capacity and dedicating that capacity to I&M's FRR plan.

Ultimately, I&M, under FRR tariff rules, is responsible for capacity at the wholesale level. Lifting the DR aggregation ban would have a limited ***wholesale*** impact on I&M, as any Curtailment Service Providers (CSPs) or AES aggregated DR would still need to dedicate that capacity to I&M's FRR Plan, per #2 above. However, I&M, AESs, and CSPs in its footprint should still be required to follow the steps outlined by Staff above, as removing the ban would still have retail effects.

VI. Alternative Method to Lifting the Ban on Third-Party Aggregation

The Commission could permit third-party aggregators to only buy and sell DR within a particular utility service territory. Essentially, third-party aggregators would administer a DR program in parallel with the utility. End use customers would be able to utilize the services of aggregators, as long as the incumbent utility enrolls all DR in their footprint at the RTO level. This would also be a natural extension of the Commission's recent Order requiring DTE and Consumers to report on the exploration of DR partnerships with DR providers.[7] This would also build off of the Commission's August 2019 Order in this docket that encouraged the development of ARC-utility partnerships with the thought that such an approach would assist with identifying options for scaling up aggregated DR for all customers.[8]

[7] MPSC Case No. U-20628, 10/29/2020 Order, pp 9-10.
[8] MPSC Case No. U-20348, 8/8/2019 Order, pp 19-20.

This is the model the Indiana Utility Regulatory Commission adopted in 2010 for both their MISO and PJM utilities.[9] However, while I&M has had relative success using aggregators in its footprint, to date no aggregators participate or acquire DR in conjunction with Indiana's MISO utilities. The MPSC may wish to consider the lack of aggregation in its decision to pursue this option.

It is also important to note that the feasibility of this alternative depends on the limits of the MPSC's statutory authority. It is unclear whether the MPSC currently has the authority to implement this change, or whether this would require action by the State Legislature.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

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Dated: November 30, 2020

[9] MPSC Case No. U-43566, 7/28/2010 Order.