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July 9, 2024

LA PUBLIC SERVICE COMM
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VIA HAND DELIVERY

Terri Bordelon
Louisiana Public Service Commission
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602 N. Fifth Street
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Baton Rouge, LA 70802

Re: Docket No. R-35135, Louisiana Public Service Commission, ex parte. In re: Rulemaking Pursuant to the General Order Dated March 7, 2019 in Docket No. R-34948 to Develop Rules Under Which Third-Party Aggregators of Retail Customers Seeking Authority to Operate will be Allowed to do Business Within the LPSC's Jurisdiction.

Dear Mrs. Bordelon:

Enclosed for filing in the above referenced matter is Staff's Initial Staff Report and Recommendation and Request for Comment on Proposed Rules. Staff is seeking comments and feedback on these proposed rules by September 15, 2024. Those comments should also address any additional issues that any commenting party believes should also be addressed in this rulemaking. Reply comments will be due by November 22, 2024.

If you have any questions about this filing, please do not hesitate to contact me.

Sincerely,

Handwritten signature of Lauren Temento Evans

Lauren Temento Evans

Encl.
cc.: Service List (via email)

LOUISIANA PUBLIC SERVICE COMMISSION

DOCKET NO. R-35135

LOUISIANA PUBLIC SERVICE COMMISSION, EX PARTE.

In re: Rulemaking Pursuant to the General Order Dated March 7, 2019 in Docket to Develop Rules Under Which Third-Party Aggregators of Retail Customers Seeking Authority to Operate will be Allowed to do Business Within the LPSC's Jurisdiction

INITIAL STAFF REPORT AND RECOMMENDATION AND REQUEST FOR COMMENT ON PROPOSED RULES

I. INTRODUCTION

This docket was initiated by a “Notice of Proceeding” issued on March 7, 2019, pursuant to Louisiana Public Service Commission (“LPSC” or “Commission”) General Order dated March 7, 2019, (Docket No. R-34948, *In re: Rulemaking to study the implications of participation of Aggregators of Retail Customers to determine whether, and under what conditions, such activity should be allowed in the Louisiana Public Service Commission's jurisdiction*)(“ARC General Order”). Sections 4 and 5 of that Order state:

Section 4. Third-Party Aggregators of Retail Customers may be allowed to conduct business in LPSC-jurisdictional areas. A Third-Party Aggregator of Retail Customers that wants to access, combine, and/or enroll Louisiana Retail Customers in RTO demand response markets may petition the Commission for the opportunity to do so. As part of that petition, the Third-Party Aggregator of Retail Customers must consent to the jurisdiction of the Commission to regulate its business practices and its interaction with retail customers, as well as consent to reporting requirements to the Commission and to the utility or utilities whose customers are being impacted. It also must demonstrate, in a docketed proceeding that requires proper notice and follows the requirements of the Rules of Practice and Procedure of the Commission, to the satisfaction of the Commission, that its proposed practices are just and reasonable and in the best interests of ratepayers.

Section 5. The Commission will notice in its Official Bulletin, subject to intervention, a rulemaking proceeding for the purpose of developing rules under which Third-Party Aggregators of Retail Customers seeking authority to operate under Section 4 of this Rule will be allowed to do business within the LPSC's jurisdiction, including the interaction with Louisiana Retail Customers, Electric Public Utilities, and the Commission.

Notice of this docket was published in the Commission’s Official Bulletin No. 1188, dated March 8, 2019. Interventions were filed by Southwestern Electric Power Company (“SWEPCO”), Marathon Petroleum Company, LP (“Marathon”), Entergy Louisiana LLC (“ELL”), the Louisiana Energy Users Group (“LEUG”), the Alliance For Affordable Energy (“AAE”), Cleco Power, LLC (“Cleco”), the Advanced Energy Management Alliance (“AEMA”), the Lafayette Utilities System (“LUS”), Pointe Coupee Electric Membership Corporation (“PCEMC”), the Association of Electric Cooperatives (“ALEC”), Northeast Louisiana Power Cooperative (“Northeast”), Walmart Inc. (“Walmart”), and Voltus, Inc. (“Voltus”).

II. BACKGROUND

The purpose of this proceeding is to develop a set of rules that would be applicable to all Aggregators of Retail Customers (ARCs) seeking to operate in the LPSC-jurisdictional portions of the State of Louisiana. In the ARC General Order, the Commission determined that Third-Party ARCs shall be prohibited from, “soliciting, enrolling, or otherwise entering into agreements” with Louisiana retail electric customers in RTO demand response markets or offerings without receiving prior LPSC approval to do so. In order to receive that approval, the Third-Party ARC had to consent to the jurisdiction of the Louisiana Commission, file a docketed proceeding before the Commission seeking approval, demonstrate to the satisfaction of the Commission that its proposed practices are just and reasonable and in the best interests of ratepayers, and consent to reporting requirements to the Commission and to the utility or utilities whose customers would be impacted by the ARCs activities.¹ These restrictions were supported by substantial evidence that allowing Third-Party ARCs’ unfettered access to LPSC-jurisdictional retail customers would be

¹ General Order dated March 7, 2019(R-34948) at 14-16.

harmful to the Commission's Integrated Resource Plan ("IRP") planning requirements and resource planning, which depend upon an accurate evaluation of and reliance upon the needs of utility customers, the assets required to serve those needs, and their demand-side resource potential.² In addition, direct participation by Third-Party ARCs could interfere with and devalue the investments funded by Louisiana ratepayers in advanced metering equipment, which support demand-side resource programs to benefit all retail ratepayers.³ Further, ARC interaction with retail customers raises concerns regarding retail rates, reliability, consumer protections, anti-competitive practices, data and information sharing and privacy, reporting needs, interaction between retail and wholesale rate schedules and programs, and allocation of benefits.

As a result, the Commission adopted a policy to promote demand response in a manner that considers the best interests of all retail customers:

It shall be the policy of the Louisiana Public Service Commission 1). to promote retail demand response programs and rate schedules and to promote participation of demand response to RTO wholesale markets and programs in a manner that preserves the Commission's jurisdiction, authority, and ability to regulate and monitor those efforts; 2). to promote full compliance with the requirements and intent behind its IRP Order and planning requirements; 3). to retain the value of the investment by retail ratepayers in advanced metering system equipment and technologies; 4). to reasonably maximize access to the cost-effective demand-side resources within the LPSC's jurisdiction; 5). to retain for retail ratepayers the benefits created by Demand Response mechanisms that act to delay, or reduce the need for, new generating capacity or purchased power agreements, and 6). To allocate those benefits among retail ratepayers in a fair, just and reasonable manner.⁴

The rules developed in this docket shall be designed to facilitate the participation of Third-Party ARCs consistent with the requirements of the ARC General Order.

This Initial Staff Report is intended to address the major issues that will need to be resolved in establishing rules for ARC participation, through a recommended set of rules under which ARCs

² Final Staff Report and Recommendation, Docket No. U-34948 at 10.

³ *Id.*, at 11.

⁴ *Id.*, at 13-14.

could aggregate customer DR loads and Distributed Energy Resources (“DER”) from LPSC-jurisdictional customers.

A. History of the Order No. 719 Opt-Out

In Order No. 719, FERC required RTOs to permit ARCs to bid demand response on behalf of retail customers directly into RTO markets “unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate.”⁵ FERC allowed that opt-out because it recognized that allowing ARCs to bid into the wholesale markets without permission from retail regulators could have unintended consequences and place undue burdens on Relevant Electric Retail Regulatory Authorities (RERRAs).⁶ FERC explicitly found that, “this action properly balances the Commission’s goal of removing barriers to development of demand response resources in the organized markets that we regulate with the interests and concerns of state and local regulatory authorities.”⁷ The interests and concerns included the potential for harms to load-serving entities including unanticipated demand reductions, the potential for ARCs to engage in gaming, and the need for retail DR programs to be adjusted to accommodate ARC programs.⁸ In Order No. 719-A, FERC stated that it has jurisdiction to regulate the market rules under which an RTO or ISO accepts a demand response bid into a wholesale market, but ruled that:

The Final Rule’s intent and effect are neither to encourage or require actions that would violate state laws or regulations nor to classify retail customers and their representatives as wholesale customers.... The Final Rule also does not make findings about retail customers’ eligibility, under state or local laws, to bid demand response into the organized markets, either independently or through an ARC. The Commission also does not intend to make findings as to whether ARCs may do business under state or local laws, or whether ARCs’ contracts with their retail customers are subject to state and local law. Nothing in the Final Rule authorizes a

⁵ Order No. 719 at P 128.

⁶ *Id.* at P 155.

⁷ *Id.* at P 156.

⁸ *Id.* at PP 134-36.

retail customer to violate existing state laws or regulations or contract rights. In that regard, we leave it to the appropriate state or local authorities to set and enforce their own requirements.⁹

In Order No. 719-B, the Commission held:

As stated above, we reiterate that the intent and effect of this proceeding are neither to undermine nor require changes to existing demand response programs. The Commission also stated in Order No. 719-A that it is up to the relevant electric retail regulatory authorities, if they so choose, to decide whether existing retail aggregation programs provide benefits and whether retail customer participation in wholesale demand response programs, individually or through an ARC, would adversely affect those programs.¹⁰

These orders recognized that FERC could effectively remove barriers to DR without unnecessarily intruding upon or interfering with retail issues related to DR.

B. The Louisiana Commission Adopted the Opt-Out and Measures Promoting Demand Response Participation in Retail and Wholesale Demand Response Programs

The Louisiana Commission did not address ARCs until 2018 when Voltus, Inc. (“Voltus”) began directly soliciting retail customers in Louisiana. The Louisiana Commission opened a rulemaking docket to study the implications of participation of ARCs within its jurisdiction and to determine whether, and under what conditions, such activity should be allowed.¹¹ After proper notice, several parties intervened in that docket. Comments were received from parties and considered before a final order was issued.

The Louisiana Commission’s Order prohibited third-party ARCs from soliciting, enrolling, or otherwise entering into agreements to participate in RTO DR programs, rate schedules, or markets directly with Louisiana retail customers, unless an ARC first sought permission from the Louisiana Commission.¹² As part of that petition, a third-party ARC must consent to the

⁹ Order No. 719-A, at P 54.

¹⁰ Order No. 719-B, at P 27.

¹¹ *Louisiana Public Service Commission, Ex Parte*, General Order, Docket No. R-34948, 2019 WL 1129594 (Mar. 7, 2019).

¹² *Id.* at 14-15.

jurisdiction of the Louisiana Commission to regulate its business practices, its interaction with retail customers, and its reporting requirements to the LPSC and to the utility or utilities whose customers are being impacted. An ARC also must demonstrate, in a docketed proceeding that requires proper notice and follows the requirements of the LPSC's Rules of Practice and Procedure, to the satisfaction of the Louisiana Commission that its proposed practices are just and reasonable and in the best interests of ratepayers.¹³ So, along with the adoption of the opt-out, the Louisiana Commission provided rules to allow ARC participation. No one appealed that Order.

That determination was supported by substantial evidence. The Louisiana Commission has had in place for years Integrated Resource Plan (IRP) rules that require its jurisdictional electric utilities to plan their systems by optimizing the least-cost set of resource options to satisfy the utility's load requirements over the planning period; and that process also requires estimation and consideration of available demand-side resources.¹⁴ Those utilities are required to evaluate all of their resource options in three-year cycles, including their demand-side options, and plan their systems in an optimized and least-cost fashion to serve their forecasted load. Further, the AEMA, a non-profit trade association whose members include demand response providers, filed comments in the Louisiana Commission's rulemaking assuring the Louisiana Commission that it could fully retain its retail jurisdiction by adopting the opt-out *and*, at the same time, capture for customers the benefits that demand response resources are capable of providing. The Louisiana Commission distinguished demand response providers, which work with and through regulated utility partners and do not take retail customer loads directly to wholesale markets without the permission of retail regulators, from a third-party ARC, which has a business plan that calls for direct interaction with

¹³ *Id.* at 15.

¹⁴ *Louisiana Public Service Commission, ex parte. In Re: Development and Implementation of Rule for Integrated Resource Planning for Electric Utilities*, Corrected General Order, Docket No. R-30021, 2012 WL 1454362 (Apr. 18, 2012) (IRP Order).

retail customers without the knowledge and consent of the retail regulators and the retail utilities that serve those retail customers, and who want to be the party directly representing those customers in the wholesale markets.¹⁵ The Louisiana Commission in its order prohibiting direct ARC participation also recognized that many other states had reached similar conclusions based on findings that direct customer participation, including through third-party ARCs, could harm IRP planning requirements, would erode or eliminate the ability of retail regulators to effectively lower costs by reducing the need for new generation or purchased power, and would shift costs to the remaining retail customers.¹⁶

In that same Order, the Louisiana Commission required the opening of a rulemaking proceeding to develop a comprehensive set of retail rate schedules and programs offering retail DR products and allowing for the participation of Louisiana retail customers in retail and wholesale DR programs.¹⁷ That new rulemaking docket was commenced in March 2019 and concluded with a May 2021 Louisiana Commission Order adopting requirements that all electric utilities subject to the jurisdiction of the Louisiana Commission, on an expedited basis, file comprehensive applications offering a variety of DR programs to all customers; and, larger utilities also are required to offer rate schedules allowing participation of commercial and industrial customers in RTO wholesale DR programs, or demonstrate to the satisfaction of the Louisiana Commission why such offerings are not in the best interests of their customers.¹⁸ The Louisiana Commission's order retained for customers the benefits of the DR offerings and limited any fees

¹⁵ *Louisiana Public Service Commission, Ex Parte*, General Order, Docket No. R-34948, 2019 WL 1129594, at *10-11 (Mar. 7, 2019).

¹⁶ *Id.* at *4-5.

¹⁷ *Id.* at *14.

¹⁸ Docket No. R-35136, *In Re: Rulemaking to Determine Need for Rate Schedules and Programs Offering Demand Response Products, Development of Such Rate Schedules and Programs, Determination of Customer Participation in Such Programs, Allocation and Recovery of Program Costs, and Whether Such Programs Shall be Mandatory or Voluntary for Utilities as set Forth in Sec. 3 of the Rule Adopted in General Order Dated March 7, 2019 in Docket No. R-34948*.

paid to utilities to actual administrative costs incurred.¹⁹ That new rule did not impact or eliminate the substantial DR that has existed in Louisiana for decades under older rate schedules, which has provided about 300 MW of DR under retail interruptible rate schedules.

In anticipation of the adoption of these new DR requirements, Entergy Louisiana, LLC (ELL) made two filings to adopt DR offerings. On September 30, 2019, ELL filed an application with the Louisiana Commission to implement an Experimental Interruptible Option, Rider EIO, in Docket No. U-35385, to allow certain qualifying non-residential customers voluntarily contract with ELL to register with MISO as Load Modifying Resources (LMRs) and Demand Response Resources (DRRs) at a specified level of interruptible load above their level of firm service. In exchange, those customers participating in Rider EIO would receive a demand-based, interruptible credit on their monthly bills and would be required to meet specified performance obligations. The bill credits provided to those potential participants were tied to the length of the contractual commitment and to the advanced notice and interruptions per day allowed. That rate schedule was approved by the Louisiana Commission in July 2021.²⁰

In addition, on December 16, 2019, ELL filed an application with the Louisiana Commission to implement a proposed Market Valued Demand Response Rider Schedule MVDR in Docket No. U-35443. Rider Schedule MVDR is available to eligible customers who are not participating in other demand response efforts, and it would allow those customers, or ARCs with minimum firm loads defined in the rate schedule, to participate in the MISO wholesale market as DRRs, LMRs, and/or Emergency Demand Resources (EDRs) after executing an agreement to curtail a specified amount of firm load with ELL acting as the sole Market Participant (MP). That

¹⁹ *Id.*

²⁰ Order No. U-35385 (8/10/21).

rate schedule was approved by the Louisiana Commission on September 28, 2020.²¹ No party challenged the approvals of these rate schedules. In response to the DR rule, Cleco, SWEPCO, and the Louisiana Cooperatives submitted filings that remain under evaluation.

The Louisiana Commission's actions demonstrate that retail DR programs and rate schedules can provide the needed incentives and access for retail customers to provide DR under retail rate schedules. The Louisiana Commission has adopted an opt-out, but it also has taken steps to make sure that its jurisdictional retail customers have access and incentives to participate in retail and wholesale DR programs. The LPSC provides ARCs the potential to aggregate under these retail and wholesale programs with the load serving entity acting as the MP. The LPSC provides a pathway for ARCs to aggregate Louisiana DR and act as the RTO MP by subjecting their activities to some regulation by the Louisiana Commission. The Louisiana Commission has provided a proper pathway for DR participation in the wholesale markets and retail offerings. RTO/ISO markets may not significantly benefit from the elimination of the opt-out because retail DR resources have a path to access the wholesale markets.

C. The U.S. Supreme Court Ruled that the Retail Regulators' Exclusive Jurisdiction Over Retail Rates and Services Were Protected by FERC's Order No. 719 Opt-Out.

The United States Supreme Court in *FERC v. EPSA* determined that FERC could regulate some demand response transactions without impinging on the authority of the States and that FERC had provided sufficient justification for its decision that DR providers and electricity producers should receive the same compensation from wholesale RTO markets.²² The Supreme Court re-affirmed that, under the Federal Power Act (FPA), FERC jurisdiction was limited to the

²¹ *Entergy Louisiana, LLC, Ex Parte, In re: Application for Authorization to Change Rates by Filing Market Valued Demand Response Rider Schedule MVDR*, LPSC Order No. U-35443, 2020 WL 5845719 (Sept. 28, 2020).

²² *FERC v. Electric Power Supply Ass'n*, 577 U.S. 260, 265 (2016).

regulation of “the sale of electricity at wholesale in interstate commerce,” including both wholesale electricity rates and any rule or practice “affecting” such rates, but that retail sales are beyond that authority.²³ While the Court did not directly address whether eliminating the Order No. 719 opt-out would violate the FPA wholesale/retail jurisdictional dividing line or not, it did find that the FERC rules regarding DR participation and compensation in wholesale markets was not a direct regulation of the retail market.²⁴ The Court also ruled that FERC’s “affecting” jurisdiction was limited to rules or practices that “directly affect the wholesale rate.”²⁵ The Court rejected arguments that FERC was merely attempting to usurp state authority over retail sales by promoting wholesale demand response specifically because FERC had also adopted the opt-out rule. The Court ruled that, “[t]he veto power thus granted to the States belies EPSA’s view that FERC aimed to ‘obliterate[]’ their regulatory authority or ‘override’ their pricing policies.”²⁶ Most importantly, the Court ruled:

[T]hat veto gives States the means to block whatever ‘effective’ increases in retail rates demand response programs might be thought to produce. Wholesale demand response as implemented in the Rule is a program of cooperative federalism, in which the States retain the last word. That feature of the Rule removes any conceivable doubt as to its compliance with § 824(b)’s allocation of federal and state authority.²⁷

Cooperative federalism required the State Regulators to retain the important role of blocking direct access to retail DR customers and regulating that role.

Cooperative federalism requires a careful balancing between the interests and jurisdictional authority of the FERC and the States under the FPA. It requires an examination of whether State demand response policies and programs interfere with or complement the goals of the FERC-

²³ *Id.* at 266.

²⁴ *Id.* at 275-76.

²⁵ *Id.* at 278.

²⁶ *Id.* at 287-88.

²⁷ *Id.* at 288.

approved RTO treatment of DR in the wholesale markets. State retail programs, such as those required by the Louisiana Demand Response Rule, that require rate schedules compensating customers for participation in retail and wholesale demand response programs do not interfere with or adversely affect the wholesale rates. They attract demand response, and they complement and support the RTO programs. At the same time, state retail programs preserve the benefits of DR to the ratepayers by optimizing the retail and wholesale programs. RTOs have no ability or incentive to allow for that optimization. Preserving the opt-out for states regulators that have IRP demand response requirements, and/or orders requiring the optimization of retail and wholesale DR rate schedules, is the proper balancing of jurisdiction under the FPA and the proper balancing required for the reliance on cooperative federalism.

D. FERC Order No. 2222

On September 17, 2020, FERC, in Docket No. RM18-9-000, issued Order No. 2222.²⁸ That Order retained the Order No. 719 opt-out right for DR and Energy Efficiency (“EE”) resources, while allowing aggregators and aggregations of Distributed Energy Resources (“DERs”) to participate in the RTO markets.²⁹ However, FERC shifted course in its Order No. 2222-A, issued on March 18, 2021.³⁰ In that Order, the FERC found that opt-outs would not apply to heterogeneous DER aggregations that include DR resources because those resources “are not solely aggregations of retail customers” and “extending the opt-out to demand resources in heterogeneous distributed energy resource aggregations would undermine the potential of Order

²⁸ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 172 FERC ¶ 61,247 (2020).

²⁹ *Id.*, P. 59.

³⁰ *Order Addressing Arguments Raised On Rehearing, Setting Aside Prior Order In Part, And Clarifying Prior Order In Part*, 174 FERC ¶ 61,197, (2021).

No. 2222 to break down barriers to competition, interfering with our responsibility to ensure wholesale rates are just and reasonable.”³¹ On June 17, 2021, FERC issued Order No. 2222-B, which reversed its Order No. 2222-A position and held that the opt-out right would apply to demand response resources that participate in heterogenous distributed energy resource aggregations.³² At the same time FERC determined that the opt-out issues would be examined in the ongoing rulemaking docket No. RM21-14-000.³³ RM21-14 was established as a notice of inquiry on March 18, 2021 seeking comment on whether FERC should revise its regulations and require RTOs to accept aggregator bids from larger utilities when the retail regulators prohibit such customers’ demand response from being bid into organized markets by aggregators.³⁴ Comments were received to the NOI, and it awaits FERC action.

E. Current Status of RERRA Opt-Outs in the States

When the LPSC issued its General Order 3-7-19 in Docket No. R-34948 on March 7, 2019, none of the MISO states, except Illinois, specifically allowed third party ARCs to interact with customers and to participate in the MISO wholesale markets with aggregated load. That Order cited Arkansas legislation and regulatory orders issued in Indiana and Michigan as examples of states that had considered and explicitly rejected the direct participation of third-party ARCs in RTO wholesale demand response programs.³⁵

The Lawrence Berkeley National Laboratory (LBNL) prepared a report issued in April 2023 for the Missouri Public Service Commission entitled “Regulation of Third-Party Aggregation

³¹ *Id.*, Order No. 2222-A, at P 23.

³² Order No. 2222-B, 175 FERC ¶ 61,227 (2021) at P. 26.

³³ *Id.*

³⁴ *Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 174 FERC ¶ 61,198 (2021).

³⁵ *General Order 3-7-19 (R-34948)* at 4-6.

in the MISO and SPP Footprints.”³⁶ The Missouri Commission instituted an ongoing docket investigating the potential participation of DER Aggregators in MISO pursuant to FERC Order No. 2222.³⁷ According to that Report, after Order No. 719, 17 of the 20 MISO and SPP states opted out of allowing aggregators to directly bid demand response into the RTO/ISO markets; only Illinois, a retail choice state in MISO, and Oklahoma and Kansas in SPP, which did not have an active aggregator issue until recently, allowed ARC participation.³⁸ Since then, Michigan has allowed aggregation of its small retail choice loads in 2019 and allowed aggregation beginning in 2022 of larger (loads exceeding 1 MW) commercial and industrial customers in its vertically integrated territories.³⁹ Arkansas retained the opt-out, and Indiana, Minnesota, and Missouri have ongoing dockets examining potential ARC participation.⁴⁰ Some states outside of MISO/SPP interviewed for the LBNL Report allow ARC participation under various levels/types of regulation, including California, New York, Maryland, and Pennsylvania.⁴¹ After the issuance of that LBNL Report, Missouri issued orders allowing demand response participation in wholesale markets, including Aggregated loads for larger Commercial and Industrial customers with a minimum load of kW, not participating in retail DR programs, and it allows entities under the same corporate umbrella to aggregate multiple sites in the same utility service area to meet the 100 kW minimum size requirement. Arkansas has potential ARC participation under consideration underway in Docket No. 09-090-U. That Docket remains open.

³⁶ [Electronic Document \(mo.gov\)](#).

³⁷ Case No. EW-2021-0267.

³⁸ [Electronic Document \(mo.gov\)](#) at iv.

³⁹ *Id.* at 4-5.

⁴⁰ *Id.*

⁴¹ *Id.* at 30-31.

Demand Response is a subset of Distributed Energy Resources (DER), and regardless of the final resolution of the DR opt-out issue, some of these issues will need to be addressed for DER aggregation that is required under Order No. 2222, including, *e.g.*, roof-top solar. Several issues must be considered, including registration/licensing of ARCs, customer data privacy and access issues, avoidance of double-counting, reporting requirements, avoidance of planning interference, avoidance of cost-shifting among customers or customer classes, conflict resolution, consumer protections, enforcement issues, and for non-DR DER perhaps interconnection standards/requirements.

Whether or not to voluntarily waive the opt-out rights and/or the scope of any ARC participation requirements requires a careful analysis of the potential benefits of ARC reliance, which could include lowering of customer bills, and capacity and ancillary services benefits, and the potential risks, which could include interference with utility planning, cost-shifting, issues related to information sharing, and double-counting of benefits.

The AEMA published a report in 2018 entitled “Advancing Demand Response in the Midwest – Expanding Untapped Potential” that discusses various participation options that have been adopted by Midwest states for ARC participation.⁴² Those models include the “Indiana Model” in which ARCs are qualified under a utility rate schedule to enroll customers for RTO capacity DR programs, the customers are registered with the utility, the utility enrolls the customers in the RTO DR program and is the Market Participant (“MP”), the utility receives the capacity credit, and the utility compensates the ARC (in Indiana the compensation is the higher of the average PJM capacity price over the last four years, or 35% of Net CONE).⁴³ A second

⁴² Advanced Energy Management Alliance, *Advancing Demand Response in the Midwest: Expanding Untapped Potential*, (Feb. 12, 2018), <https://aem-alliance.org/download/121043/>.

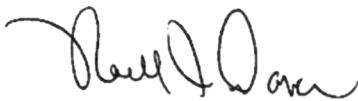
⁴³ *Id.* at 10.

approach allows the utility to contract with a single ARC for a specific amount of DR MW, a price per MW, and the parties agree on a program design.⁴⁴

III. STAFF RECOMMENDATION AND REQUEST FOR COMMENT

The Staff initially recommends adoption of a pilot program for limited customer classes and sizes that operates through a utility rate schedule, or rate schedules, tailored for each utility similar to the “Indiana Model.” The following proposed rules are intended to be a starting point for discussion and future collaboration, not a result that is pre-ordained by the Staff or the Commission. As a result, the Staff is seeking comments and feedback on these proposed rules by September 15, 2024. Those comments should also address any additional issues that any commenting party believes should also be addressed in this rulemaking. Reply comments will be due by November 22, 2024.

Respectfully submitted,



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⁴⁴ *Id.* at 11.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above and foregoing has been served upon all parties of record by email properly addressed on this 9th day of July, 2024.

A handwritten signature in black ink, appearing to read "Lauren Temento Evans", written in a cursive style.

LAUREN TEMENTO EVANS

LOUISIANA PUBLIC SERVICE COMMISSION

REQUIREMENTS FOR AGGREGATORS OF RETAIL CUSTOMERS SEEKING TO OPERATE IN THE LPSC-JURISDICTIONAL PORTIONS OF THE STATE OF LOUISIANA.

PURPOSE

The Louisiana Public Service Commission (“LPSC”) establishes the following rule to ensure that any aggregation of retail customers seeking to operate in LPSC-jurisdictional portions of the state of Louisiana is in the public interest and therefore ensures safe and reliable service to Louisiana citizens and ratepayers.

AUTHORITY

Article IV, Section 21 of the Louisiana Constitution of 1974 provides the Commission with the following authority:

Powers and Duties. The Commission shall regulate all common carriers and public utilities and have such other regulatory authority as provided by Law. It shall adopt and enforce reasonable rules, regulations and procedures necessary for the discharge of its duties, and shall have other powers and perform other duties as provided by Law.

Consistent with the above authority, the Commission has adopted rules and regulations through Commission Orders that apply to utilities in general, and in some instances, electric utilities specifically. The blanket authority to regulate public utilities granted above; however, is not absolute, as it is subject to the following limitations regarding utilities owned, operated, or regulated by a political subdivision:

Limitation. The Commission shall have no power to regulate any common carrier or public utility owned, operated, or regulated on the effective date of this constitution by the governing authority of one or more political subdivisions, except by the approval of a majority of the electors voting in an election held for that purpose; however, a political subdivision may reinvest itself with such regulatory power in the manner in which it was surrendered. This paragraph shall not apply to safety regulations pertaining to the operation of such utilities.

SECTION 100. PREAMBLE

The Louisiana Commission has all jurisdiction and authority over ARCs as allowed by law. The Louisiana Commission intends to exercise that jurisdiction and authority over ARCs consist with the requirements of this rule. That jurisdiction and authority also includes regulation of ARC interactions with Louisiana electric utilities and their customers including ARC operations and business practices, services and promotional materials. It does not include, at this time, regulation of the pricing provisions and rates for ARC services and products. The authorizations allowed by this rule are intended to be a pilot program of limited duration and scope at this time. As a result, ARCs shall only be allowed to aggregate the loads and resources of industrial and commercial customers that individually have peak loads exceeding 1 MW, on average over the previous three operating calendar years.

SECTION 101. DEFINITIONS

- 1.) An “Aggregator of Retail Customers” (“ARC” or “ARCs”) is a person or entity that seeks to interact directly with retail electric customers that are subject to the jurisdiction of the Louisiana Public Service Commission to aggregate, bid or sell aggregated Distributed Energy Resources (“DER”) including Demand Response resources (“DR”), either on a combined or separate basis, including behind the meter generation (“BTM”) to a wholesale electricity market or to an electric public utility.
- 2.) “Aggregate” means to combine the electric loads and/or resources of one or more retail electric customers that take electric service from electric public utilities that are subject to the jurisdiction of the Louisiana Public Service Commission for the purpose of bidding or selling that aggregation into a wholesale electric market, consistent with the rules of those wholesale markets.
- 3.) “Aggregation” is the combined electric loads and/or resources of one or more retail electric customers that take electric service from electric public utilities that are subject to the jurisdiction of the Louisiana Public Service Commission for the purpose of bidding or selling that aggregation into a wholesale electric market consistent with the rules of those wholesale markets.

SECTION 201. AUTHORITY TO OPERATE

No ARC shall operate or do business in the State of Louisiana in areas served by electric public utilities that are subject to the jurisdiction of the Louisiana Public Service Commission (“LPSC”) without first filing an application with the LPSC to register as an ARC and obtaining an Order from the Louisiana Public Service Commission certifying that such operations are in the public interest. In order to obtain such an Order, the ARC shall be required to file a petition seeking such authority in compliance with the Rules of Practice and Procedure of the Louisiana Public Service Commission, which contains rules intended to protect confidential data. In addition, that petition shall include, at a minimum, the following information:

- 1.) A description of the ownership and organizational structure of the ARC

- 2.) Financial Statements for the previous five fiscal years
- 3.) Financial forecasts for the next five years
- 4.) Credit rating information and the most recent reports from credit rating agencies.
- 5.) A description and documentation of customer complaints for prior 2 years
- 6.) A listing of all RTOs or ISOs in which the ARC is participating.
- 7.) A description of the management structure of the ARC identifying all officers, board members, and all representatives who will be engaging in business in Louisiana.
- 8.) A listing of all states in which the ARC is currently authorized to do business.
- 9.) A detailed description regarding any instances when the ARC has been denied operating authority or has had its operating authority modified or revoked,
- 10.) A detailed description regarding any instances when the ARC has been fined, penalized, or punished related to its business practices in any state or jurisdiction.
- 11.) A detailed description regarding any pending or past regulatory or judicial actions against, including any findings regarding the ARC.
- 12.) A detailed description of the types of business activities in which the ARC intends to engage in Louisiana, including what customer classes with which it intends to interact.
- 13.) A copy of materials that the ARC plans to use for marketing purposes in Louisiana.
- 14.) Copies of any contract forms that it intends to use in Louisiana and any that it has used within the prior eighteen months in any state.
- 15.) Verification that the ARC has appointed an agent for service of process and service of subpoenas located in Louisiana and identification of that agent, including name, physical, and mailing address.
- 16.) A signed and notarized affidavit by an official of the ARC attesting to the truth, accuracy, and completeness of the information provided in compliance with this rule, attesting that the ARC acknowledges and consents to the jurisdiction and authority of the Louisiana Commission and to the Louisiana State and/or Federal Courts, including the jurisdiction and authority of the Louisiana Commission to resolve complaints by customers and utilities against the ARC in accordance with Section X of this Rule below, and including the authority to regulate and monitor its operations and business practices.

SECTION 202. ADDITIONAL INFORMATION

The Louisiana Commission and its Staff shall have the right to seek and review additional information from the ARC or other sources that they reasonably believe are needed for the Commission to make its public interest determination.

SECTION 203. FINANCIAL SECURITY

The Louisiana Commission may, in its discretion, impose a requirement on the petitioning ARC to maintain a bond, letter of credit, or other financial security to protect the counter-party risks and/or penalties resulting from the failure of the ARC to comply with its obligations under market rate schedules of the operators of any wholesale markets in which it is authorized to participate.

SECTION 204. RESCISSION OR SUSPENSION OF OPERATING AUTHORITY

The Louisiana Commission retains the authority to rescind or suspend any operating authority granted to an ARC for failure to comply with its contractual operations, its obligations to comply with Commission rate schedules, rules and regulations, and for any failure of the ARC to pay any obligations or penalties imposed by the operator of a wholesale market, or if the Commission determines that the continual operation of the ARC is no longer in the public interest. Any conditions and requirements of that rescission or suspension shall be set forth by the Commission in its order providing for that rescission or suspension.

SECTION 205. OBLIGATION TO MAINTAIN AN OFFICE IN LOUISIANA

The ARC shall maintain a physical office in Louisiana that is staffed with at least two employees, and at least one of which shall be designated as a contact for communications with the Commission and its Staff.

SECTION 206. RENEWAL OF OPERATING AUTHORITY

The approval of the Commission of the initial petition of an ARC to operate in Louisiana shall expire by its own terms three years after the effective date of the Commission's approval. Prior to that expiration, any ARC that desires to continue operating under the Commission's authority shall file a petition for renewal that complies with the requirements of this rule. If the Commission approves the renewal application, that authority shall remain in effect unless rescinded or suspended under this rule.

SECTION 301. ANNUAL REPORTING REQUIREMENTS

Any ARC operating under the authority of the Louisiana Commission shall file an annual report with the Louisiana Commission by April 1 of the following year. That report shall, at a minimum, include:

- 1.) A description of the number of customers under contract in Louisiana for aggregation, by customer class, and the megawatts and/or megawatt hours under contract by customer class and by customer.
- 2.) A description of the legal duration of each customer contract.
- 3.) The RTOs and markets into which each aggregation was offered into during the reporting year, including the size of the aggregations.
- 4.) Any changes in business practices or marketing materials compared to what was previously disclosed to the Commission.
- 5.) A description of any formal or informal customer complaints during the reporting period, including copies any lawsuits filed against the ARC, in any jurisdiction.

- 6.) A description and quantification of any penalties or charges imposed by an operator of a wholesale market in any jurisdiction during the reporting period, including any instances in which the ARC has been denied operating authority or has had its operating authority modified or revoked.
- 7.) A description of any FERC filings by the ARC or FERC complaints or FERC actions affecting the ARC during the reporting period.
- 8.) Any material changes in the business or management structure of the ARC or of the business plan of the ARC during the reporting period.
- 9.) Copies of any credit reports, descriptions of any credit rating changes, and copies of audits and financial statements for the reporting period.
- 10.) Copies of all customer complaints received in the previous year.
- 11.) Any other information that may have a material impact on the ARCs ability to operate under its authority granted by the Louisiana Commission.

SECTION 401. ACCESS TO CUSTOMER, METERING, AND AMI DATA

The ARC shall have access to only such individual customer and AMI data for that customer that is reasonably required for the ARC to effectively participate in the wholesale markets if and only if the individual customer grants that right to the ARC in writing and that request is delivered to the applicable electric public utility.

SECTION 501. CUSTOMER AND UTILITY COMPLAINTS

Any formal complaints against the ARC regarding aggregation services shall be initiated by a customer or an electric utility pursuant the Rules of Practice and Procedure of the Louisiana Public Service Commission.

SECTION 601. UTILITY RATE SCHEDULES

Each electric utility subject to the jurisdiction of the LPSC shall prepare and file with the Commission, consistent with the rules and regulations of the Commission, within 3-months from the date of the issuance of any LPSC Order approving final rules related to this proceeding, a written Rate Schedule governing utility and customer interactions with ARCs consistent with this rule. That Rate Schedule shall contain a standard offer available to ARCs under which it will purchase DER and/or DR services. That rate schedule will require:

- 1.) The ARC to have obtained LPSC authority to operate consistent with this rule.
- 2.) The ARC to provide proof of any financial security imposed by the LPSC consistent with this rule.
- 3.) The ARC to provide proof of its compliance with the obligation to maintain an office and personnel in Louisiana consistent with this rule.
- 4.) Requirements to provide customer, metering, and AMI data to the ARC consistent with this rule.
- 5.) Requirements that the utility shall receive all capacity credits resulting from participation of aggregations in any wholesale capacity markets, in exchange for payments from the utility to the ARC equal to the average of

the previous three-years PRA results for the applicable RTO Zone. For any year where there are seasonal accreditations, the annual average shall be the average of the four seasons.

- 6.) Requirements that the utility shall be the representative to the RTO markets for the aggregation, that the utility shall assume all risks and non-compliance with RTO market requirements and be responsible for all penalty or similar payments imposed under RTO rate schedules for any non-compliance. In no event shall the agreements between the ARCs and customers or ARCs and utilities, or utility Rate Schedules allow any penalty or similar payments imposed by the RTOs be recovered from utility customers.
- 7.) Requirements that customers shall not be allowed to benefit more than once from any DERs, including DRs, and that customers shall not be allowed to participate in wholesale aggregations if they are already participating in retail programs and shall not be allowed to participate in retail programs if they are or plan to participate in wholesale programs that may provide overlapping benefits.
- 8.) Requirements that ARCs shall only be allowed to aggregate the loads and resources of industrial and commercial customers of the host utility that individually have peak loads exceeding 1 MW, on average over the previous three operating calendar years. Residential and other customers taking service under other non-commercial and non-industrial rate schedules shall not be eligible to participate.
- 9.) Requirements setting forth the standard terms and conditions under which ARCs are allowed to access and interconnect to the existing distribution systems of the applicable utilities for the purpose of delivering aggregated DER (including DR) products to the RTOs.

SECTION 602. PREVIOUSLY ADOPTED UTILITY RATE SCHEDULES

If a utility has adopted a rate schedule prior to the effective date of these rules addressing ARC or DR provider participation, that utility shall be required to file an application with the Commission within 30 days from the effective date of these rules seeking Commission approval that the rate schedule is consistent with the requirements of these rules. The utility shall bear the burden of proof in that proceeding.

SECTION 701. SEVERABILITY

In the event that any provision or portion of this Order is ruled to be unlawful by final order of any court of competent jurisdiction, it is the intent of the Commission that the remaining portions of the rule will survive and remain in full force and effect, subject to any further action of the Commission after due proceedings in accordance with the Commission's rules and applicable law.

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as of 7/9/2024**

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