



Minnesota Solar Energy Industries Association

We Move Minnesota Solar + Storage Forward

April 10, 2023

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55105

Re: In the Matter of a Commission Investigation into the Potential Role of Third-Party Aggregation of Retail Customers, Docket E999/CI-22-600

Mr. Seuffert,

Please find attached comments from the Minnesota Solar Energy Industries Association. These comments reflect the views of our organizations and interested members related to whether the Minnesota Public Utilities Commission should take action related to third-party aggregation of retail customers as discussed in Docket Number E999/CI-22-600.

Sincerely,

/s/ Logan O'Grady, Esq.
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Enclosure: Reply Comments of MnSEIA

**STATE OF MINNESOTA
PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Valerie Means	Commissioner
Matt Schuerger	Commissioner
Joseph K. Sullivan	Commissioner
John Tuma	Commissioner

**In the Matter of a Commission
Investigation into the Potential Role of
Third-Party Aggregation of Retail
Customers**

**REPLY COMMENTS of the
MINNESOTA SOLAR ENERGY
INDUSTRIES ASSOCIATION
(MnSEIA)**

April 10, 2023

Docket Nos. E999/CI-22-600

INTRODUCTION

The Minnesota Solar Energy Industries Association (“MnSEIA”) is a 501(c)(6) nonprofit trade association that represents our state’s solar and storage businesses, with over 145 member companies, which employ over 5,000 Minnesotans. As such, it has an interest in any issues that support or promote renewable energy development in Minnesota.

Minnesota’s goal to have 100 percent clean energy by 2040 will require the energy industry to change how it does things. Doing what has been done in the past will not be good enough and forcing companies to change is never as efficient or effective as a competitive marketplace driving the change. The industry will have to change not only how it generates electricity, but also how it is managed. “Demand response is a tool for shifting electricity consumption away from peak load times, for reshaping the underlying load profiles, and, when needed, for shedding load; it can be used to avoid unnecessary investments in generation and distribution infrastructure, increase overall system efficiency, and improve reliability.”¹ So while utilities may claim that they have done all that they can with demand response, such claims should be evaluated with some level of skepticism. Utilities primarily earn a return on investment by generating electricity, not conserving it. It is naïve to believe that any party will act against its

¹ *In the Matter of a Commission Investigation to Identify Performance Metrics, and Potentially, Incentives for Xcel Energy’s Electric Utility Operation*, Public Utilities Commission, ORDER ESTABLISHING PERFORMANCE METRICS, Docket No. E-002/CI-17-401, p. 10 (Sept. 18, 2019).

own self-interest, especially in situations where a party has a fiduciary obligation to maximize the return on its investors' investment.² In fact, the utilities appear to admit that they do demand response because it is required of them, not because they want to do it.³ However, if the utilities are correct that they have done all they can with demand response, then, even if aggregators of retail customers ("ARCs") are not prohibited from operating in Minnesota, utilities should not be concerned because there would presumably not be any market for them.

However, before the Public Utilities Commission ("Commission") even considers whether it is in the public interest to make a decision that could provide additional resources to MISO and utilities that help them manage their systems by reducing the demand for electricity, it would appear necessary for the Commission to determine what legal authority it has to regulate ARCs. To the extent the Commission does not have authority to regulate ARCs, they presumably cannot be prohibited from operating. And, to the extent that the Commission does have authority to regulate ARCs, they should be allowed because they have the potential to "increase reliability, increase resilience of the grid, lower overall costs, and benefit all ratepayers."⁴

REPLY COMMENTS

MnSEIA hereby provides the following Reply Comments in response to the Initial Comments filed by other parties in this docket.

1. Legal Authority to Regulate ARCs

As the Commission is well-aware, the Commission's powers are "prescribed by law" and limited to "those matters within its jurisdiction."⁵ As such, a threshold issue before the Commission

² See *In the Matter of a Petition of Northern States Power Company for Approval of a Public Charging Network, and Electric School Bus Pilot, and Program Modifications*, Department of Commerce, DIRECT TESTIMONY AND ATTACHMENTS OF MATTHEW LANDI ON BEHALF OF THE DIVISION OF ENERGY RESOURCES OF THE MINNESOTA DEPARTMENT OF COMMERCE, Docket No. E002/CI-22-432, p. 110-111 (Feb. 7, 2023) ("Electric IOUs have a fiduciary responsibility to their shareholders to maximize their profitability. Electric IOUs earn profits through a Commission approved 'rate of return' on its capital investments that are prudently incurred in the provision of adequate and reliable electricity service."); *In the Matter of a Commission Investigation into the Potential Role of Third-Party Aggregation of Retail Customers*, Sierra Club and Union of Concerned Scientists, INITIAL COMMENTS, Docket No. E999/CI-22-600, p. 2 (March 13, 2023) ("Moreover, there are structural biases that inevitably hamper demand response programs operated by monopoly utilities because it conflicts with the utilities' inherent interest in meeting load with rate-based resources."). Thus, it is unlikely that investor-owned utilities would participate in any demand response program if it was not required by regulators.

³ *In the Matter of a Commission Investigation into the Potential Role of Third-Party Aggregation of Retail Customers*, Xcel Energy, INITIAL COMMENTS, Docket No. E999/CI-22-600, p. 2-3 (March 13, 2023) ("The Commission has recognized the importance of utility control of DR resources, the history of effective demand side management in Minnesota, and the existing regulatory structure in Minnesota, *which requires that utilities consider demand side resources in their planning.*") (Emphasis added).

⁴ *In the Matter of a Commission Investigation into the Potential Role of Third-Party Aggregation of Retail Customers*, The Advanced Energy Management Alliance and Enerwise Global Technologies, LLC D/B/A CPower, JOINT INITIAL COMMENTS, Docket No. E999/CI-22-600, p. 1 (March 13, 2023).

⁵ See Minn. Stat. § 216A.05.

takes any action in any docket would presumably be to determine whether it has jurisdiction over the parties and issue before it.

Both Commerce and the Sierra Club question the Commission’s jurisdiction over ARCs, providing a detailed and thorough analysis of the issue. Both Commerce and the Sierra Club conclude that ARCs are not public utilities. Commerce states:

There may be technical arguments that the Minnesota Statutes and rules that govern public utilities should apply to ARCs. *The better reading, however, which harmonizes the language of the relevant statutes and rules, is that ARCs are not subject to regulation as public utilities because they do not furnish electricity to retail customers.* The service they provide is related to electric service but is not, itself, electric service.⁶

The Sierra Club provides a similar analysis noting that “demand response is not a ‘service’ because it is not electricity or equipment for delivery of electricity.”⁷ Thus, the Sierra Club logically concludes, “Because ARCs do not constitute “electricity utilities,” the Commission has no authority to prohibit them pursuant to Minn. Stat. §§ 216B.38 and 216B.40.”⁸

If the Commission agrees with the legal analysis of the Sierra Club and Commerce, then the Commission would not appear to have the authority to prohibit ARCs and, thus, its order prohibiting them is improper. However, if the Commission determines that the legal analysis of the Sierra Club and Commerce is flawed and is able to identify the legal authority it has to regulate ARCs, then it should allow them because the benefits of a competitive marketplace would benefit the public by creating a more resilient system and lowering costs for customers.

2. The Benefits of a Competitive Marketplace for Demand Response

In analyzing the demand response programs of some of the utilities in Minnesota, Commerce noted that while Otter Tail Power (“OTP”) and Minnesota Power (“MP”) did well compared to other utilities nationwide, ranking 10th and 17th, Xcel’s program was much more expensive, ranking 52nd out of 83 investor-owned utilities with demand response programs.⁹ In addition, Table 2, shows that there is a lot of room for improvement in terms of potential demand response savings relative to peak demand, with Xcel at only 10.1% of Potential Summer Peak Demand, OTP at 10.6% of Potential Winter Peak Demand, and MP at less than 20% for both Potential Summer and Winter Peak Demand.¹⁰ While Commerce may be correct that is good compared to other investor owned utilities nationwide, it demonstrates that there is a lot of room for improvement. And, as noted above, that is not surprising because a company that earns most of

⁶ *In the Matter of a Commission Investigation into the Potential Role of Third-Party Aggregation of Retail Customers*, Department of Commerce, INITIAL COMMENTS, Docket No. E999/CI-22-600, p. 6 (March 13, 2023) (emphasis added).

⁷ Sierra Club, INITIAL COMMENTS, p. 6.

⁸ *Id.* at p. 7.

⁹ Commerce, INITIAL COMMENTS, p. 14.

¹⁰ *Id.* at p. 10.

its profits from generating electricity that is consumed by its customers likely does not have much of an incentive to reduce the demand for its product, and, thus, its profits.

While Commerce looked at this information and somehow concluded, based on a hypothetical that it created, that “the most likely scenario is that allowing ARCs will either increase the cost of DR, raising retail rates, or existing DR will be lost resulting in new capacity being constructed and subsequently retail rates increasing,” it is probably more advisable to rely on actual real world experiences. Walmart, who “has over a thousand stores participating in DR initiative throughout the United States,” spanning multiple Regional Transmission Operators and Independent System Operators, and also participates in dozens of local utility DR programs, has a different opinion.¹¹

In light of Walmart's experience with DR programs, including those offered and/or facilitated by an Aggregator of Retail Customers (“ARC”) or its equivalent, Walmart believes that maximizing customers’ access to DR opportunities will give customers greater ability to help improve grid reliability, reduce grid stress, encourage the more efficient use of resources, potentially save money for all utility customers, and mitigate power outages/shortages and the need to construct additional capacity resources to serve load.¹²

Similarly, CPower, which is the “largest aggregator of demand response and other DERs in the United States with approximately 6.4 GW of DER capacity under management,”¹³ noted that much has changed since 2010, including “more than a decade of proven aggregator successes in providing thousands of megawatts of reliable demand response services in wholesale markets around the country.”¹⁴

While it is understandable that monopolies do not want competition, especially in an area that reduces the demand for their product, neither they nor Commerce have identified an actual situation anywhere in the country where ARCs created any of the problems they claim to be concerned about. For example, Xcel cites numerous concerns that it raised when this issue was last addressed in 2010, but doesn’t identify any situation where any of the concerns it raised actually occurred in the 12 years since the Commission’s order was issued.¹⁵ On the other hand, real world experiences demonstrate that demand response provides significant benefits to the electric system and customers, and could provide more if it was not restricted to monopolies, who have little incentive to maximize its impact. Markets cannot be efficient if incentives are not properly aligned.

¹¹ *In the Matter of a Commission Investigation into the Potential Role of Third-Party Aggregation of Retail Customers*, Walmart, Inc., INITIAL COMMENTS, Docket No. E999/CI-22-600, p. 2-3 (March 13, 2023).

¹² *Id.* at 3.

¹³ CPower, INITIAL COMMENTS, p. 2.

¹⁴ *Id.* at p. 4.

¹⁵ *In the Matter of a Commission Investigation into the Potential Role of Third-Party Aggregation of Retail Customers*, Xcel Energy, INITIAL COMMENTS, Docket No. E999/CI-22-600, p. 5-6 (March 13, 2023).

3. Mischaracterization of the MISO Market Rules for Resource Adequacy Purposes

To support its position against ARCs, Xcel is mischaracterizing load forecasting. To imply that Xcel will struggle to forecast load if ARCs are allowed is mischaracterizing the MISO market registration rules for resource adequacy purposes. Utilities in Michigan and Illinois, where ARCs are allowed, have experience forecasting load for planning purposes. For example, to register an LMR-BTMG, the Asset Owner must specify¹⁶ the Local Resource Zone, the Local Balancing Authority, and the Load Zone Commercial Pricing Node. Whether the Asset Owner is Xcel or an ARC, they would have to specify the location of the LMR-BTMG for registration purposes. Hence, it is inaccurate to state that Xcel would struggle to accurately forecast its load when the physical location of the load is not changing, irrespective of who represents the BTMG asset in the MISO capacity auction.

4. MISO has Defined Roles and Responsibilities for Coordination with ARCs

Xcel's argument that coordination between MISO, ARCs and utilities does not exist is inaccurate.¹⁷ MISO does have defined roles and responsibilities for coordination with ARCs on LMR-BTMG assets. For example, it is the responsibility of the LMR-BTMG owner (i.e., MnSEIA Member) to attest that coordination has occurred with each of the following entities¹⁸: Load Serving Entity, Distribution Provider, Transmission Owner and MISO. Since Xcel Energy is the Load Serving Entity, Distribution Provider, and Transmission Owner, the LMR-BTMG owner must coordinate with Xcel Energy and MISO.

¹⁶ MISO Resource Adequacy Business Practices Manual BPM -011, revision 27, Effective Date October 31, 2022, Appendix E – BTMG registration, “Local Resource Zone (LRZ) - The LRZ where this BTMG is located displays once the Asset Owner and LBA is selected and the registration is saved. Local Balancing Area (LBA) - Select the LBA where this BTMG asset is located. Load Zone CP Node - Enter the CP Node where the BTMG asset is located.”

¹⁷ See Xcel, INITIAL COMMENTS, p. 8 (“Increased participation of ARCs in MISO may require extremely close coordination between the MISO, ARC, and utilities which does not currently exist.”).

¹⁸ MISO Resource Adequacy Business Practices Manual BPM -011, revision 27, Effective Date October 31, 2022, Section 4.2.1.5.5, Roles and Responsibilities to Determine Eligibility for PRA Participation, “The MP owning a BTMG is responsible for providing an attestation to MISO that proper coordination has occurred with each entity. Load Serving Entity (LSE): Collaborate with BTMG MP to establish eligibility for a BTMG to participate in the wholesale market (e.g., PRA) in accordance with the relevant state regulatory framework. Distribution Provider (DP): Ensure reliability of distribution system and assess access to the transmission system. Typically, the DP completes an interconnection study to assess the reliability impacts on the distribution system. The DP is responsible for determining engineering studies, facility upgrades, and/or agreements required to permit access of a BTMG to the transmission system. Transmission Owner (TO): Determine when the transmission system is utilized by a BTMG to serve load and coordinate with the DP and MISO on engineering and facility studies as appropriate. The TO typically ensures studies are completed, per their direction, to ensure transmission facilities (including other interconnected generators) are not impacted by an additional injection of energy from a BTMG onto the transmission system. Studies will vary depending on the specific Point of Interconnection. MISO: Accountable for ensuring BTMG has demonstrated deliverability for use in the PRA (additional details below) and ensuring the BTMG MP has provided attestation of coordination with the LSE, DP, and TO.”

5. The Commission Should Not Defer Consideration of the Issue until 2030

MnSEIA notes that MISO is proposing a full implementation of Order 2222 by 2030. If the Commission were to act on Xcel's recommendation not to allow ARCs until 2030, with the current¹⁹ capacity situation at MISO, there is an increased likelihood of capacity shortfalls²⁰ for a few more years²¹ unless additional capacity is added. The market is ready to deliver this additional capacity to MISO Planning Resource Auction (“PRA”) if ARCs are allowed. As we note in our Initial Comments,²² LMR-BTMG qualifies as capacity resources in the MISO PRA. The 2022 Organization of MISO States (“OMS”) MISO Survey notes²³ that LMRs are critical in meeting local resource needs. And LMR-BTMG is located within the Local Resource Zone 1- Minnesota, which meets the MISO definition²⁴ of Local Clearing Requirements. Hence, the Commission must remove the prohibition of ARCs to allow MnSEIA Members’ solar to participate as LMR-BTMG in MISO's capacity auction.

And the timing is critical – the Commission must lift the ARC ban by December 1, 2023, to enable resources to line up for the MISO capacity auction start date in April 2024. Otherwise, market participants will miss the deadline for next year's auction. The Commission should take note that the Michigan Public Service Commission lifted its ARC ban in December 2022,²⁵ after

¹⁹ MISO Press Release April 14, 2022, ““The reality for the zones that do not have sufficient generation to cover their load plus their required reserves is that they will have increased risk of temporary, controlled outages to maintain system reliability,” said Clair Moeller, MISO’s president and chief operating officer. “From a consumer perspective, those zones may also face higher costs to procure power when it is scarce.””
<https://www.misoenergy.org/about/media-center/misos-annual-planning-resource-auction-results-underscore-the-reliability-imperative/>

²⁰ MISO Press Release April 28, 2022, ““The seasonal assessment aligns with the cleared resources identified in the 2022-2023 Planning Resource Auction, which indicated capacity shortfalls in both the north and central regions of MISO and leaving those areas at increased risk of temporary, controlled outages to preserve the integrity of the bulk electric system,” said JT Smith, executive director – market operations at MISO.””
<https://www.misoenergy.org/about/media-center/miso-projects-risk-of-insufficient-firm-generation-resources-to-cover-peak-load-in-summer-months/>

²¹ Utility Dive, November 23, 2022 - MISO power prices could remain high, go higher for years: Chatterjee, other Voltus panelists, ““This isn’t a short-term thing that’s just going to last into next year or the year after,” said Neil Chatterjee, former FERC chairman and a senior advisor at Hogan Lovells.””
<https://www.utilitydive.com/news/miso-midcontinent-power-prices-demand-response-dr-voltus/637271/>

²² MnSEIA, INITIAL COMMENTS, p. 3 (“Solar facilities can participate as Load Modifying Resources – Behind the Meter Generation (“LMRBTMG”) in the MISO capacity market.”).

²³ 2022 OMS-MISO Survey Results presentation, June 10, 2022, Slide 12, titled “New generation and load modifying resources continue to be important in meeting local resource needs”,
<https://cdn.misoenergy.org/20220610%20OMS-MISO%20Survey%20Results%20Workshop%20Presentation625148.pdf>

²⁴ MISO Tariff, Module A, Local Clearing Requirement, “The minimum amount of Seasonal Accredited Capacity for an LRZ that is required to meet its LOLE for each Season while fully using the Zonal Import Ability for such LRZ and accounting for controllable exports.”
https://docs.misoenergy.org/legalcontent/Module_A_-_Common_Tariff_Provisions.pdf

²⁵ For Commercial and Industrial customers greater than 1 MW. “THEREFORE, IT IS ORDERED that the prohibition established in the December 2, 2010, order in Case No. U-16020, with respect to demand response resources, Michigan retail customers, or aggregators of retail customers on behalf of retail customers against participating in any regional transmission organization wholesale power market is lifted with respect to Michigan bundled retail commercial and industrial customers and aggregators of retail customers on behalf of retail commercial and industrial customers with a minimum enrolled load size of 1 megawatt registered with an

Michigan ratepayers were hit with high capacity prices in 2020 and 2022. Minnesota should learn from Michigan instead of risking a repeat of its mistakes.

Finally, the Commission should note that several MISO state commissions,²⁶ as well as OMS,²⁷ have expressed concern with MISO's 2030 implementation date in their comments filed at FERC. FERC action on MISO's 2030 compliance proposal for Order 2222 implementation is pending, but it appears that it is unlikely that FERC would approve MISO's 2030 date given the state regulatory authority's concerns.

CONCLUSION

Monopolies are inherently detrimental to the public and the economy.²⁸ Which is why they are disfavored in a free-market democratic society.²⁹ The exception to that principle is when the perceived benefits of a monopoly outweigh their harm to society. Minnesota decided that the benefits of allowing monopolies to provide electric service outweigh the harm to the public that necessarily results from limiting the public's freedom to choose who provides that service.

aggregator of retail customers.”

<https://mi-psc.force.com/sfc/servlet.shepherd/version/download/0688y000005iCIRAAU>

²⁶ See Illinois Commerce Commission comments in FERC Docket # ER22-1640, “This lengthy delay in implementation is not reasonable and maintains existing barriers to the market.”

https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220606-5116&optimized=false; Indiana Utility Regulatory Commission comments, “it is expected that the majority of MISO states will be prepared to go live at the state level in alignment with those proposed implementation dates, which fall in calendar years 2026 and 2025, respectively.” https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220606-5135&optimized=false; and, Michigan Public Service Commission comments, “MISO’s proposed implementation date will prevent distributed energy resource aggregators from participating in the market until 2030, which is too long to wait.”

https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220606-5158&optimized=false

²⁷ OMS comments in FERC Docket # ER22-1640, “OMS argues that Order 2222 should be implemented sooner than 2030 in order to take advantage of the reliability and economic benefits of DER aggregation.”

https://elibrary.ferc.gov/eLibrary/filelist?accession_number=20220606-5186&optimized=false

²⁸ See Commerce, LANDI TESTIMONY, p. 110 (stating that allowing a for-profit electric utility into a competitive marketplace “risks that utility ratepayers will be forced to pay for unnecessary, or unnecessarily costly, equipment; risks that the private sector will face unfair competition from monopoly utilities; risks that these burdens will fall hardest on those least able to bear the costs; and risks that public utility commissions will favor utility interests over non-utility concerns”); *In the Matter of a Petition of Northern States Power Company for Approval of a Public Charging Network, and Electric School Bus Pilot, and Program Modifications*, Department of Commerce, DIRECT TESTIMONY AND ATTACHMENTS OF ADWAY DE ON BEHALF OF THE DIVISION OF ENERGY RESOURCES OF THE MINNESOTA DEPARTMENT OF COMMERCE, Docket No. E002/CI-22-432, p. 16 (Feb. 7, 2023) (stating that “[m]aintaining a market structure that would enable free entry of participants is crucial to meeting Minnesota’s EV target. Xcel’s current proposal may create significant entry barriers for potential market participants”); and, Ohio Attorney General, <https://www.ohioattorneygeneral.gov/Media/Newsletters/Competition-Matters/October-2020/The-Effects-of-Monopolies-are-No-Laughing-Matter> (Oct. 26, 2020) (Noting that “with a monopoly, there can be little incentive for innovation or improvement on a product/service. Monopolies can also make it difficult for new and innovative companies to enter the market”).

²⁹ See Federal Trade Commission, *The Antitrust Laws* (noting that Congress passed a law in 1890 as a “comprehensive charter of economic liberty aimed at preserving free and unfettered competition as the rule of trade” and noting that “for over 100 years, the antitrust laws have had the same basic objective: to protect the process of competition for the benefit of consumers, making sure there are strong incentives for businesses to operate efficiently, keep prices down, and keep quality up.”)

<https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws>.

While the wisdom of that choice was likely clearer when that decision was originally made, the energy industry has changed dramatically in the last 10 years. And the Commission is now routinely faced with deciding whether to allow electric utility’s monopoly power to grow, thereby increasing the potential harm to society, or remain restricted to where it was originally granted-providing electricity for consumption. “The need for fast-acting, flexible resources to help grid operators maintain system balance will become increasingly important and valuable as intermittent supply resources more frequently replace traditional generation.”³⁰ Demand response was not an electric service that was provided by electric utilities when their monopoly power was established. Moreover, the rationale for allowing monopolies³¹ is not particularly applicable to distributed energy resources like demand response. Further, entrusting the responsibility to limit demand for electricity to investor-owned utilities that make most of their profit producing it is likely imprudent. While, on the other hand, allowing ARC’s will create a competitive marketplace for demand response that will likely produce all the benefits that a competitive marketplace inherently produces-more innovation and lower prices-and, thus, “promote economical, efficient, and adequate electric service to the public.” The freedom to choose is a bedrock principle of American society and should only be restricted to situations when it is absolutely necessary to do so. Accordingly, MnSEIA believes that ARCs should not be prohibited from providing demand response services in Minnesota.

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³⁰ Peter Dotson-Westphalan & Kenneth D. Schisler, CPOWER, REGULATING DEMAND RESPONSE AND AGGREGATORS IN THE MIDWEST WHILE SAFEGUARDING LOCAL JURISDICTION: A GUIDE FOR STATE REGULATORY COMMISSIONS, ELECTRIC COOPERATIVES AND MUNICIPAL ELECTRIC UTILITIES, p. 5 (Dec. 2022)

(<https://cpowerenergymanagement.com/wp-content/uploads/2022/12/Midwest-DR-Framework.pdf>).

³¹ See Minn. Stat. § 216B.37 (declaring that it is in the public interest to allow monopolies to provide electric service “in order to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public”).