

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Midcontinent Independent)	Docket No. ER22-1640-000
System Operator, Inc.)	

Motion to Submit Answer and Answering Comments of the R Street Institute

The R Street Institute (R Street) submits this Motion to Submit Answer and Answering Comments filed in Docket No. ER22-1640-000 in response to the Midcontinent Independent System Operator Inc.’s (MISO) compliance filing submitted on April 14, 2022 in the above-captioned proceeding in response to Order 2222 of the Federal Energy Regulatory Commission (FERC or Commission). R Street seeks to provide answers to Xcel Energy Services (Xcel), Organization of MISO States (OMS), Michigan Public Service Commission, Indiana Utility Regulatory Commission and the Missouri Public Service Commission.

I. Motion to Submit Answer

Under Rule 213(a)(2) of FERC’s Rules of Practice and Procedure, answers to protests and comments are generally not permitted.¹ However, FERC can waive this practice when an answer clarifies issues under consideration, ensures completeness of the record or assists the Commission in its decision-making.² Here, R Street provides additional context in response to comments and protests submitted by parties, clarifies certain issues and topics, and otherwise assists FERC in its decision-making process. R Street moves to accept these answering comments.

II. Answering Comments

- A. Accepting MISO’s Oct. 1, 2030 start date results in inequitable treatment of customers in states with multiple Regional Transmission Organizations (RTOs).

Several state commissions and OMS noted that they are served by other RTOs, such as the PJM Interconnection (PJM) and the Southwest Power Pool (SPP).³ Order 2222 allows for regional differences, as these state commissions and OMS note; however, for states that operate in two different RTOs, there could be as great as a five-year difference between opportunities for customers in a state to participate

¹ 18 C.F.R. § 385.213(a)(2) (2019).

² See, e.g., *Southwest Power Pool, Inc.*, 143 FERC ¶ 61,018, at P 15 (2013) (accepting answer that assisted in the decision-making process); *Texas Eastern Transmission, LP*, 122 FERC ¶ 61,205, at P 8 (2008) (accepting answer that completed the record); *California Independent System Operator Corp.*, 105 FERC ¶ 61,284, at P 10 (2003) (accepting answer that clarified the issues).

³ Notice of Intervention and Comments of the Organization of MISO States, Inc., Docket No. ER22-1640-000, at 10-11 (June 6, 2022); Comments of the Public Service Commission of the State of Missouri, Docket No. ER22-1640-000, at 6 (June 6, 2022); Notice of Intervention and Comments of the Michigan Public Service Commission, Docket No. ER22-1640-000, at 15 (June 6, 2022); Comments of the Indiana Utility Regulatory Commission, Docket No. ER22-1640-000, at 11 (June 6, 2022).

in those RTOs.⁴ Furthermore, for those states that participate in two markets, states will have to develop rules based on the earlier timeline; for example, PJM proposed a February 2026 start date and SPP proposed a 2025 third quarter start date. States like Louisiana, Arkansas and Missouri will need to have rules in place for distributed energy resource (DER) aggregators by 2025 for SPP and Illinois, Indiana and Michigan will need rules in place 2026 to support PJM participation.

Even assuming regional differences in implementation, such a difference in implementation times would not result in equitable treatment for customers in those states. Of the 14 states in MISO, only two states (Wisconsin and Mississippi) do not touch other RTOs. R Street agrees with OMS and the state commissions that this discrepancy is problematic to states since they are developing rules anyway for participation in those other RTOs. By delaying customers in the MISO region from participating in DER markets, as directed by Order 2222, MISO's proposal treats those customers substantially differently.

B. Grid Architecture should not be an excuse for delaying Order 2222 implementation in MISO region.

Xcel's comments raise a number of concerns about how a utility can plan and respond to the role of DER aggregators in a given territory. Notably, Xcel organizes its technical comments around a structure used by the U.S. Department of Energy (DOE) in its Modern Distribution Grid project.⁵ Notably, Xcel states that "utilities will need to identify key design considerations and objectives and identify system integration requirements."⁶ An initial starting point for that effort is to identify objectives and attributes of the future grid architecture. Xcel further notes that undergoing the process to integrate these changes and plan for them in their own planning and architectural considerations will take time as utilities across the region are in different places and "these activities are complex and sufficient time is needed to conduct the proper amount of diligence and deploy a sound implementation."⁷ FERC should reject such arguments as a reason for accepting a 2030 start date.

R Street appreciates Xcel's references to DOE's Modern Grid Distribution project and agrees with Xcel that grid architecture is an important aspect of the future ability of the distribution grid especially in a high DER future. R Street also agrees that defining and identifying the objectives and attributes of this future distribution system is important. Indeed, in the Notice of Proposed Rulemaking that led to the issuance of Order 2222, FERC sought comment on how a distribution system operator (DSO) "might add value to the distributed energy resource aggregator model in terms of facilitating communication among affected entities."⁸ While FERC did not further build on this topic, clearly it was contemplating the role of grid architecture on how to leverage DER being developed across the country.

While R Street recognizes the importance of identifying objectives in advance, Xcel's comments seem to ignore that DER and integrating DER into utility planning is not a recent trend. FERC issued Order 719 in

⁴ *Participation of Distributed Energy Resource Aggregations in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 2222, 172 FERC ¶ 61,247 at P 361 (2020) (Order 2222).

⁵ "Modern Distribution Grid Project: Overview," Pacific Northwest National Laboratory, June 2022. <https://gridarchitecture.pnnl.gov/modern-grid-distribution-project.aspx>.

⁶ Motion to Intervene and Comments of Xcel Energy Services Inc., Docket No. ER22-1640-000, at 7-8 (June 6, 2022).

⁷ *Id.* at 8-9.

⁸ *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Notice of Proposed Rulemaking, 157 FERC ¶ 61,121 at P 156 (November 17, 2016).

October 2008 which enabled the participation of demand response aggregators in organized wholesale markets.⁹ A purpose of Order 719 was to “eliminate barriers to demand response participation in organized energy markets. These reforms are to ensure that demand response is treated comparably to other resources.”¹⁰ Subsequent efforts by FERC to enhance the ability of DER to participate in organized markets include Order 745, issued in March 2011.¹¹ For over a decade, FERC policy has been to “foster competition in wholesale power markets.”¹² This includes DER.

Furthermore, at the state level, commissions across the MISO footprint have addressed aggregation in one manner or another, albeit mostly resulting in not allowing demand response aggregators to participate in their respective states (Illinois being the exception). However, while some states have expressly prohibited aggregators from participation, other states have more simply not issued rules to allow aggregators to participate. For example, the Minnesota commission expressed its preference that demand response aggregators work with utilities to develop new demand response programs.¹³ More recently, the Minnesota commission directed Xcel to work with demand response aggregators to procure an additional 43 megawatts of demand response capacity and directed additional opportunity to comment on whether Minnesota should allow demand response aggregators to participate more broadly in Minnesota.¹⁴

Xcel also notes that additional technology is needed to support the development of DER aggregators. FERC should reject this assumption. While technology, such as a Distributed Energy Resource Management System (DERMS), can help utilities to control DER, this is built upon the assumption that the utility must control the DER.¹⁵ With an aggregator in control of the DER, it is then upon the aggregator to control the DER in response to a MISO signal. Again, to the extent that the utility seeks to leverage grid architecture as a rationale for delaying DER aggregation, that assumption is built upon the premise that the utility, and only the utility, is capable of controlling and implementing such programs. This would frustrate not only Order 2222 directives, but FERC’s directions in Orders 719 and 745. Aggregators are more than capable of setting up aggregations and managing them in response to appropriate price and market signals without the utility controlling them via DERMS.

As Xcel notes “grid architecture development, design, procurement and deployment and selection will still need to occur,” and that Xcel anticipates that it will take “five years, at minimum, to be able to

⁹ *Wholesale Competition in Regions with Organized Electric Markets*, Order 719, 125 FERC ¶ 61,071 (October 17, 2008) (Order 719).

¹⁰ *Id.* at P 15.

¹¹ *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, 134 FERC ¶ 61,187 (2011), *order on reh’g and clarification*, Order No. 745-A, 137 FERC ¶ 61,215 (2011), *reh’g denied*, Order No. 745-B, 138 FERC ¶ 61,148 (2012), *vacated sub nom. Elec. Power Supply Ass’n v. FERC*, 753 F.3d 216 (D.C. Cir. 2014), *rev’d & remanded sub nom. FERC v. Elec. Power Supply Ass’n*, 577 U.S. _____, 136 S. Ct. 760 (2016).

¹² Order 719 at P 1.

¹³ *In the Matter of an Investigation of Whether the Commission Should Take Action on Demand Response Bid Directly into the MISO Markets by Aggregators of Retail Customers Under FERC Orders 719 and 719-A*, Order Accepting Compliance Filings, Minnesota Public Utilities Commission, Docket No. E-999/CI-09-1449 (April 16, 2013).

¹⁴ *In the Matter of Xcel Energy’s Petition for Load Flexibility Pilot Programs and Financial Incentive, et al.*, Order Approving Modified Load-Flexibility Pilots and Demonstration Projects, Authorizing Deferred Accounting, and Taking Other Action, Minnesota Public Utilities Commission, Docket Nos. E-002/M-21-101, *et al.* (March 15, 2022).

¹⁵ Xcel Comments at 9-10.

deploy needed technologies to manage DER aggregations at a meaningful level of participation – assuming that sufficiently mature technologies even exist.”¹⁶ As R Street noted above, FERC has made it clear since at least 2008 that it wants DER aggregators to participate in organized wholesale markets. That Xcel has not, in fact, been including such guidance in their own distribution planning, consistent with the DOE’s Modern Grid Distribution project, should not be a reason for delaying Order 2222 requirements until 2030, as proposed by MISO. In other words, FERC has been clear since 2008 that aggregators should be able to participate directly in organized wholesale markets and Xcel, and the other utilities across the MISO territory should have been including such objectives in their planning efforts since then. The utilities, therefore, should not be able to claim the lack of sufficient planning or implementing the appropriate grid architecture as a reason to delay Order 2222 implementation.

III. Conclusion

R Street respectfully requests that the Commission accept this Motion to Submit Answer and Answering Comments in response to comments submitted on MISO’s Order 2222 compliance filing.

Respectfully submitted,

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Dated at Washington, D.C.
This 27th Day of July 2022

¹⁶ *Id.* at 10.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that one copy of the foregoing pleading has this day been served in a manner permitted by Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010) on each person whose name appears on the Official Service List compiled by the Secretary in this proceeding.

/s/ Christopher Villarreal
Christopher Villarreal

Dated at Eden Prairie, Minnesota.
This 27th Day of July 2022.