

STATE OF IOWA
BEFORE THE IOWA UTILITIES COMMISSION

IN RE: PARTICIPATION OF DEMAND RESPONSE AGGREGATORS IN MARKETS OPERATED BY REGIONAL TRANSMISSION ORGANIZATIONS AND INDEPENDENT SYSTEM OPERATORS	DOCKET NO. NOI-2025-0001
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Request to File Late Comments and Comments of the R Street Institute

The R Street Institute (R Street) submits these comments in response to the Iowa Utilities Commission (IUC or Commission) “Order Initiating Inquiry” issued on March 21, 2025.¹ R Street appreciates the opportunity to offer its perspectives on topics raised in the Order and thanks the Commission for the opportunity to provide comments on this initiative.

Request to File Late Comments

Due to R Street’s perspective and experience with this topic and the early stage of this proceeding, R Street requests the Commission to accept these late-filed comments. This inquiry is still in the early stages of the process and, as noted in Chair Helland’s dissent, the result of this inquiry will be another proceeding to review potential and proposed rules related to Aggregators of Retail Customers (ARC). R Street has participated in similar proceedings across the region, including in Minnesota² and Wisconsin.³ R Street does not believe any party will be prejudiced by the late filing of these comments and accepts the record as it exists.

Introduction

On Oct. 17, 2008, the Federal Energy Regulatory Commission (FERC) issued Order No. 719.⁴ That order directed Regional Transmission Organizations (RTOs) to institute reforms to “accept bids from demand response resources in their markets for certain ancillary services, on a basis comparable to other resources.”⁵ In particular, FERC sought to remove barriers to participation in RTO tariffs for demand response. As FERC stated in Order No. 719, “enabling demand-side resources, as well as supply-side

¹ *In re: Participation of Demand Response Aggregators in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order Initiating Inquiry With Dissenting Opinion, Docket No. NOI-2025-0001 (March 25, 2025).

² *In the Matter of a Commission Investigation into the Potential Role of Third-Party Aggregation of Retail Customers*, Docket No. E-999/CI-22-600, Minnesota Public Utilities Commission.

³ *Investigation on the Commission’s Own Motion to Review Aggregation of Retail Customers to Form Demand Response Load Reduction Resources*, Docket No. 5-EL-163, Wisconsin Public Service Commission.

⁴ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, 125 FERC ¶ 61,071 (2008), *order on reh’g*, Order No. 719-A, 128 FERC ¶ 61,059 (2009), *order on reh’g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

⁵ Order No. 719 at P 15.

resources, improves economic operation of electric power markets by aligning prices more closely with the value customers place on electric power.”⁶ However, Order No. 719 noted that while RTOs are to allow a bid from an ARC, such participation by the ARC may be limited if “the laws or regulations of the relevant electric retail regulatory authority do not permit the customers aggregated in the bid to participate.”⁷ FERC Order No. 719-A further notes that “we leave it to the appropriate state or local authorities to set and enforce their own requirements” for ARC participation.⁸

Like many states within the Midcontinent Independent System Operator (MISO) footprint, the Commission issued an order prohibiting ARCs from aggregating Iowa customers.⁹ The Commission initiated this proceeding on March 25, 2025. In its Order initiating this proceeding, the Commission provides a history of federal and state action related to demand response in Iowa and actions of the Commission. In particular, the Commission issued an order prohibiting ARCs in 2013. As the Order appropriately notes, significant activity has occurred in the years since the Commission’s last action on this topic. To help identify potential next steps, the Commission is seeking comments on 11 questions over four topics including jurisdiction, dispute resolution, dual participation, and role of the Commission in implementing Order No. 2222.¹⁰ The Commission also seeks comments on a draft rule to allow ARC participation in Iowa.¹¹

R Street appreciates the opportunity to provide these comments in response to the Commission’s Order.

About the R Street Institute

R Street is a nonprofit, nonpartisan public policy research organization. Our mission is to engage in policy research and outreach to promote free markets and limited, effective government. We favor regulation that is transparent and applied equitably, as well as systems that rely on price signals rather than central planning. At the same time, we recognize that natural monopolies and externalities are real concerns that governments must address. We offer research and analysis that advance the goals of a more market-oriented society and limited, effective government, with the full realization that progress takes time.

As one of the preeminent free-market entities in the United States, R Street has a unique perspective on the issues raised in this proceeding regarding the growth and development of ARCs and demand-response participation in wholesale markets, ensuring transparency in wholesale market structures, reducing barriers to entry in wholesale markets, and lowering costs via market-based solutions.

⁶ *Id.* at P 16.

⁷ *Id.* at P 155.

⁸ Order No. 719-A at P 54.

⁹ *Investigation to Develop and Analyze Alternative Electric and Natural Gas Rate Design and Load Management Options which have the Potential to Reduce Emissions of Greenhouse Gases*, Order Temporarily Prohibiting Operation of Aggregators of Retail Customers, Docket No. 5-UI-116 (Oct. 15, 2009).

¹⁰ Order at Attachment A.

¹¹ Order at Attachment B.

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Comments

R Street thanks the Commission for seeking input on these important procedural considerations. R Street believes that now is an opportune time for the Commission to have this discussion regarding the ability of ARCs to participate in Iowa. R Street recommends that the Commission continue this proceeding to develop appropriate requirements and processes to allow ARCs to participate in Iowa, as discussed further below.

R Street would first like to comment on the significant changes in the electricity system since the Commission first issued its temporary prohibition on ARCs. This includes additional action before FERC directing RTOs to allow distributed energy resource aggregators to participate in wholesale markets.¹² After FERC issued Order No. 719, it issued Order No. 745, which provided additional guidance and direction regarding the use of demand response in organized markets. Upheld by the U.S. Supreme Court, this Order solidified FERC's authority regarding the role of demand response in organized markets.¹³ FERC also issued Order No. 2222 directing RTOs to allow for the aggregation of distributed energy resources (DERs), which is broader than just demand response. Indeed, DERs can include demand response, energy efficiency, energy storage, electric vehicles, and solar.¹⁴ Finally, FERC has taken steps to reconsider the initial decision in Order No. 719 that let states opt out of allowing ARCs to provide demand response services in their states.¹⁵

¹² *Participation of Distributed Energy Res. Aggregations in Mkts. Operated by Reg'l Transmission Orgs. & Indepe. Sys. Operators*, Order No. 2222, 172 FERC ¶ 61,247 (2020), *order on reh'g*, Order No. 2222-A, 174 FERC ¶ 61,197, *order on reh'g*, Order No. 2222-B, 175 FERC ¶ 61,227 (2021).

¹³ *Demand Response Compensation in Organized Wholesale Energy Mkts.*, Order No. 745, 134 FERC ¶ 61,187 (2011), *order on reh'g & 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. Elec. Power Supply Ass'n v. FERC*, 136 S. Ct. 760 (2016).

¹⁴ See, e.g., *Distributed Energy Resources Rate Design and Compensation: A Manual Prepared by the NARUC Staff Subcommittee on Rate Design*, NARUC at 45 (November 2016). <https://pubs.naruc.org/pub/19FDF48B-AA57-5160-DBA1-BE2E9C2F7EAO>

¹⁵ *Participation of Aggregators of Retail Demand Response Customers in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 174 FERC ¶ 61,198 (March 18, 2021).

This opt-out creates challenges for implementing Order No. 2222, as the opt-out only applies to demand-response services. This means that an ARC that is allowed to operate pursuant to Order No. 2222 by aggregating energy efficiency, storage, or any other wholesale service cannot include demand response. FERC sought to address this confusion in Order No. 2222-A by allowing demand response to be included in heterogeneous aggregations.¹⁶ According to FERC, one of the goals of Order No. 2222 is to “break down barriers to competition.”¹⁷ While FERC subsequently withdrew the direction to allow demand response to be part of heterogeneous aggregations in Order No. 2222-B, it did not explicitly reject its determination on the value of demand response being included in heterogeneous aggregations. Rather, FERC decided to open a new proceeding to consider whether the demand response opt-out granted in Order No. 719 should be maintained.¹⁸ To minimize this confusion, R Street believes the Commission should allow customers with demand greater than 100 kW (individually or in aggregate) to work with ARCs and participate in organized markets as well as develop rules and processes for ARC registration and data access to allow ARCs to participate in organized markets more fully. This would allow ARCs to develop aggregations that include demand response, both on a stand-alone basis and as part of a heterogeneous aggregation. Such action is allowed under Order No. 719 and would fulfill the overarching goals of both Order No. 745 and Order No. 2222—to enhance competition in organized markets.

Comments in Response to the Commission’s Questions

In its Order, the Commission identified a number of topics for stakeholders to respond to and which would be used to inform potential future Commission action. R Street appreciates the opportunity to submit comments in response to these questions.

I. Jurisdictional

1. If the Commission were to modify its opt-out to allow ARCs to operate within its jurisdiction, what regulatory gaps, if any, would exist under current RTO/ISO rules governing [demand response]?

R Street would suggest that rather than gaps, the Commission should consider the steps or guidance needed to enable ARC participation in Iowa. For example, if the Commission were to adopt only the proposed rule attached to its Order, there would still need to be steps for the Commission to take to enable ARC participation. Notably, the Commission would need to develop appropriate rules, policies, requirements, or guidance to direct the sharing of customer energy usage with a customer-authorized third party. As FERC found last year, in a complaint filed by an ARC regarding the inability to access customer usage data to participate in PJM markets, “the Commission here respects the role of states with respect to issues such as electric distribution companies’ policies around residential customer meter data. We recognize that some questions governing the availability to third parties of data held by electric distribution companies, including interval data, along with larger questions involving deployment of advanced metering infrastructure, are questions under the jurisdiction of state regulatory authorities.”¹⁹ The availability of data to participate in MISO markets is vital to the success of ARCs. As FERC Commissioner Chang noted in her concurrence:

¹⁶ Order No. 2222-A at PP 22, 28.

¹⁷ *Id.* at P 23.

¹⁸ Order No. 2222-B at P 28.

¹⁹ *Enerwise Global Technologies, LLC v. PJM Interconnection, L.L.C.*, 118 FERC ¶61,191 at P 35 (Sept. 19, 2024).

I am concerned that metered interval data are often difficult or impossible to obtain for third parties interested in deploying demand-side resources, which highlights a potential gap where [ARCs] in areas with metered interval data may face a barrier to participation in the PJM market. This restriction in demand-side resources' access to the market would reduce competition that otherwise could bring value to customers.

More challenging, this potential gap occurs at the intersection of state and federal jurisdiction, as state regulatory commissions have authority to determine whether distribution utilities must provide third parties with metered interval data from retail customers.²⁰

The draft rule directs a utility and an ARC to "cooperate in the exchange of customer data."²¹ R Street encourages the Commission to provide more specifics regarding the sharing of customer data to ensure the utility cannot create unreasonable barriers to accessing such authorized customer data. Furthermore, R Street recommends that any action related to the development of data access and privacy policies be consistent and standardized across each regulated utility. This would include a requirement to adopt Green Button Connect My Data as the standard for sharing customer data and to ensure such implementation is done in compliance with the underlying standard via certification by an appropriate entity. A significant barrier to enabling aggregators is when each utility in a given jurisdiction has different rules, policies, and requirements. In other words, if an aggregator wants to participate in Iowa, but each utility has different rules, practices, and standards for accessing customer data, that means the aggregator must develop utility-specific solutions rather than one common solution across the state. This lack of process and data standardization increases costs to the aggregator and makes it more difficult for customers to participate in an ARC product.

2. Does Iowa law give the Commission sufficient authority to fill those regulatory gaps?

R Street is unable to opine on the status of the current authority of the Commission to address these gaps. However, R Street does suggest that its current authority over utility tariffs, rules, and practices provides it sufficient authority to enforce those tariffs—no different from what they are allowed currently. In other words, if a utility is found to be operating in violation of a Commission-approved order, it has the authority to investigate and enforce its own authority. To the extent the Commission decides to implement any such policies, such as registration requirements or a process to share customer usage data, then its authority would apply to the entities it regulates (i.e., utilities). R Street would caution the Commission from attempting to apply its authority to entities over which it has no authority.

II. Dispute Resolution

3. How should relationships between utilities and ARCs be managed?

To have a well-functioning and trusted marketplace for ARCs to participate within Iowa, R Street believes the Commission should adopt such requirements, processes, and tariffs as necessary to enable ARC participation. In order for such a marketplace to develop, there is a need for interaction between the regulated utility and the ARC. As noted above, the process and sharing of customer usage data should be detailed to ensure the ARC receives the necessary customer usage data, as identified by the customer, and that the process is standardized. Furthermore, to ensure the ARC has the relevant

²⁰ *Id.* at Chang Concurrence P 3-4.

²¹ Order at Attachment B.

customer information to participate in MISO markets, there must be a process for sharing additional information between the utility and the ARC.

R Street also suggests that for residential and other small customers, the Commission may want to adopt registration requirements for ARCs so that the Commission knows who is participating in its state. As the Commission's authority applies to retail customers, it should ensure there is some local authority. R Street sees the role of ARC registration and the development of rules and tariffs as providing certainty to ARCs, utilities, the Commission, and customers regarding the operation of ARCs. Furthermore, R Street notes that any adopted rule or tariff should be applied in the same manner for each utility under Commission authority. Such conformity is vital to ensure that aggregators can operate in Iowa with one set of rules rather than multiple utility-specific requirements. This consistency will reduce overhead and customer-acquisition costs for the ARCs and ensure that individual utility practices do not become a barrier to entry.

As a starting point, R Street suggests the Commission look to the rules and tariffs adopted by the California Public Utilities Commission (CPUC) related to demand response aggregators operating in California.²² For an ARC (or a demand response provider (DRP), as they are defined in California) to participate in the state, an aggregator must be registered with the CPUC, along with the California Independent System Operator. For the purposes of these comments, R Street will focus on the state regulatory requirements adopted by the CPUC.

These requirements include:

- A signed DRP registration form.
- An application fee of \$100 via certified check.
- A signed utility-DRP service agreement for each utility territory in which the DRP intends to do business.
- A performance bond if the aggregator intends to serve residential or small commercial customers (of less than 20 kW peak load). The performance bond amount is based on the number of customers according to a formula in each of the utility's rules. The minimum performance bond amount is \$25,000.²³

By requiring such information, the Commission would be able to identify authorized ARCs, have contact information for all authorized ARCs, ensure that the ARCs agree to abide by the adopted policies and

²² *Order Instituting Rulemaking regarding policies and protocols for demand response load impact estimates, cost-effectiveness methodologies, megawatt goals and alignment with California Independent System Operator Market Design Protocols*, D.12-11-025, California Public Utilities Commission (Dec. 4, 2012). <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M037/K494/37494080.PDF>; See also, PG&E Electric Rule No. 24. https://www.pge.com/tariffs/assets/pdf/tariffbook/ELEC_RULES_24.pdf. All references to the California rule will be to PG&E Electric Rule No. 24 unless otherwise identified.

²³ California Public Utilities Commission, "DRP Registration Information," State of California, last accessed Oct. 21, 2024. <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-costs/demand-response-dr/dr-registration-information>. Examples of needed forms can be found at the same link.

requirements of the Commission, and provide additional protection for ARCs working with residential and small commercial customers.²⁴

Furthermore, by adopting requirements as found in PG&E Electric Rule No. 24, the Commission would provide certainty to ARCs and the utilities regarding the rights, roles, and responsibilities of each organization.

Such requirements include:

- Common set of definitions
- Timelines for approval and communications between the ARC and the utility
- Participation requirements for customers to minimize risk of dual participation in the same products
- Customer energy usage data
- Guidelines for establishing aggregation service
- Costs paid in the provision of certain services (e.g., metering)
- Process for a customer to discontinue participation in either a utility demand response program or an aggregator's program
- Dispute-resolution process

R Street is concerned that if these requirements, roles, and responsibilities are not detailed in advance, the Commission may find itself needing to litigate these issues individually and as they occur on a utility-by-utility basis, which would not benefit customers, ARCs, utilities, or the Commission. Rather, by comprehensively addressing these issues in advance and in one document, the Commission can detail the roles of the ARCs and utilities and set expectations for how aggregation will occur.

4. How should relationships between ARCs and customers be managed?

R Street submits that, for the most part, this is beyond the authority of the Commission. Instead, the process outlined above puts requirements on the ARC and the utility to ensure it has accomplished specific requirements, that the process has been followed, and that authorizations have been received. However, to the extent the Commission is concerned that some customers may be better suited to participate, R Street notes that other states have allowed specific types of customers to participate without any such protections. For example, the Missouri Public Service Commission issued an order allowing customers with a demand above 100 kW to immediately work with ARCs and participate in RTO markets.²⁵ This demand can be either at an individual location or aggregated by a customer inside a utility's service territory. These customers are sophisticated enough to understand the risks of

²⁴ See, e.g., the list of registered aggregators with the CPUC: <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-costs/demand-response-dr/registered-demand-response-providers-drps-aggregators-and-faq>.

²⁵ *In the Matter of the Establishment of a Working Case Regarding FERC Order 2222 Regarding Participation of Distributed Energy Resource Aggregators in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order Partially Modifying the Commission's 2010 Order Regarding ARCs, File No. EW-2021-0267 (Oct. 12, 2023).

participating with an ARC. Allowing this threshold to be aggregated also allows certain commercial customers with multiple locations across a utility's service territory to participate in MISO markets. Note that R Street suggests limiting such aggregation only to individual utility service territories. In other words, if Retailer A operates across Iowa and seeks to sign up with an ARC, its aggregation that participates in MISO markets can be done only on a utility service territory basis as long as it reaches 100 kW. The 100 kW minimum is also consistent with FERC Order No. 2222.²⁶

5. What entities are responsible for managing relationships between utilities, ARCs, and customers?

For an ARC to participate in MISO or Southwest Power Pool (SPP) markets, it must be registered with the RTO. Furthermore, the RTO is also responsible for creating the market products that allow the ARCs to participate. The RTO is also responsible for collecting bid information and sharing results with stakeholders, including the utility. This means that, to the extent the utility is worried about not being able to account for demand response being called in the RTO market, MISO adjusts the utility's load forecast in response to those bids.

The other entity is the Commission itself. As the regulator of relevant electric utilities, it has the authority to oversee and ensure the utility follows its rules, regulations, and statutes. The Commission's authority over utilities means it can enforce utility tariffs and materials. So to the extent an ARC violates a utility tariff, the Commission can direct the utility to take certain action against the ARC. For example, if an ARC is misusing customer usage data obtained pursuant to a Commission-approved utility tariff, the Commission may direct the utility to stop sharing such information with the ARC.

6. What types of disputes do stakeholders anticipate?

First, as noted above, the availability of customer usage information is necessary for ARCs to participate in RTO markets. To the extent that the utility does not provide data in a timely or standardized manner or provides wrong or erroneous data, the ARC is responsible to the RTO. As such, the ARC will be harmed by the utility's failure to provide this information. This was the situation an ARC found itself in in the PJM territory—unable to access customer usage data necessary to participate in PJM markets.

To the extent that there are other disputes, R Street notes that the implementation of procedures and requirements, such as those adopted by the California Commission, provides a process for such disputes to be handled and ensures that a common set of terms and practices applies across the state.

III. Double Counting/Dual Participation

7. Should demand response (DR) customers be required to participate in only retail programs or only wholesale programs?
8. If DR customers were allowed to participate in both wholesale and retail programs, how would improper double counting be identified and avoided?

²⁶ *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 171 (2020).

R Street suggests that customers should be allowed to participate in whatever programs they choose, provided they comply with FERC Order Nos. 745 and 2222 regarding dual participation. In other words, to the extent that a customer participates in both a retail energy program and a wholesale capacity program, with each program compensating the customer for different responses, dual participation should be permitted. However, a customer should not be allowed to participate in a program that compensates it for the same service achieved by the same response. Since utilities already have information about its programs, the utility must sign off on a customer participating in another product to ensure they do not inappropriately participate in the same product or service. In such cases, the customer must then decide whether to stay with the utility program or sign up with the ARC's product. For example, PG&E Electric Rule Section 2.d. describes the process for dual participation.²⁷

IV. FERC Order No. 2222

9. Should the Commission treat ARCs operating DR programs the same way it treats ARCs operating other DER programs?

R Street notes that there are differences between an ARC operating under a Commission-approved utility demand response program and a competitive product offered by an ARC. When an ARC operates under a utility program, the ARC becomes a contractor to the utility. It is then subject to the specific requirements of the utility. In the case of an ARC operating in competition with the utility, there is no need to subject the ARC to the same requirements that would otherwise apply as a utility contractor.

10. What should the Commission's role in the implementation of FERC Order No. 2222 be, if any?

Unlike FERC Order No. 745, Order No. 2222 does not permit the state to opt out of allowing ARCs to participate. Nevertheless, R Street suggests that many of the issues discussed above would also apply in the case of an ARC operating under Order No. 2222. Notably, an ARC operating under either Order No. 745 or Order No. 2222 will need customer usage information. The utility and the ARC must share information to ensure customer participation eligibility. R Street also suggests that a registration process would be useful to ensure the Commission can identify ARCs operating in Iowa, even if it does not directly regulate them. There should be some type of customer protection process in place, especially for residential customers.

11. Regardless of the position the Commission ultimately takes with respect to the current opt-out, does an adequate regulatory structure currently exist at the level to facilitate Order No. 2222 implementation? If not, what changes, either administratively or legislatively, should be explored to facilitate Order No. 2222 implementation?

Customers have missed out on opportunities to participate in RTO markets for nearly 15 years. There has been a significant amount of growth in technology available to customers in this period, including smart thermostats, electric vehicles, and the installation of advanced metering infrastructure. Indeed, traditional, staid utility demand-response programs, where they are available only during system emergencies, provide no opportunities for customers to become more active and engaged and limits the additional tools used by MISO and SPP on a daily basis. This was precisely FERC's goal in Order Nos. 719, 745, and 2222: to encourage demand to participate as a resource and to be responsive, rather than to act passively with no ability to assist in the reliability of the grid. New technologies allow more resources and services to participate, which helps mitigate potential reliability events and can lower costs through

²⁷ See, fn. 22 *supra*.

the use of demand response rather than a power plant. As demand response (and DER more broadly) grows in participation and utilization, future costs may decrease, as resource needs can be met by aggregated resources rather than utility-owned power plants.

As noted in response to Question 10, there is no opt-out opportunity for the Commission under Order No. 2222. If the Commission maintains a demand response opt-out, it will deprive customers and the market of aggregating demand response with any other Order No. 2222-allowed products. This means ARCs will be unable to sign up customers for demand response products and will have to tailor Iowa-specific Order No. 2222 products that exclude demand response. However, data access and other topics raised above must be addressed regardless. Even if the Commission keeps the demand response opt-out in place, it must still enable customer usage data access and communication processes between the ARC and the utility.

Conclusion

R Street thanks the Commission for the opportunity to comment on these important topics.

Respectfully submitted,

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