UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Voltus, Inc.	)	
	)	**Docket No. EL21-12**
Complainant,	)	
	)	
v.	)	
	)	
Midcontinent Independent System Operator, Inc.	)	
	)	
Respondent.	)	

COMMENTS OF NRG CURTAILMENT SOLUTIONS, INC.

Pursuant to Rule 211 of the Federal Energy Regulatory Commission's ("FERC" or the "Commission") Rules of Practice and Procedure[1], NRG Curtailment Solutions, Inc. ("NRGCS") hereby submits these comments supporting Voltus, Inc.'s ("Voltus") October 20, 2020 Complaint against the Midcontinent Independent System Operation, Inc. ("MISO").[2] The Voltus Complaint raises important issues regarding the barriers to entry limiting participation in the organized wholesale markets by demand response participants and aggregators. From Order 719 to the most recent Order 2222, the energy landscape has evolved, and therefore, demand response participation in the wholesale market should be revisited. As such, NRGCS submits the below comments supporting Voltus's concerns for the need to more fully open the market to demand response participation, especially in light of Order 2222.

[1] 18 C.F.R. § 385.211.
[2] *Voltus, Inc. v. Midcontinent Independent System Operator, Inc.,* Docket No. EL21-12 (October 20, 2020) ("Voltus Complaint").

I. BACKGROUND

A. NRGCS

NRGCS is a wholly-owned subsidiary of NRG Energy, Inc. NRGCS participates in wholesale and distribution-level utility-administered demand response programs across the United States and is one of the largest demand response providers in the country. Through wholesale and retail markets, NRGCS serves a wide variety of commercial, industrial, and institutional customers and achieved a 2,400 MW reduction of curtailable load at over 5,000 facilities in 2019.

NRGCS is one of the largest strategic load management service providers in North America, operating in PJM, NYISO, ISO-NE, IESO, ERCOT, and CAISO. By utilizing demand response programs within the wholesale markets, NRGCS has the ability to leverage wholesale market programs, such as capacity, energy, and ancillary services, and customize an energy solution that corresponds with the consumers' ability to curtail load and their ability to respond to wholesale market prices.

B. Order 719 and its Implementation in MISO

In 2008, FERC issued Order 719.[3] The Commission's goal in issuing Order 719 was to make reforms to improve the operation of organized wholesale electric markets as they related to demand response, among other things, and to study whether further reforms were necessary to eliminate barriers to demand response entering the organized markets.[4] Importantly, it stated that the "Commission's policy has been, and continues to be, to identify and eliminate barriers to participation of demand response resources in organized power markets."[5] In the Notice of

[3] *Wholesale Competition in Regions with Organized Electric Markets,* 125 FERC ¶ 61,071 (October 17, 2008) ("Order 719").
[4] Order 719 at PP 2, 5.
[5] Order 719 at P 48.

Proposed Rulemaking that culminated in Order 719, the Commission "proposed to require RTOs and ISOs to amend their market rules to permit an aggregator of retail customers to bid demand response on behalf of retail customers directly into the RTO's or ISO's organized markets, unless the laws or regulations of the Relevant Electric Retail Regulatory Authority ("RERRA") do not permit a retail customer to participate."[6] In its Final Rule, the Commission required "RTOs and ISOs to amend their market rules as necessary to permit an ARC [Aggregator of Retail Customers] to bid demand response on behalf of retail customers directly into the RTO's or ISO's organized markets, unless the laws or regulations of the relevant electric retail regulatory authority do not permit a regulatory customer to participate."[7] In MISO, nearly all states have chosen to prohibit the participation of ARCs in the wholesale market through this "opt-out" provision of the Commission's regulation.[8]

At the time this regulation was issued, the Commission found that its 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."[9]

C. Order 2222

FERC recently issued Order 2222.[10] Order 2222 provides aggregated distributed energy resources the opportunity to participate in regional organized markets. In Order 2222, FERC made clear the mandate that "each RTO's/ISO's rules do not prohibit any particular type of distributed energy resource technology from participating in distributed energy resource

[6] *Id.* at P 128
[7] *Id.* at P 154.
[8] *See* Appendix B to the Voltus Complaint.
[9] Order 719 at P 156.
[10] Participation of Distributed Energy Resource Aggregations in Markets Operated by RTOs and ISOs, 172 FERC ¶ 61,247 (September 17, 2020) ("Order 2222").

aggregations."[11] Order 2222 does not allow retail regulatory authorities to broadly prohibit distributed energy resources from participating in the regional markets. Specifically, the Commission stated that "[r]equiring that each RTO's/ISO's rules do not exclude any particular types of technology from participating in distributed energy resource aggregations in RTO/ISO markets will ensure a technology-neutral approach to distributed energy resource aggregations, which will ensure that more resources are able to participate in such aggregations, thereby helping enhance competition and ensure just and reasonable rates."[12]

Each ISO/RTO has the responsibility to make a compliance filing to meet the obligations set forth in Order 2222.

D. Changes in the Supply Landscape and the Role of Demand-Side Resources

Since 2008, the energy landscape has changed. The supply stack in the wholesale markets looks much different today than it did in 2008. The wholesale markets are moving in the direction of cleaner resources such as wind, solar, and battery storage. As Mr. Centolella states in his testimony to the Voltus Complaint, wind and solar will make up a large number of the new resources expected to come online from 2020 to 2022.[13] Moreover, wind and solar comprised over 80% of new resources in the interconnection queue in September 2019.[14] With this change, the wholesale markets have a supply mix of increasingly intermittent (and sometimes-unpredictable) resources that needs to be balanced with fast responding resources that can reliably respond to emergency conditions, such as reserve shortages, increased energy prices, and emergency system conditions.

[11] Order 2222 at P 141.
[12] *Ibid.*
[13] Exhibit A (Testimony of Paul Centolella) to Voltus Complaint, at pg. 11.
[14] *Id.*

As noted in FERC's 2019 Assessment of Demand Response and Advanced Metering report[15] demand response resources assisted in helping to mitigate reserve shortages due to reduced wind output and thermal generation outages. Since 2008 demand response has proven to be a reliable supply asset to wholesale markets as the system needs and resource mix has changed. Meanwhile, consumers who have the choice to partner with demand response aggregators have enjoyed greater visibility and control over their energy usage. This has translated to direct energy savings and the added social benefit of contributing to the nation's energy independence.

E. Voltus Complaint

With this backdrop, on October 20, 2020, Voltus filed a complaint against MISO: (1) asking the Commission to find that the MISO tariff provisions authorizing states to bar third party demand response providers from participating in MISO's wholesale market are not just and reasonable and inconsistent with the Federal Power Act, (2) asking the Commission to find that certain relevant electric retail regulatory authorities in MISO that issued prohibitions against third party demand response providers did so in a manner inconsistent with the terms of the regulation, and (3) asking the Commission to issue a notice of proposed rulemaking to amend its regulations and eliminate Order 719's opt-out.[16]

Voltus argues that the opt-out has contributed to MISO's market inefficiencies and operational risk.[17] It explains that with the evolving mix of technology, demand response is even more important but is severely limited by the state opt-outs.[18] Since 2008's Order 719, FERC has issued Order 2222, concluding that coordination between wholesale and distribution system

[15] https://www.ferc.gov/sites/default/files/2020-04/DR-AM-Report2019_0.pdf, page 19.
[16] Voltus Complaint, pgs. 1-2.
[17] *Id.* at pg. 7.
[18] *Id.* at pg. 7.

operators is needed and that storage and distributed energy resources should not be barred from participating in the wholesale market.[19] As such, Voltus argues that the opt-out language should be overturned. In addition, Voltus argues that the opt-outs adopted under Order 719 have caused barriers to competition in the market because utility demand response programs (e.g., those that are closed to aggregators) are insulated from competitive pressures and therefore result in rates that are unjust and unreasonable.[20] Lastly, Voltus argues that the opt-out is unduly discriminatory because it treats demand response resources differently than energy storage and other distributed energy resources.[21] However, FERC specifically stated that limiting technology that would be allowed to participate in wholesale markets would create a barrier to entry.[22] As such, Voltus requests that the Commission direct MISO to disregard certain state actions that block aggregators from participating in MISO through measures other than state law or regulation and require MISO to incorporate mechanisms for coordination with distribution system operators specific to demand response in accordance with Order 2222.

II. COMMENTS

A. State Opt-Outs Create a Barrier to Competition in the Market and Unduly Discriminate Against Third-Party Aggregators, Stifling Competition and Growth of Demand Response Providers and Aggregators.

Voltus has identified a clear infirmity of MISO's market. As a consumer-focused provider of wholesale and retail electricity services, NRGCS and its affiliates rely on competitive electricity markets to provide reliable and value-added services at competitive rates. In MISO, nearly all states have elected to prohibit ARC competition within the wholesale market. In doing so, states availed themselves of Order 719's "opt-out" provision. While states are free to

[19] *Id.* at pg. 8
[20] *Id.* at pg. 8.
[21] *Id.* at pg. 9.
[22] Order 222 at P 141.

develop and define types of retail-level demand response programs, these, as well as the opt-out selection, have resulted in limited or no access for wholesale market demand response service providers. Too often this is due to state programs limiting participation to the local monopoly utility or providing only limited access for competitive demand response providers.

As one example of the restraints that companies like NRGCS and Voltus face, one may look to Minnesota, which has chosen to house its demand-response proceedings not in a docket that studies how state regulation may permit business models like ARCs to operate, but how incumbent utilities can be incentivized to procure demand response after years of hostility in favor of generation rate base.[23] Years later, there remains no clear pathway for the ARC business model to exist in Minnesota. The state is a jurisdiction that ostensibly has looked favorably on demand response, requiring by order that 400 MWs be procured by the state's largest utility.[24] The utility has suggested four different ways that demand response will be incorporated into its portfolio. None of them clearly allows customers to provide demand response directly into MISO's markets.[25] The most dynamic of the rate plans suggested by the utility appears to be a "flex pricing" pilot program, which is a fixed-rate product with four blocks associated with pre-specified times of the day—not in relation to the actual value of wholesale energy at any given time.[26] The utility is candid about its intention to be a gatekeeper between demand response providers and the wholesale market. Answering a recent stakeholder question about whether demand response would be bidding into the MISO market, and presumably being

[23] *See In the Matter of the Commission Investigation to Identify and Develop Performance Metrics and Potentially, Incentives for Xcel Energy's Electric Utility Operations*, Minnesota Public Service Commission Docket No. E-002/CI-17-401 ("MNPUC Proceeding").
[24] Correspondence, "Re: Proposed Demand Response Incentive Mechanism Summary – Stakeholder Meeting No. 1" ("Xcel Stakeholder Meeting Notes") (Oct. 15, 2020), pg. 3. MNPUC Proceeding. Available online: https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId={B02D2E75-0000-C11D-A1A0-C4ABB168134B}&documentTitle=202010-167358-01
[25] *Id.* at pg. 4.
[26] https://www.xcelenergy.com/company/rates_and_regulations/filings/flex_pricing_pilot/how_flex_pricing_works.

compensated in relation to the price signals surfaced by it, the utility responded, "We are planning to be responsive to the MISO market verses [*sic*] bidding into it with these particular products."[27] All told, the long-awaited development of demand response in Minnesota portends to result in an end state where a utility will act as a gatekeeper of ARCs, and will not allow them to bid directly into MISO or even to interact readily with MISO's price signals.

As further examples, Mississippi and Louisiana provide aggregators access to MISO markets, but only through the utility with an administrative fee paid to the utility. The Mississippi Public Service Commission approved a Market Valued Demand Response Schedule filed by Entergy Mississippi. This demand response schedule is an optional service that provides opportunity for customers and ARCs with firm load to participate as demand response resources in MISO wholesale markets. In agreeing to participate as an ARC under this tariff, an ARC "shall not participate as a DR resource in 'MISO' wholesale markets except through [this tariff] or other Company-implemented DR effort."[28] Not content to cement the utility as a gatekeeper, the tariff appears to prohibit an ARC from offering some loads through this retail tariff and offering others through the wholesale market (were that allowed by Mississippi in the first instance). An ARC under this tariff may only "revise its standing Demand Response Offer twice per calendar" without paying Entergy additional fees.[29] The rate schedule provides that Entergy will be paid 10% of the monthly settlement amount "to cover Company's administrative costs."[30] NRGCS has not been able to locate a revenue requirement or any other document that indicates

[27] Xcel Stakeholder Meeting Notes, pg. 4.
[28] Entergy Mississippi, LLC, *Market Valued Demand Response Schedule (MVDR-1)*, eff. Sept. 30, 2019, p. 1. https://cdn.entergy-mississippi.com/userfiles/content/price/tariffs/eml_mvdr.pdf.
[29] *Id*. at pg. 4.
[30] *Id.* at pg. 4.

what "administrative costs" this charge is meant to cover, or the basis for this particular rate design.

Similarly, in Louisiana, Entergy has on file a similar "Marked Valued Demand Response Rider Schedule." Like in Mississippi, the tariff prohibits an ARC's direct participation in MISO. Notably, and somewhat more generously, ARCs will have to pay only 5% of the MISO settlement amount to Entergy.[31]

Both the Mississippi and Louisiana Entergy riders bar customers and/or ARCs from directly participating in the MISO wholesale market. Both these riders charge either the customer or ARC an administration fee associated with the rider in order to enroll these resources in MISO. While customers or an ARC should not be precluded from participating in MISO's wholesale demand response products through either Entergy Rider, they should also not be precluded from participating directly in MISO's wholesale demand response products. The administrative fee associated with having to directly enroll through Entergy, either 10% or 5%, respectively, is lost revenue that either the customer or ARC could forgo if direct participation in MISO's wholesale market was allowed. In sum, the incumbent utilities have defined the terms of participation, and these limitations have created a barrier to competition by demand response providers in wholesale electricity markets.

There are two states that have commenced proceedings to revisit the "opt-out" decision in light of Order 2222.[32] Other states have moved toward procuring more demand response. This

[31] *Entergy Services, LLC*, Louisiana State Public Service Commission Docket #U-35443.

[32] On July 7, 2020, the Arkansas Public Service Commission ("APSC") issued Order No. 9 to consider whether it is in the public interest for the APSC to allow ARCs to market and sell demand response into MISO and the Southwest Power Pool markets in light of FERC Order 2222. *See In the Matter of the Impact of Federal Energy Regulatory Commission (FERC) Orders 719 & 719-A in FERC Docket No. RM07-19-001 on the Regulatory Authority of the Arkansas Public Service Commission*, Arkansas Public Service Commission Docket No. 09-090-U. Similarly, the Michigan Public Service Commission issued an order in light of FERC Order 2222 to reopen Case No. U-20348 for the purpose of accepting comments and reviewing the Michigan Public Service Commission's ban on Michigan retail customers from bidding demand response resources into the wholesale markets. *See In the Matter, on the*

progress is laudable in a marketplace that is dominated by vertically integrated utilities with well-established incentives to hold power generation in rate base rather than providing customers opportunities to reduce their demand and obviate the need for such investments. However, upon examination, none of these state actions in MISO will provide for a program for demand response that will readily interact with wholesale price signals and do so in a way that allows an ARC access to that price signal without significant intermediation by a utility, which is to say its competitor.

The Commission seems not to have anticipated that, having tried to strike a balance between the Commission's goals of removing barriers to development of demand response resources in the organized markets and the interests and concerns of the state, incumbent utilities and states would swiftly and perfunctorily exercise this opt-out—often without engaging in any reasoning, or citing to any particular "interest" or "concern." Collectively, these actions have almost fully closed the wholesale market to ARC participation in MISO, the nation's largest RTO/ISO. That is at the heart of this Complaint, and the Commission should recognize now that whatever states may do, it is not reasonable to allow a situation that will categorically prohibit demand response's equitable participation as a resource within the wholesale market on the same footing as other resources.

Such prohibition of a demand response resource's equitable participation within the wholesale market is not only unjust and unreasonable, it harms competition by hindering the very benefits of open competition that free markets create. For example, a level playing field allows demand response aggregators to test new business models that bundle demand response

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Commission's own Motion, to commence a collaborative to consider issues related to implementation of effective electric demand response tariffs and efficient deployment of load-modifying resources, Michigan Public Service Commission Case No. U-20628.

with traditional distributed energy resources in ways that both save on the end user's total energy spend, and that harness valuable revenue streams for both the consumer and aggregator. Such opportunities provide end users with the incentive to invest in energy solutions that would otherwise have been uneconomical. An open and competitive market also sends a strong signal for demand response aggregators to invest in new technologies, such as interval meters that receive and communicate load usage data in real-time, remote monitoring, and automated dispatch technologies that rapidly deploy back-up generation in response to emergency events.

Finally, aggregators (unlike utilities) have the breadth and depth of experience to build a reliable demand response portfolio that is composed of the right balance of load profiles. Within a competitive and inclusive market, aggregators have made strides in carefully targeting demand response participants based on industry segments, load size, and unique curtailment potential on an individual end user level that, on an aggregated basis, have proven to achieve electric reliability benchmarks at a reasonable cost. State opt-outs, however, have the undesirable effect of hindering innovation, raising barriers to entry, and imposing costs that have threatened wider demand response deployment.

The end result has knock-on effects on third party aggregators who face an unlevel playing field; the consumer who is left with limited choice and control over its energy solutions; and the bulk power grid, which is unable to leverage the full potential of demand response, with its proven track record for delivering bulk power reliability. Not allowing third-party aggregators to freely participate in the wholesale market has stifled competition and growth of demand response providers and aggregators in MISO. The absence of access is a clear barrier to entry. Continuing to allow RERRAs the ability to erect barriers for aggregators only seeks to

limit the ability of aggregators, and the consumer, to suppress technology advances and limit the ability for consumers to participate in wholesale markets either directly or through an aggregator.

B. Because of FERC's Recent Decision in Order 2222, Opening the Market to Greater Demand Response Competition is Ripe for Consideration.

FERC's recent action in Order 2222 makes this issue of opt-outs ripe for consideration as the Commission specifically addressed this issue in its order. In Order 2222, the Commission stated that it would not permit RERRA opt-out for DER Aggregation and noted that Order 2222 did not affect RERRAs from prohibiting retail customers' demand response from participating in the wholesale markets by aggregators.[33] Specifically, in Order 2222, FERC declined "to include a mechanism for all relevant electric retail regulatory authorities to prohibit all distributed energy resources from participating in the RTO/ISO markets through distributed energy resource aggregations."[34] The Commission made clear that it was not legally required to grant an opt-out because it has exclusive jurisdiction over the wholesale markets, "including rules for participation of resources connected at or below distribution-level voltages."[35]

In Order 2222, the Commission described the benefits of allowing distributed energy resource aggregators broader access to the wholesale market.[36] Specifically, the Commission noted that "reliability, transparency, and market-related benefits of removing barriers to participation of distributed energy resource aggregators in RTO/ISO markets are significant."[37] In addition, the "Commission also noted that current RTO/ISO market rules often limit the services that distributed energy resources are eligible to provide, in many cases only allowing these resources to be used as demand response or load-side resources when they are located

[33] Order 2222 at P 59.
[34] *Id.* at P 56.
[35] *Id.* at P 57.
[36] *Id.* at PP 59-60.
[37] *Id.* at P 60.

behind a customer meter or by imposing prohibitively expensive or otherwise burdensome requirements."[38] The Commission acknowledged the role of states and the concerns raised by RERRAs, but stated that any concerns about the potential effects on the distribution system do not justify an opt-out that could limit participation.

The Commission's reasoning for not permitting RERRAs to opt-out and to further open the market to distributed energy resources and aggregators should apply no differently to demand response providers and aggregators. There is no practical difference as far as wholesale market efficiency is concerned between distributed energy resources and demand response resources. In Order 2222, the Commission stated that participation in distributed energy resource aggregations should be technology-neutral, allowing more resources to participate and focused on the fact that distributed energy resource aggregations could meet the qualification and performance requirements to provide the service.[39] The function of a demand response resource and distributed energy resource is the same. Therefore, there is no justification for the discriminatory treatment between the two resources.

The Commission's overarching goal, both in Order 719 and Order 2222, is to identify and eliminate barriers to participation of resources in organized markets. The opt-out provision in Order 719 has been a barrier for demand response participants and aggregators, as noted above. With Order 2222, the Commission has opened the market up for distributed energy resource participation, and specifically does not permit an opt-out. To treat demand response differently, when the Commission emphasizes that participation should be technology-neutral, is contrary to Order 2222 and unduly discriminatory. Therefore, with the changing landscape since 2008 and FERC's landmark Order 2222 opening up the market for distributed energy resource

[38] *Id.* at P 17.
[39] Order 2222 at PP 114, 117.

participation in the wholesale market, the Commission should eliminate the opt-out provision set forth in Order 719.

III. CONCLUSION

For the aforementioned reasons, NRGCS requests that the Commission find that the opt-out provision in Order 719 is inconsistent with law, and more fully open the wholesale markets to demand response providers and aggregators, creating a more robust and competitive market for all participants.

Respectfully Submitted,

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Counsel for **NRG Curtailment Solutions, Inc.**

November 19, 2020

Certificate Of Service

I hereby certify that I have served a copy of the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Atlanta, Georgia this 19th day of November, 2020.

/s/ *Jennifer S. Hsia*