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March 1, 2010

Ms. Patricia Van Gerpen, Executive Director
South Dakota Public Utilities Commission
State Capitol Building
500 East Capitol Avenue
Pierre, South Dakota 57501-5070

Re: AGGREGATORS OF RETAIL CUSTOMERS IN WHOLESALE ELECTRIC MARKETS

Dear Ms. Van Gerpen:

Northern States Power Company, a Minnesota corporation ("Xcel Energy" or the "Company") respectfully submits the attached Comments to help inform the South Dakota Public Utilities Commission ("SDPUC" or the "Commission") on whether it should take action with respect to the possible operation of Aggregators of Retails Customers ("ARCs") in South Dakota. ARCs have the potential to adversely impact electric services to retail customers in South Dakota and are likely subject to Commission jurisdiction under South Dakota statute.

ARCs can potentially begin to operate in South Dakota on June 1, 2010. Therefore, we respectfully request that the Commission take action, to protect the interests of retail customers, maintain system reliability, protect existing successful demand response programs, and uphold the jurisdictional authority of the Commission, as provided under SDCL 49-34A-4, by promptly issuing an order prohibiting the operation of ARCs in South Dakota until the Commission can fully consider the issues raised by ARC operations. Such action is similar to recent action taken by the Indiana Utility Regulatory Commission ("ICRC"), Michigan Public Service Commission ("MPSC"), and the Public Service Commission of Wisconsin ("PSCW"). If the Commission determines that ARCs ought to be allowed to operate in South Dakota, then we suggest that the Commission should conduct rulemakings to set appropriate "rules of the road" for the operation of ARCs *before* ARCs are allowed to begin operations.

A. Procedural Background

1. FERC Orders No. 719, 719-A, and 719-B

On October 17, 2008, the FERC issued Order No. 719,[1] which amended FERC's regulations to improve the operation of organized wholesale electric power markets, such as the Midwest Independent Transmission System Operator ("MISO" or "Midwest ISO") regional energy and ancillary services market. In particular, Order No. 719 focused on the following areas: (1) the role of demand response in organized markets and greater use of market prices to elicit demand response during periods of operating reserve shortage; (2) increasing opportunities for long-term power contracting; (3) strengthening market monitoring; and (4) enhancing the responsiveness of regional transmission organizations ("RTOs") to customers and other stakeholders. Order No. 719 directed RTOs, like MISO, to modify their tariffs or demonstrate that their existing tariff and market design satisfied the requirements of Order No. 719. FERC required RTOs to make a compliance filing within six months of the date Order No. 719 was published in the *Federal Register*.

Various stakeholders made timely requests for rehearing or for clarification of Order No. 719. In response, FERC issued Order No. 719-A on July 16, 2009,[2] which generally affirmed Order No. 719's, and made two additional ARC-related requirements: RTOs and ISOs were required to submit compliance filings on the use of a threshold for distinguishing small utilities and on the sharing of ARC registration-related information with affected load serving utilities.[3]

On December 17, 2009, FERC issued Order No. 719-B.[4] Order 719-B denied rehearing certain aspects of Order No. 719-A, but provided further clarification to certain portions of Orders No. 719 and 719-A

The critical aspect of Order No. 719 *et al.*, important to this filing, is that FERC required Midwest ISO to modify its Tariff to allow ARCs to provide direct services to retail customers within the 15 state Midwest ISO region, including South Dakota. The Midwest ISO's compliance filings to Order No. 719-A *et al.* have been submitted to FERC, and are pending approval. The proposed Tariff changes would allow ARCs to potentially begin operating in South Dakota as early as June 1, 2010. However, as discussed in more detail below, FERC has also consistently explained that ARCs may be prohibited or regulated by individual states if the applicable state regulatory authority, such as the SDPUC, takes specific action.[5] The proposed Midwest ISO Tariff provisions retain this authority. Xcel Energy respectfully urges the

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[1] *Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719, 73 FR 61,400 (Oct. 28, 2008), FERC Stats. & Regs. ¶ 31, 281, (hereinafter "Order No. 719").

[2] *Wholesale Competition in Regions with Organized Electric Markets*, , *order on reh'g*, Order No. 719-A, 74 FR 37776 (Jul. 29, 2009) FERC Stats. & Regs. ¶ 31,292 (2009) (hereinafter "Order No. 719-A").

[3] Order No. 719-A at ¶¶ 60–64 and ¶ 69.

[4] *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719-B, 129 FERC ¶ 61,252 (Dec. 17, 2009) (hereinafter "Order No. 719-B").

[5] *See* 18 C.F.R. § 35.28(g)(1)(iii).

Commission to promptly take specific action prior to June 1, 2010 to protect its jurisdiction. Such action will prevent harm to the longstanding and well-developed utility DSM programs and ratepayers who may be negatively affected by introduction of non-regulated ARCs in South Dakota.

The benefits of ARCs that FERC envisioned in Order No. 719 *et al.* can and should come from states in the Midwest ISO region where either retail competition or a lack of existing utility demand response programs means that ARCs could increase efficiency in capacity use and operating reserves. However, the regulated utilities in South Dakota—and particular Xcel Energy—already effectively operate in a manner similar to an ARC to facilitate coordinated and cost-effective retail demand response, thereby enhancing efficient utilization of existing capacity and reserves. For example, the Company has 15,000 residential and 500 small business customers enrolled in Saver's Switch, our heating and cooling cycling program. In addition, 110 small business and commercial and industrial customers participate in our South Dakota interruptible service tariffs. Introduction of ARCs in South Dakota could reduce the efficiency of these proven utility demand response programs, to the detriment of ratepayers as a whole. This outcome would not serve the public interest.

2. *MISO's Order Nos. 719 and 719-A Compliance Filings and Company Comments to FERC*

On April 28, 2009, the Midwest ISO submitted a compliance filing pursuant to Order No. 719 (the "April 28 Filing"). The compliance filing included, for informational purposes only, indicative MISO Tariff language concerning participation of ARCs in the Midwest ISO's Ancillary Services Markets. On May 27, 2009 Xcel Energy Services Inc. ("XES") filed a motion to intervene and comment in the proceeding on behalf of the NSP Companies.[6] Recognizing the NSP Companies' robust demand response programs and anticipating that ARCs would only operate in state jurisdictions with retail competition (i.e., not South Dakota), XES generally agreed with FERC's intent to encourage greater end-use demand response. XES, however, also highlighted the potential lack of revenue neutrality if demand response resources would began to be owned or controlled by an entity other than the host load zone.

On October 2, 2009, in compliance with Order No. 719-A, the Midwest ISO formally submitted its proposed Tariff revisions regarding the participation of ARCs in the Midwest ISO markets, to be effective June 1, 2010 (the "October 2 Filing"). The revised Midwest ISO tariff proposed to allow ARCs to begin providing services in the Midwest ISO region effective June 1, 2010.

[6] The NSP Companies are comprised of the Company and its utility operating affiliate Northern States Power Company, a Wisconsin corporation ("NSPW"). The NSP Companies operate an integrated generation and transmission system (the "NSP System").

On November 6, 2009, XES, on behalf of the NSP Companies, filed a protest to MISO's October 2 Filing with FERC. XES expressed concern about the impact MISO's proposed ARC program will have on the NSP Companies' retail and wholesale demand response programs. Specifically, XES raised concerns that running the Company's retail demand response programs (such as rate discounts in return for retail curtailment, and the SaversSwitch program) in parallel with MISO's proposed wholesale ARC program could result in double-counting of demand resources and double-payment to participating customers. MISO's proposed ARC program could also create significant coordination and mandatory electric reliability standards compliance issues.[7] XES concluded that if the ARC concept moved forward, the Company would likely need to take steps with state commissions to request the preclusion of participation in the Company's retail demand response programs or tariffs if the customer also elected to participate in an ARC-administered wholesale demand response program.

B. Orders No. 719, 719-A, and 719-B Give State Commissions the Power to Determine Whether ARCs can Operate in Their Jurisdiction

In Orders No. 719, 719-A, and 719-B, FERC amended its rules to allow ARCs to bid demand response resources from retail customers into the Midwest ISO's wholesale regional energy or ancillary services market, unless the relevant electric retail regulatory authority—such as the SDPUC—prohibits such action.[8] As such, unless the Commission prohibits the operation of ARCs in South Dakota prior to June 1, 2010, ARCs could begin providing services to the Company's retail end use customers on that date.

The final ARC rule is divided into four subparts.[9] Two subparts relate to ARCs that aggregate the demand response for customers of utilities that distributed 4 million megawatt-hours ("MWh") or less in the previous fiscal year.[10] These subparts do not

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[7] Under Section 215 of the Federal Power Act, enacted in the Energy Policy Act of 2005, FERC has the authority to approve North American Electric Reliability Corporation (NERC) reliability standards as mandatory, with non-compliance subject to enforcement penalties by the applicable delegated Regional Entity, NERC or FERC.

[8] *See Order 719* at P 129–64 and *Order 719-A* at P 17–71.

[9] 18 C.F.R. § 35.28(g)(1)(iii).

[10] For smaller utilities, ARCs can only aggregate demand response for customers, if the relevant regulatory authority *permits* such action. The ARC rules for customers of utilities that distributed 4 million megawatt-hours or less in the previous fiscal year are:

1. The [FERC]-approved independent system operator or regional transmission organization **must accept bids** from an ARC that aggregates the demand response of the customers of utilities that distributed 4 million megawatt-hours or less in the previous year, **where the relevant electric retail regulatory authority permits** such customers' demand response to be bid into organized markets by an ARC.

2. An independent system operator or regional transmission organization **must not accept bids** from an ARC that aggregates the demand response of the customers of utilities that distributed 4 million megawatt-hours or

apply to Xcel Energy because the Company distributed more than 4 million MWh last fiscal year. The other two subparts provide rules for ARCs that aggregate the demand response for customers of utilities that distributed more than 4 million MWh last fiscal year:

1. Each FERC-approved independent system operator and regional transmission organization **must accept bids** from an ARC that aggregate more than 4 million MWh in the previous fiscal year.

2. An independent system operator of regional transmission organization **must not accept bids** from an ARC that aggregates the demand response of the customers of utilities that distributed more than 4 million MWh in the previous fiscal year, **where the relevant electric retail regulatory authority prohibits such customers' demand response to be bid** into organized markets by an ARC.[11]

Under the ARC rule, MISO must accept bids from ARCs that aggregate the demand response of the Company's customers in South Dakota, unless the Commission prohibits operation of ARCs in South Dakota. In *Order 719-A*, FERC explained that the ARC rule did not determine or restrict state commission action:

> The Final Rule also does not make findings about retail customers' eligibility, under state or local laws, to bid demand response into the organized markets, either independently or through an ARC. [FERC] also does not intend to make findings as to whether ARCs may do business under state or local laws, or whether ARCs's contracts with their retail customers are subject to state and local law. Nothing in the Final Rule authorizes a retail customer to violate existing state laws or regulations or contract rights. In that regard, we leave it to the appropriate state or local authorities to set and enforce their own requirements.[12]

The ARC rule does not require regulatory authorities to take any specific action regarding ARCs,[13] but if a regulatory authority decides to preclude ARCs, "their decisions or policy should be clear and explicit so that the RTO or ISO is not tasked with interpreting ambiguities."[14] Again, however, if a state regulatory authority takes

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less in the previous fiscal year, **unless the relevant electric retail regulatory authority permits** such customers' demand response to be bid into organized markets by an ARC.

18 C.F.R. § 35.28(g)(1)(iii).

[11] *See* 18 C.F.R. § 35.28(g)(1)(iii). [emphasis added]

[12] *Order 719-A* at P 54.

[13] *Order 719-A* at P 63.

[14] *Order 719-A* at P 50.

no action, ARCs are deemed to be permitted to begin operations within the service territories of load serving utilities with sales of more than 4 million MWH.

The Company respectfully requests the Commission take action in response to Federal Energy Regulatory Commission ("FERC") Order No. 719 *et al.*, in order to affirm the Commission's regulatory jurisdiction over South Dakota retail electric utility rates and protect the interests of South Dakota ratepayers. If the Commission does not take action, the MISO Tariff will automatically authorize ARCs to operate in South Dakota starting as soon as June 1, 2010. As discussed in more detail below, the Company believes that the participation of third-party ARCs between retail customers and the Midwest ISO wholesale energy and ancillary services market has the potential to increase the cost of service for non-participant South Dakota retail ratepayers and would not improve the efficiency of either the retail or wholesale electric utility market.

C. Operation of ARCs May Negatively Impact Customer Rates, System Reliability, and Existing Demand Response Programs

1. *Operation of ARCs in South Dakota may Affect the Price of Electricity for Retail and Non-Retail Customers Regulated by the Commission*

The operation of ARCs in South Dakota may have unintended consequences to the price which retail customers pay for electricity. If the Commission does not act, an ARC located with Xcel Energy's area and selling energy into the Midwest ISO market will be paid directly at the full market price by Xcel Energy's customers. This could result in Xcel Energy's customers paying for energy they did not use, and wholly subsidizing ARCs.

For example, an ARC would be paid the full real time spot energy price (the "Locational Marginal Price" or "LMP") for not using a certain volume of energy. Xcel Energy will be charged the LMP for the energy that was not used. This cost would be invoiced through the MISO bill under the asset energy charge type because MISO will artificially increase Xcel Energy's load volume. That increased cost would flow through the Fuel Cost Rider ("FCR") to all retail customers.

The Company provides service at cost based, regulated rates, and we are required to offer our native load resources into the Midwest ISO energy market in a manner that reserves the least cost resources for native load customers. An ARC could be under no such restriction. The ARC would profit, and the Company's customers would pay higher energy costs through the FCR.

If an ARC did not participate in the energy market, and only participated in the capacity market (planning reserves) under Module E to the Midwest ISO Tariff, then the Company would be required to purchase the capacity the ARC sells. The ARC could sell this capacity back to the Company, or to a different load serving entity in the MISO footprint. In this example, the Company would be required to procure more planning reserves than it needs to reliably serve the load, thereby shifting the cost impact to the Company and its customers. The Company provides an example of the potential impact on the Company and its customers in our discussion below on Capacity Costs.

If the Commission allows South Dakota ARCs to participate in MISO's Energy and Operating Reserve Market, the Commission should set a Marginal Foregone Retail Rate ("MFRR")—a proxy for the price that retail customers would have paid under a company's tariff for the energy they did not consumer and for which the ARC received compensation from Midwest ISO—to ensure that the South Dakota utilities and customers are not harmed by the ARCs action. Setting an MFRR that appropriately balances the interests of the Company's customers and the obligation to supply ARC sales will be a difficult and complicated process.

Alternatively, if the Commission were to allow ARCs to operate in South Dakota, it will be necessary to substantially modify the rate design and pricing in the Company's current interruptible tariffs to price services to customers who elect to participate in ARCs so those customers are not able to leverage the difference between short term energy market rates and cost-based regulated rates to the disadvantage of other non-participant customers.

2. *ARCs Could Cause Retail Customers to Pay Higher Capacity Costs*

The MISO ARC proposal could cause retail customers to pay higher capacity costs. This result would be caused by not recognizing that utility capacity requirements will be reduced by ARC capacity sales.

This is illustrated in the following example of a South Dakota regulated utility with a 9,000 MW system peak and a 15 percent reserve margin. This example requires a total 10,350 MW capacity requirement (9000 MW x 1.15), which retail customers support through traditional embedded cost rates.

An ARC that registers 300 MW of load as capacity in the MISO market under Module E can actually sell 345 MW of capacity (300 MW plus the 15 percent reserve margin). The ARC can sell this capacity to any utility in the MISO wholesale market. As part of this sale, the ARC certifies that the load will be off the system in an emergency, which would happen in system peaking conditions. In other words, the ARC certifies that the load will controlled on the peak day.

However, the ARC transaction will reduce the South Dakota utility peak load by only 300 MW, down to 8,700 MW. Although the resulting lower peak will reduce the South Dakota utility capacity requirement from 10,350 MW to 10,005 MW (8700 MW x 1.15), the utility must still maintain 345 MW of generation to supply an ARC sale to a different utility, because the retail customer is effectively reselling the Company's capacity through the ARC.

The ARC may argue that because its customer has already paid for that 345 MW of capacity through average cost retail rates, the customer owns that capacity and is entitled to sell it in the MISO market to the highest bidder. However, this argument ignores the fact that the South Dakota retail utility and its non-participant retail customers will continue their full cost responsibility for the peaking capacity no longer required as a result of the 345 MW ARC sale.

When ARC capacity is sold to another retail jurisdiction, the South Dakota customers that supply the capacity would not be adequately compensated because there is no recovery mechanism in the MISO market for the extra 345 MW of physical capacity. This capacity cost is spread over all customers and is not specifically assigned to ARC participants.

The Company does not support this potential subsidy from retail customers to ARCs and the customers they represent. The Company notes that the Commission would be unable to regulate this cost if they allow ARCs to participate in MISO's resource adequacy construct (Module E). Therefore, the Company recommends that the Commission prohibit ARC participation in the MISO Module E Resource Adequacy construct.

In any event, this example again shows the complexities that will be introduced by ARCs, and the potential for cost shifts to non-participant customers if the "rules of the road" are not established in advance. It will take time to understand the complexities, and conduct the rulemakings necessary to establish appropriate requirements for ARC participation in South Dakota. The Commission should thus prohibit operation of ARCs at this time and determine whether additional discussion of these issues is merited.

3. *Operation of ARCs in South Dakota may impact System Planning and Reliability*

Under the Midwest ISO Tariff, the Company is a Load Serving Entity ("LSE") in the Energy and Operating Reserve Markets. ARCs may create increased difficulty in forecasting load requirements in the Midwest ISO day-ahead markets since the LSEs will need information from the ARCs concerning the volume of demand response that they intend to offer into the market the following day. LSEs need clear information to properly adjust their own load forecast or deploy its own demand response for the operating horizon. Improper coordination could lead to an over scheduling of generation (and resulting Midwest ISO charges), overload or underload distribution systems, or even adverse power flows or transmission congestion.

4. *Operation of ARCs may Negatively Impact Existing Demand Response Programs*

Historically, demand response initiatives in South Dakota have been developed, implemented, and managed by LSEs for the purpose of minimizing power supply costs for the benefit of their retail rate payers. These demand response programs were developed pursuant to the terms and conditions of retail tariffs previously approved by the Commission. The demand response programs not only help reduce the need for, and therefore cost of, planning and operating reserves, but also ensure the integrity of the Company's integrated resource plan.

The Midwest ISO's proposed ARC Tariff raises substantial questions about the interplay and effects of Midwest ISO wholesale ARC programs which would be largely duplicate the Company's existing retail demand response infrastructure, as well as additional DSM programs currently proposed, and the consequent impact of ARCs costs to non-participant retail customers. The Company is concerned about the impact that Midwest ISO's proposed ARC program will have on the Company's demand response tariffs in South Dakota, as more fully discussed below.

The Midwest ISO region includes states where electric utility service has been unbundled and where retail competition has been introduced, as well as states, like South Dakota, where electric utility service remains fully integrated and where traditional cost-based regulation remains.

As previously mentioned, Xcel Energy currently offers DR programs to all customer classes. In South Dakota, we have 15,000 residential and 500 small business customers enrolled in Saver's Switch. In addition, we have 110 small business and commercial and industrial customers participating on interruptible service tariffs. We continue to grow these programs as needed to meet peak load relief requirements. Therefore, ARCs are not necessary in this market.

In total, load control in South Dakota exceeds 35 MW, and we continue to grow these programs as needed to meet peak load relief requirements. Therefore, ARCs are not necessary in this market.

The NSP Companies have developed an extremely robust demand response program that provides more than 1,000 MW of system peak load control (more than 10% of the NSP System total requirements load).[15]

These retail demand response programs have passed cost-effectiveness tests and are subject to state regulatory review. All customers benefit by mitigating peak load conditions, lowering capacity requirements (and associated costs) and responding to system emergencies, while still supporting a least-cost retail rate regime and integrated resource planning. In particular, the customers who participate in the retail demand response programs receive approximately $2.4 million per year in rate discounts or credits for the avoided capacity costs, and these benefits are reflected in the lower rates paid by all customers. This retail market demand response benefits the entire Midwest ISO footprint by mitigating peak load conditions for the entire Midwest ISO system and by providing a source of load reduction that can be used to system emergencies.

The NSP Companies demand response program is not only large, it is robust and reliable and has gone through numerous refinements and continued expansion over the past 30 years. During Midwest ISO's peak in 2006, more than 100% of the NSP Companies' requested (dispatched) demand response was obtained, providing benefits to Xcel Energy's retail customers (its intended purpose). However, implementation of the Company's demand response programs also benefited the Midwest ISO region by lowering reserve requirements and energy prices.

The NSP Companies have already fully developed the potential demand response from its customers. The introduction of third party ARCs could negatively impact a portion (perhaps a large portion) of the Company's existing demand response program customer base, thereby rendering the remaining base much less cost-effective. Furthermore, the NSP Companies also reflect the impact of deployment of their demand response programs in their system load bids in the Midwest ISO energy and ancillary service markets, as well as the Midwest ISO's resource adequacy construct.

Fundamentally, the Company is concerned that ARCs may lead to: (1) negative impacts to existing robust retail demand response programs; and (2) replacement of those programs by ARCs that may be smaller or less cost-effective. The Company is also concerned that the NSP ratepayers could end up paying twice for the same demand response and that many benefits could go to other entities in the Midwest ISO footprint. Xcel Energy believes that participation by its customers in both the

[15] Information about the NSP Companies demand response and conservation programs in the five state region is available at the Xcel Energy web site (www.xcelenergy.com).

Company's retail demand response programs and Midwest ISO wholesale ARC program raises serious economic concerns. Customers participating in both programs could receive double compensation for volunteering to curtail their demand, which would artificially increase the cost of service for all other customers; whether it is within or across classes is unimportant. The potential for double-counting of demand resources and double-payment to customers calls into question whether participating in both the Company's demand response program and wholesale ARC programs would be in all customers' best interest. Thus, it is the Company's recommendation to prohibit ARCs at this time.

D. Prohibiting or Regulating the Operation of ARCs in South Dakota is Consistent with Commission Action in other Midwest ISO States.

1. Indiana

On August 13, 2008, the IURC denied an industrial group's request to condition approval of participation in the Midwest ISO Ancillary Services Market ("ASM") on the revision of electric tariffs to allow participation by retail customers in Midwest ISO's demand response programs.

IURC's denial of the industrial group's request prompted the IURC to commence an investigation into end-use customer participation in demand response programs offered by Midwest ISO and PJM Interconnection. On February 25, 2009, the IURC expressly barred end-use customer participation in RTO demand response programs until further order, unless an end-use customer received IURC authorization to participate in such programs. In so ordering, the IURC explained that they were maintaining the status quo in Indiana: "the legislature has not found that it is in the public interest to alter its traditional regulation of the relationship between retail power use and utilities. In Indiana, which follows a more traditional cost-of-service model, [the Commission] exercise[s] broad oversight over retail sales and service."[16] The IURC Order is attached to this filing.[17]

2. Michigan

On August 13, 2009, the Detroit Edison Company, Indiana Michigan Power Company, and the Michigan Electric and Gas Association (which includes NSPW as a member) (jointly, the "Utilities") filed an application with the MPSC seeking an order initiating an investigation into the rules and regulations governing customer

[16] *In the Matter of the Commission's Investigation into any and all Matters Related to Commission Approval of Participation by Indiana end-use Customers in Demand Response Programs Offered by the Midwest ISO and PJM Interconnection*, Cause No. 43566, Order on Requests for Interim Relief at 2(I.U.R.C. Feb. 25, 2009) (quoting *In re Verified Join Petition of Duke energy Indiana, Inc. et al.,* Cause No. 43426 Phase I Order at 18 (I.R.U.C. Aug. 13, 2008).
[17] *See* Attachment A.

participation in ARCs and a determination regarding necessary licensing requirements and appropriate rules and regulations related to ARCs. The Utilities raised several concerns:

1. Discrimination Concern: ARCs could create conflicts with existing demand response programs and have unintentional detrimental financial consequences for non-participating retail customers;

2. Planning Concern: ARCs could jeopardize an Load Serving Entity's ability to forecast energy and capacity requirements; and

3. Forecasting Concern: Under NERC Standards MOD-019-0 and MOD-020-0, utilities must know their forecasts and amounts of interruptible demand and direct control management available to transmission operators and reliability coordinators. Compliance with these NERC Standards necessitates state rules and regulations for ARCs.

The MPSC agreed to open an investigation into the rules and regulations governing customer participation in ARCs.[18] In addition, the MPSC restricted participation of Michigan retail customers in ARCS until further order of the MPSC.[19] The Utilities' request[20] and the MPSC Order are attached to this filing.[21]

3. Wisconsin

In Wisconsin, the PSCW initiated its own investigation into ARCs. The docket was initially opened to develop and analyze load management options in accordance with the recommendations of the Governor's Task Force on Global Warming. On April 2, 2009, the PSCW amended the notice of investigation and requested comments on whether and to what extent the PSCW should prohibit the participation of ARCs in Wisconsin.[22] NSPW submitted letter comments to the PSCW, suggesting that ARCs should be limited because of the potential need to change retail rate schedules, potential conflicts with existing PSCW-approved retail demand response programs, and potential conflicts with existing consumer rules.

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[18] *See* Docket No. U-16020.

[19] *In the Matter of the Joint Request to Initiate an Investigation of the Licensing Rules, and Regulations Needed to Address the Effect of the Participation of Michigan Retail Customers, including those Associated with Aggregators of Retail Customers, in a Regional Transmission Organization Wholesale Market*, Order at 6, Case No. U-16020 (Mich. P.S.C. Sept. 29, 2009).

[20] *See* Attachment B.

[21] *See* Attachment C.

[22] *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*, Amended Notice of Investigation and Request for Comments at 2 (Wis. P.S.C. Apr. 2, 2009).

On October 14, 2009, the PSCW issued an order temporarily prohibiting operation of ARCs in Wisconsin. In doing so, the PSCW noted that

1. ARCs have the potential for securing electricity at net lower rates than the rates authorized by the Commission; and

2. The operation of ARCs could have a discriminatory effect on ratepayers (i.e., if utilities had to pay the associated costs of providing adequate generating capacity for customers which are reselling the capacity into the wholesale market through an ARC).[23]

NSPW's written comments in the PSCW docket[24] and the PSCW Order are attached to this filing.[25]

4. Minnesota

On January 13, 2010 the Minnesota Public Utilities Commission ("MPUC") issued a Notice soliciting comments on the potential effects of ARCs on utility rates, reliability, demand-side management, conservation programs, and other relevant issues. In the Company's response to this notice, we indicate our concerns with ARCs and requested that the MPUC take the initial step of prohibiting ARCs. This message is consistent with our message in our jurisdictions. The Company's comments are attached to this filing.[26] This issue is currently pending additional party comments and MPUC action.

CONCLUSION

The Company appreciates the opportunity to provide these comments. We respectfully request that the Commission take action to protect the interests of retail customers, maintain system reliability, and uphold the jurisdictional authority of the Commission as provided under South Dakota law by promptly issuing an order prohibiting the operation of ARCs in South Dakota until the Commission can fully consider the issues raised by ARC operations and, if necessary, conduct rulemakings to regulate ARCs.

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[23] *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 at 3–4 (Wis. P.S.C. Oct. 14, 2009).
[24] *See* Attachment D.
[25] *See* Attachment E.
[26] *See* Attachment F.

To facilitate such an Order, the Company has prepared a proposed Order for the Commission's reference.[27]

Please call Jim Wilcox at (605) 339-8350, if you have any questions.

Sincerely,

/s/

ALLEN KRUG
MANAGING DIRECTOR
REGULATORY ADMINISTRATION

Enclosures

[27] *See* Attachment G

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMMISSION'S INVESTIGATION INTO ANY AND ALL MATTERS RELATED TO COMMISSION APPROVAL OF PARTICIPATION BY INDIANA END-USE CUSTOMERS IN DEMAND RESPONSE PROGRAMS OFFERED BY THE MIDWEST ISO AND PJM INTER-CONNECTION	CAUSE NO. 43566 **ORDER ON REQUESTS FOR INTERIM RELIEF**
RESPONDENTS: INDIANA REGULATED ELECTRIC UTILITIES	APPROVED: FEB 2 5 2009

BY THE COMMISSION:
David E. Ziegner, Commissioner
Loraine L. Seyfried, Administrative Law Judge

On September 3, 2008, the Indiana Utility Regulatory Commission ("Commission") issued an Order initiating this Cause and commencing an investigation into any and all matters relating to participation by Indiana end-use customers in demand response programs ("DRPs") offered by the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") and PJM Interconnection ("PJM").[1]

On January 23, 2009, Intervenor Industrial Group filed a Motion for Issuance of Interim Order authorizing otherwise qualified entities to take any and all steps and actions required to register for and participate directly in PJM DRPs in time for summer 2009.

On February 2, 2009, Respondents Indiana Michigan Power Company, several municipal utilities[2] and Intervenor Indiana Municipal Power Agency (collectively, "PJM Utilities") filed a Verified Motion for Expedited Issuance of an Order Maintaining Status Quo and Expressly Barring End-Use Customer Participation in RTO ["Regional Transmission Organizations"] Demand Response Programs. The Motion requests that the Commission issue an order expressly reserving the status quo (*i.e,* prohibiting direct end-use customer participation unless specifically approved by the Commission after the filing of a petition by an end-use customer) to allow for the Commission's

[1] The term "demand response programs" includes, but is not limited to, any RTO program designed specifically for demand response resource participation, and any participation by a demand resource in any other RTO market, procedure or construct.
[2] Anderson Municipal Light & Power, City of Auburn, Crawfordsville Electric Light & Power, Logansport Municipal Utilities, Mishawaka Utilities, Richmond Power & Light, and City of Tipton.

consideration of the evidence yet to be presented in this Cause and the issuance of a final order addressing all issues.

Responses and Replies to both Motions were filed by Respondents and Intervenors in this Cause.

1. **Commission Jurisdiction**. Pursuant to Ind. Code §§ 8-1-2-58 and -59, the Commission has broad discretion to investigate matters pertinent to public utilities operating within the State. Respondents are public utilities as defined by Ind. Code § 8-1-2-1. Therefore, the Commission has jurisdiction over Respondents and the subject matter of this investigation.

2. **Background**. This Cause arose out of the Commission's August 13, 2008 Order in Phase I of Cause No. 43426 as a result of the Commission's denial of the Industrial Group's request to condition approval of participation in the Midwest ISO's Ancillary Services Market upon the revision of electric utility tariffs to allow for participation by retail customers in the Midwest ISO's DRPs. In denying the Industrial Group's request, the Commission explained the current regulatory structure in Indiana concerning direct end-use customer participation in RTO DRPs. The Commission, referring to its Notice of Intervention and Protest filed in Federal Energy Regulatory Commission ("FERC") Docket No. EL05-93-000, noted that in Indiana, "the legislature has not found that it is in the public interest to alter its traditional regulation of the relationship between retail power use and utilities. In Indiana, which follows a more traditional cost-of-service model, [the Commission] exercise[s] broad oversight over retail sales and service." *In re Verified Joint Petition of Duke Energy Indiana, Inc. et al.,* Cause No. 43426 Phase I Order at p. 18 (IURC 08/13/08).

The Commission agreed with the petitioning utilities that the relationship of demand response with integrated resource planning and other aspects of state ratemaking is complex and that a new layer of Midwest ISO demand response tariffs cannot simply be added without also considering existing retail tariff structures. *Id.* at p. 19. The Commission also noted that granting the Industrial Group's proposal would "at least partially bypass this Commission's review of demand response measures – measures that will undoubtedly affect other retail customers." *Id.* However, the Commission, observing that it had approved two petitions from Indiana industrial customers for direct participation in PJM's DRPs pursuant to settlement agreements and that demand response resources and measures are becoming more prevalent, found that it should commence this investigation to "further evaluate possible procedures for considering and, if appropriate, streamlining requests by end-use customers seeking to participate" in RTO DRPs. *Id.* at pp. 18-19.

A preliminary hearing and prehearing conference was held on October 1, 2008. As noted by the Industrial Group in its Reply, the Presiding Officers requested the parties to agree upon a schedule that would allow for completion of this Cause and issuance of an order in time for participation in RTO DRPs during the summer of 2009. A schedule was subsequently agreed upon and a Prehearing Conference Order was issued on October 8, 2008. None of the parties have indicated that the deadlines for participation in RTO DRPs for the summer of 2009 have changed since the issuance of the Prehearing Conference Order.

3. **Motions for Interim Relief and Responses**. On January 23, 2009, Intervenor Industrial Group filed a Motion for Issuance of Interim Order authorizing otherwise qualified entities to take any and all steps and actions required to register for and participate directly in PJM DRPs in time for summer 2009. The Industrial Group argued that if qualified entities cannot take the steps and actions required to register for and participate in PJM DRPs, the opportunity to provide demand resources into the PJM market in the summer of 2009 would be lost.

On January 29, 2009, Respondents Northeastern REMC, Harrison REMC, Marshall County REMC, Jackson County REMC and Intervenors Hoosier Energy Rural Electric Cooperative, Inc., Wabash Valley Power Association, Inc., and Indiana Statewide Association of RECs, Inc. filed their Response opposing the issuance of an interim order authorizing direct participation in the PJM DRPs as premature, but not opposing the Commission's authorization for the Industrial Group to begin the registration process for participation in the PJM DRPs for 2009.

On February 2, 2009, Intervenor CPower, Inc. filed its Response supporting the Industrial Group's Motion and specifically noting that registration in PJM's capacity programs includes a requirement to participate or incur penalties. On that same date, the Indiana Office of Utility Consumer Counselor ("OUCC") filed its Response supporting the Industrial Group's Motion with respect to enrollment by Indiana retail jurisdictional customers in PJM's energy and ancillary services demand response programs, subject to further Commission conditions and limitations, and opposing participation in all other PJM DRPs until completion of this Cause.

Also on February 2, 2009, the PJM Utilities filed their Response in Opposition to the Industrial Group's Motion and Request for Administrative Notice of the Commission's Protest in Federal Energy Regulatory Commission Docket No. EL-05093-000.[3] In their Response, the PJM Utilities assert that the Industrial Group failed to provide any factual or legal foundation for granting its requested interim approval and that the granting of such relief contravenes Indiana law and policy. The PJM Utilities also filed a Verified Motion for Expedited Issuance of an Order Maintaining Status Quo and Expressly Barring End-Use Customer Participation in RTO ["Regional Transmission Organizations"] Demand Response Programs, requesting the Commission issue an order reserving the status quo (*i.e,* prohibiting direct end-use customer participation unless specifically approved by the Commission after the filing of a petition) to allow for the Commission's consideration of the evidence to be presented in this Cause and a final order issued.

On February 6, 2009, the Industrial Group filed its Reply asserting that the Commission has the authority to immediately authorize end-use customer participation in PJM demand response programs pursuant to its emergency powers under Ind. Code § 8-1-2-113 and requesting the Commission issue an interim order to avoid the possible loss of opportunity to participate in certain DRPs for the 2009 summer season. The Industrial Group also responded to arguments by the PJM Utilities that demand response constitutes a resale of electric service and that demand responders are public utilities.

[3] PJM Utilities' Request for Administrative Notice was granted in the Commission's February 20, 2009 Docket Entry.

On February 9, 2009, Respondents Duke Energy Indiana, Inc., Indianapolis Power & Light, Northern Indiana Public Service Company, and Southern Indiana Gas & Electric Company (collectively, "MISO Utilities") filed a Joint Response in Support of PJM Utilities' Joint Motion for Expedited Issuance of Order Maintaining Status Quo and Expressly Barring End-Use Customer Participation in RTO Demand Response Programs, supporting the position of the PJM Utilities.

On February 12, 2009, CPower, Inc. filed its Response to the PJM Utilities' Joint Motion indicating its concurrence in the Industrial Group's Reply. CPower, Inc. also argues that maintenance of the status quo is not appropriate because of the potential financial harm to it and other Indiana end-use customers; that the legal arguments of the PJM and MISO Utilities are based on a mischaracterization of PJM's DRPs; and that the Commission can, and should, lawfully authorize end-use customers and curtailment service providers (such as CPower, Inc.) to participate in RTO DRPs.

PJM filed its Response to the PJM Utilities' Joint Motion on February 12, 2009. In its Response, PJM indicated it was not expressing an opinion on the merits of the pending motions, but was instead requesting that the Commission issue an interim order providing guidance to the parties concerning the participation of Indiana end-use customers in RTO DRPs. PJM further indicated that it has recently made two filings with FERC pursuant to FERC's Order 719 that are relevant to this proceeding.[4] First, PJM filed on February 10, 2009, its proposed revisions to its FERC Tariff for implementing the requirements of FERC Order 719, which essentially provide for participation by end-use customers unless an objector files with PJM: (1) an order, resolution or ordinance of the relevant retail electric regulatory authority expressly barring end-use customer participation, (2) an opinion of the relevant retail electric regulatory authority's legal counsel attesting to the existence of a regulation or law expressly barring end-use customer participation, or (3) an opinion of the state Attorney General, on behalf of the relevant retail electric regulatory authority, attesting to the existence of a regulation or law expressly barring end-use customer participation.[5] Second, PJM filed on February 9, 2009, a request to extend a DRP registration date from March 3, 2009 to May 1, 2009.

Finally, the PJM Utilities filed a Joint Reply to CPower, Inc.'s and PJM's Responses on February 19, 2009. PJM Utilities dispute that an emergency requiring the issuance of an order pursuant to Ind. Code § 8-1-2-113 exists. PJM Utilities, citing to prior Commission emergency orders addressing crisis situations faced by regulated utilities, state that the situation in this Cause is different because the only alleged harm is the loss of an economic opportunity for retail customers and their wholesale transaction brokers, which (1) would only be available to a select few customers, (2) has not previously been made available, (3) has not been relied upon by those customers in the past, and (4) could have been sought on a case-by-case basis under the Commission's existing regulatory scheme. PJM Utilities also disagreed with CPower Inc.'s assertions that its alleged harm outweighs the harm that the utilities would suffer if the Motion for Status Quo was granted.

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[4] Wholesale Competition in Regions with Organized Electric Markets, 125 FERC ¶ 61,071 (10/28/2008) ("Order 719").
[5] PJM Interconnection LLC Docket No. ER09-701-000.

4. **Commission Discussion and Findings.**

A. Industrial Group's Motion for Issuance of Interim Order. As noted by the Commission's Phase I Order in Cause No. 43426 and the PJM Utilities' Response and Joint Motion in this Cause, the regulatory environment with respect to Indiana end-use customer participation in RTO DRPs was explained in the Commission's May 18, 2005 Notice of Intervention and Protest in FERC Docket No. EL05-93-000. The Commission stated that because of the nature of regulation in Indiana where the Commission regulates retail sales and service, "it has a duty at least to consider the effects of any proposed partial departure from a local provider's system on the integrity and future operation of that system." *Id.* at p. 3. PJM filed a supplemental answer in which it agreed to honor the Commission's position and not permit direct participation by end-use customers prior to receiving Commission approval. Supplement to the Answer of PJM Interconnection, L.L.C., FERC Docket No. EL05-93-000 (July 15, 2005).

Since that time, the Commission has reviewed individual petitions filed by Indiana end-use customers on a case-by-case basis. As noted by the PJM Utilities in their Joint Response, the Commission has approved direct retail customer participation in PJM's DRPs in three instances on a trial basis subject to reporting requirements after a review of the circumstances surrounding participation and with the agreement (or at least non-opposition) of the OUCC and the electric utility supplier. Two other petitions are still pending before the Commission.

The initiation of the Commission's investigation in this Cause did not alter the Commission's existing regulatory practice of requiring approval prior to direct participation by a retail customer in an RTO DRP. Nor did the Commission's investigation prohibit Indiana end-use customers desiring to participate in PJM's DRPs from filing a petition seeking approval from the Commission. Instead, the Commission commenced this investigation to determine whether, and in what manner, the Commission's regulatory procedure should be modified or streamlined to address requests by end-use customers based on the importance of demand response and the increased interest in participation in RTO DRPs.

The Industrial Group's Motion requests the Commission enter an interim order broadly authorizing end-use customers to directly participate in PJM's DRPs. The Motion fails to set forth any factual or legal basis for its requested relief. No evidence has been prefiled in this Cause and the evidentiary hearing has yet to be held. Consequently, the Commission lacks the necessary facts to make an informed decision that adequately considers the potential consequences that may result if the Commission were to grant the relief sought by the Industrial Group.

Furthermore, while the Industrial Group's Motion states that an interim order is necessary to avoid the loss of the opportunity to participate in PJM's DRPs in the summer of 2009, we fail to understand why this sudden urgency could not have been avoided. Although the Industrial Group notes that the registration deadlines are now fast approaching, it is clear from the parties' responses to the Motions that these registration deadlines are essentially the same as last year and were in existence at the time the procedural schedule was agreed to at the Prehearing Conference. Furthermore, as indicated above, Indiana retail customers desiring to have Commission approval for participation in an RTO DRP in the summer of 2009 could have filed at any time an individual petition with the Commission seeking such approval.

Consequently, the Commission finds that the Industrial Group's Motion for Issuance of an Interim Order should be denied.[6]

B. PJM Utilities' Verified Motion for Expedited Issuance of an Order Maintaining Status Quo and Expressly Barring End-Use Customer Participation in RTO Demand Response Programs. In addition to the PJM Utilities' Joint Motion, several of the other parties in this Cause have also requested that the Commission provide guidance concerning end-use customer participation in RTO DRPs during this proceeding. In support of these requests, the parties noted that PJM's proposed tariff, which was developed to comply with FERC's Order 719, provides that participation in PJM's DRPs shall be permitted unless an order, law or regulation of the relevant electric retail regulatory authority expressly does not permit a retail customer to participate.[7] PJM Utilities, in support of their Joint Motion, argue that although the Commission's prior orders and regulatory practice establish that end-users may not participate in PJM DRPs without approval, and notwithstanding that PJM previously agreed to honor the Commission's request and not permit direct participation by end-use customers prior to receiving Commission approval, such decisions may be insufficient to prevent PJM from allowing Indiana retail customers to participate in PJM's DRPs without Commission approval based upon PJM's proposed FERC Tariff.

As noted by the PJM Utilities, FERC recently finalized its general rules concerning RTO demand response programs in Order 719, clarifying that all State commissions can decide whether their retail customers should participate in the programs. Order 719 tentatively permits participation by retail customers "unless the laws or regulations of the relevant electric retail regulatory authority expressly do not permit a retail customer to participate." 18 CFR 35.28(g)(1)(iii). FERC made clear that a State commission has full veto power over retail participation by stating that "we will not require a retail electric regulatory authority to make any showing or take any action in compliance with this rule." Order 719 at ¶ 155. And, FERC provided that the RTO may require "certification that participation is not precluded by the relevant electric retail regulatory authority." *Id.* at ¶ 158.

PJM's proposed FERC Tariff to Comply with Order 719 essentially provides for participation by end-use customers unless an objector files with PJM: (1) an order, resolution or ordinance of the relevant electric retail regulatory authority expressly barring end-use customer participation, (2) an

[6] We note that any Indiana end-use customer that has not yet filed a petition with the Commission seeking approval to participate in an RTO DRP, may still do so at any time. Because PJM has filed with FERC to extend one of its DRP registration deadlines, the Commission would be willing to consider the establishment of an expedited schedule for reviewing any such petition that may be filed.

[7] PJM, in its Response to the Motions filed in this Cause, confirmed the filing of its proposed tariffs with FERC on February 10, 2009. To the extent necessary, the Commission takes administrative notice of FERC's Order 719 and PJM's tariff filing in PJM Interconnection LLC Docket No. ER09-701-000, copies of which are attached hereto.

opinion of the relevant retail electric regulatory authority's legal counsel attesting to the existence of a regulation or law expressly barring end-use customer participation, or (3) an opinion of the state Attorney General, on behalf of the relevant retail electric regulatory authority, attesting to the existence of a regulation or law expressly barring end-use customer participation.

Based on the foregoing and the fact that this investigation was commenced to identify and appropriately address important factual, legal and policy issues associated with the Commission's approval of end-use customer participation in RTO DRPs, the Commission finds it necessary and appropriate to issue an order requiring the status quo be maintained. Therefore, Indiana end-use customers are prohibited from participating in RTO DRPs pending further order of the Commission in this Cause, except where the end-use customer proposing to participate in an RTO DRP has first petitioned for and received, after hearing, a final order of the Commission authorizing such participation.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. The Industrial Group's Motion for Issuance of Interim Order authorizing otherwise qualified entities to take any and all steps and actions required to register for and participate directly in PJM's demand response programs is hereby denied.

2. PJM Utilities' Verified Motion for Expedited Issuance of an Order Maintaining Status Quo and Expressly Barring End-Use Customer Participation in RTO Demand Response Programs is hereby granted. Indiana end-use customers are prohibited from participating in RTO demand response programs until further order of the Commission, unless such end-use customer has filed a petition for and received, after hearing, an order of the Commission authorizing such participation.

3. This Order shall be effective on and after the date of its approval.

HARDY, GOLC, LANDIS, AND ZIEGNER CONCUR; SERVER ABSENT:

APPROVED: FEB 2 5 2009

I hereby certify that the above is a true and correct copy of the Order as approved.

Stacy L. Hunter

Stacy Hunter
Acting Secretary to the Commission

The Detroit Edison Company
One Energy Plaza, Detroit, MI 48226-1279

Detroit Edison
A DTE Energy Company

MICHAEL J SOLO, JR.
Attorney
(313) 235-9512

August 13, 2009

Ms. Mary Jo Kunkle
Executive Secretary
Michigan Public Service Commission
6545 Mercantile Way
Lansing, Michigan 48909

Re: In the matter of the joint request of THE DETROIT EDISON COMPANY, INDIANA MICHIGAN POWER COMPANY, and THE MICHIGAN ELECTRIC AND GAS ASSOCIATION to initiate an investigation of the licensing rules, and regulations needed to address the effect of the participation of Michigan Retail Customers, including those associated with Aggregators of Retail Customers, in an RTO wholesale market
Case No. U-16020 (Paperless e-file)

Dear Ms. Kunkle:

Attached for electronic filing is The Detroit Edison Company, Indiana Michigan Power Company, and the Michigan Electric and Gas Association's Application and Joint Request. Also attached is a Proof of Service.

Very truly yours,

Michael J. Solo, Jr.

MJS/dmc
Attachments
cc: Service List

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the joint request of THE DETROIT EDISON COMPANY, INDIANA MICHIGAN POWER COMPANY, and THE MICHIGAN ELECTRIC AND GAS ASSOCIATION to initiate an investigation of the licensing rules, and regulations needed to address the effect of the participation of Michigan Retail Customers, including those associated with Aggregators of Retail Customers, in an RTO wholesale market	)))))))))))	Case No. U-16020

THE DETROIT EDISON COMPANY, INDIANA MICHIGAN POWER COMPANY AND MICHIGAN ELECTRIC AND GAS ASSOCIATION'S JOINT REQUEST THAT THE MICHIGAN PUBLIC SERVICE COMMISSION INITIATE AN INVESTIGATION INTO THE RULES, AND REGULATIONS NEEDED TO ADDRESS THE PARTICIPATION OF MICHIGAN RETAIL CUSTOMERS, INCLUDING THOSE ASSOCIATED WITH AGGREGATORS OF RETAIL CUSTOMERS, IN A RTO WHOLESALE ELECTRIC MARKET

Pursuant to the Rules of Practice and Procedure Before the Commission, R 460.17101 et al, and the Administrative Procedures Act ("APA"), The Detroit Edison Company, Indiana Michigan Power Company and Michigan Electric and Gas Association ("Requestors") hereby request the Michigan Public Service Commission ("Commission" or "MPSC") initiate an investigation into the rules and regulations governing the direct participation of Michigan Retail Customers into a Regional Transmission Organization (RTO) wholesale electric market, including those customers who choose to participate in conjunction with Aggregators of Retail Customers, and make a determination regarding necessary licensing requirements and appropriate rules and regulations related to the activities of these customers. In support of its request, the Requestors state as follows:

1. On October 17, 2008, the Federal Energy Regulatory Commission (FERC) issued a final rule, Wholesale Competition in Regions with Organized Electric Markets, Docket Nos. RM07- 19-000 and AD07-7-000, 125 FERC P 61, 071 (2008) (Order 719). Order 719 requires RTOs, including the Midwest ISO (MISO) to amend their market rules to allow Aggregators of Retail Customers (ARCs) to bid demand response resources from retail customers directly into the RTOs' organized wholesale energy and ancillary services markets in accordance with certain criteria.

2. Order 719 provided that an RTO must allow bids into its markets "unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate."

3. MISO made a compliance filing implementing Order 719 requirements on April 28, 2009 (Docket ER09-1049-0000). As part of this compliance filing MISO provided “informational” draft tariff language related to the integration of ARCs into the MISO markets, and indicated that final tariff language would be filed on or before August 31, 2009. The “informational” draft filing made by MISO did not address the concerns expressed below related to how ARCs will interface with the LSEs responsible for serving the load of the affected customers, as was expressed in a filing made by Detroit Edison on May 26, 2009 in response to the MISO filing.

4. As part of a Compliance filing made on June 17, 2009 (Docket Nos. ER08-394-007 and ER08-394-009) MISO also indicated that “Load Modifying Resource Market Participants (LMR MPs)” would be able to participate in the MISO markets. An

LMR MP includes any MISO Market Participant that "has the rights to control the energy demand or the energy production from a Load Modifying Resource".

5. PJM Interconnection, L.L.C. (PJM) filed proposed tariff revisions to implement the Commission's Order 719 on February 10, 2009. In response, several parties filed protests expressing concern over whether the PJM's proposed tariff incorrectly interpreted Order 719 and that the proposed tariffs place an undue burden on LSEs and State commissions.

6. An LMR MP may be a single customer bidding a single site into an RTO market or a single customer aggregating multiple sites owned by them. They may bid into the RTO market themselves or through a third party.

7. The Requestors contend that, in the context of an appropriate retail regulatory structure, LMR MPs and ARCs could bring potential advantages to retail customers in Michigan including encouraging innovative demand response utilization or providing additional opportunity for retail customers to participate in demand response. However, several concerns exist with such participation absent appropriate rules and guidelines. Examples of these concerns follow:

i. LMR MPs and ARCs could create conflicts with existing demand response programs and have unintended detrimental financial consequences for non-participating retail customers. It is further unclear to what extent such entities would be subject to the application of the Commission's rules that govern electric utilities and electric utility customers and/or Alternative Electric Suppliers in Michigan.

ii. Absent defined rules and regulations regarding LMR MPs and ARCs demand response activity, LSE's ability to forecast energy and capacity requirements could be jeopardized. LSE's serving distribution customers need to be aware of when demand response events are scheduled and implemented, to be able to properly manage distribution load from a real time reliability perspective. Further, North American Electric Reliability Standards MOD-019-0 and MOD-020-0 require that each LSE shall make known its forecast and amount of interruptible demand and direct control management to transmission operators and reliability coordinators. These requirements necessitate defined rules and regulations regarding LMR MPs and ARCs demand response activity.

8. Michigan Compiled Laws Section 460.6(1) provides the Commission with the jurisdiction to hear and pass upon all matters pertaining to, necessary, or incident to the regulation of public utilities.

> "(1) The public service commission is vested with complete power and jurisdiction to regulate all public utilities in the state except a municipally owned utility, the owner of a renewable resource power production facility as provided in section 6d, and except as otherwise restricted by law. The public service commission is vested with the power and jurisdiction to regulate all rates, fares, fees, charges, services, rules, conditions of service, and all other matters pertaining to the formation, operation, or direction of public utilities. The public service commission is further granted the power and jurisdiction to hear and pass upon all matters pertaining to, necessary, or incident to the regulation of public

utilities, including electric light and power companies, whether private, corporate, or cooperative; water, telegraph, oil, gas, and pipeline companies; motor carriers; private wastewater treatment facilities; and all public transportation and communication agencies other than railroads and railroad companies."

WHEREFORE, the Requestors request that the Commission:

A. Initiate the requested investigation to make a determination regarding the appropriate Licensing, Rules and regulations necessary for the direct participation of Michigan Retail Customers into a RTO wholesale market, including those defined to be LMR MPs or that are associated with any Aggregators of Retail Customers in Michigan;

B. Give such Notice to interested parties as may be required by statute or the Commission's rules regarding such investigation;

C. Temporarily restrict the participation of Michigan Retail Customers in RTO wholesale markets (including MISO and PJM) until the Commission makes its determination. Prior to Commission determination only Load Serving Entities within Michigan shall be authorized to aggregate retail customers to which they supply electric retail supply service for RTO wholesale market participation until such time as the Commission issues a final ruling;

D. Grant such further additional relief, as the Commission may deem suitable and appropriate.

THE DETROIT EDISON COMPANY

By: Michael J. Solo

Digitally signed by Michael J. Solo
DN: cn=Michael J. Solo, o=Legal - Regulatory, ou=DTE Energy, email=solom@dteenergy.com, c=US
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Michael J. Solo P57092

INDIANA MICHIGAN POWER COMPANY

By: Richard J. Aaron

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Richard J. Aaron P35605

MICHIGAN ELECTRIC AND GAS ASSOCIATION

By: James A Ault

James A. Ault P30201

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the joint request of THE DETROIT EDISON COMPANY, INDIANA MICHIGAN POWER COMPANY, and THE MICHIGAN ELECTRIC AND GAS ASSOCIATION to initiate an investigation of the licensing rules, and regulations needed to address the effect of the participation of Michigan Retail Customers, including those associated with Aggregators of Retail Customers, in an RTO wholesale market	)))))))))))	Case No. U-16020

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

Jennifer Evans, being duly sworn, deposes and says that on the 13th day of August, 2009, a copy of THE DETROIT EDISON COMPANY, INDIANA MICHIGAN POWER COMPANY, and THE MICHIGAN ELECTRIC AND GAS ASSOCIATION to initiate an investigation of the licensing rules, and regulations needed to address the effect of the participation of Michigan Retail Customers, including those associated with Aggregators of Retail Customers, in an RTO wholesale market was served upon the persons on the attached service list via e-mail.

____
Jennifer Evans

Subscribed and sworn to before
me this 13th day of August, 2008.

____
Notary Public

SERVICE LIST
MPSC CASE NO: U-16020

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S T A T E O F M I C H I G A N

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the joint request of **THE DETROIT EDISON COMPANY, INDIANA MICHIGAN POWER COMPANY, THE MICHIGAN ELECTRIC AND GAS ASSOCIATION and CONSUMERS ENERGY COMPANY** to initiate an investigation of the licensing rules, and regulations needed to address the effect of the participation of Michigan retail customers, including those associated with aggregators of retail customers, in a regional transmission organization wholesale market.	)	Case No. U-16020

At the September 29, 2009 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Orjiakor N. Isiogu, Chairman
Hon. Monica Martinez, Commissioner
Hon. Steven A. Transeth, Commissioner

ORDER

On August 13, 2009, The Detroit Edison Company, Indiana Michigan Power Company, and Michigan Electric and Gas Association (Electric Utilities) filed an application seeking an order initiating an investigation into the rules and regulations governing the direct participation of Michigan retail customers into a Regional Transmission Organization (RTO) wholesale electric market, including those customers who choose to participate in conjunction with aggregators of retail customers. Additionally, the Electric Utilities seek a determination regarding necessary licensing requirements and appropriate rules and regulations related to the activities of these customers. On August 21, 2009, Consumers Energy Company (Consumers) filed a letter of support for the application and joined the filing parties in seeking relief from the Commission.[1]

In support of their request, the Electric Utilities state that on October 17, 2008, the Federal Energy Regulatory Commission (FERC) issued a final rule known as Wholesale Competition in Regions with Organized Electric Markets, Docket Nos. RM07-19-000 and AD07-7-000, 125 FERC P 61,071 (2008) (Order 719). According to the Electric Utilities, Order 719 requires RTOs, including the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), to amend their market rules to allow aggregators of retail customers to bid demand response resources from retail customers directly into an RTO's organized wholesale energy and ancillary services markets in accordance with certain criteria. The Electric Utilities indicate that Order 719 provides that an RTO must allow bids into its markets "unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate."

The Electric Utilities state that Midwest ISO made a compliance filing implementing Order 719 requirements on April 28, 2009 in Docket ER09-1049-0000. According to them, as part of this compliance filing Midwest ISO provided "informational" draft tariff language related to the integration of aggregators of retail customers into the Midwest ISO markets, and indicated that final tariff language would be filed on or before August 31, 2009.[2]

The Electric Utilities stress that the Midwest ISO's "informational" filing did not address how aggregators of retail customers will interface with the load-serving entities (LSEs) responsible for serving the load of the affected customers. The Electric Utilities further state that, as part of a

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[1]In recognition of its support for the filing and its joining in the request for relief from the Commission, Consumers has been added to the caption of this proceeding. All references to the Electric Utilities are meant to include Consumers.

[2]Subsequently, Midwest ISO announced its intention to delay its FERC Order 719 filing for up to 30 days.

compliance filing made on June 17, 2009 (Docket Nos. ER08-394-007 and ER08-394-009) Midwest ISO also indicated that "Load Modifying Resource Market Participants (LMR MPs)" would be able to participate in the Midwest ISO markets. They point out that an LMR MP includes any Midwest ISO market participant that "has the right to control the energy demand or the energy production from a Load Modifying Resource."

The Electric Utilities further state that PJM Interconnection, L.L.C. (PJM) filed proposed tariff revisions to implement Order 719 on February 10, 2009, and that protests filed in response to the February 10 filing raise the question of whether PJM's proposed tariff properly interpreted Order 719. According to the Electric Utilities, there are legitimate concerns whether such proposed tariffs place an undue burden on LSEs and state commissions.

The Electric Utilities maintain that an LMR MP may be a single customer bidding a single site into an RTO market or a single customer aggregating multiple sites. Further, the Electric Utilities are concerned that a customer could bid into the RTO market by itself or through a third party.

While conceding that, in the context of an appropriate retail regulatory structure, LMR MPs and aggregators of retail customers could bring potential advantages to retail customers in Michigan by encouraging innovative demand response utilization or providing additional opportunity for retail customers to participate in demand response, the Electric Utilities assert that there are several concerns associated with such participation in the absence of appropriate rules and guidelines.

As examples of these concerns, the Electric Utilities cite the possibility that LMR MPs and aggregators of retail customers could create conflicts with existing demand response programs and have unintended detrimental financial consequences for non-participating retail customers. They also maintain that the extent to which LMR MPs and aggregators of retail customers may be governed by the Commission is unclear. According to the Electric Utilities, absent defined rules and regulations regarding LMR MPs and aggregators of retail customers demand response activity, an LSE's ability to forecast energy and capacity requirements could be jeopardized. The Electric Utilities argue that LSE's serving distribution customers must be cognizant of when demand response events are scheduled and will be implemented to properly manage distribution load on a real time basis. Further, citing North American Electric Reliability Standards MOD-019-0 and MOD-020-0, the Electric Utilities insist that LSEs must know their forecasts and amounts of interruptible demand and direct control management available to transmission operators and reliability coordinators. According to the Electric Utilities, such requirements necessitate defined rules and regulations regarding LMR MPs and aggregators of retail customers demand response activity.

For all of these reasons, the Electric Utilities request that the Commission initiate an investigation regarding appropriate rules and regulations for the direct participation of Michigan retail customers into an RTO wholesale market. Pending completion of this investigation, the Electric Utilities suggest that the Commission temporarily restrict the participation of Michigan retail customers in RTO wholesale markets. According to the Electric Utilities, pending the outcome of this proceeding, only LSEs within Michigan should be allowed to aggregate retail customers to whom they supply electric retail supply service for RTO wholesale market participation.

The Commission is persuaded that the relief requested by the Electric Utilities should be granted. The Commission finds that an investigation should be commenced into appropriate rules and regulations for the direct participation of Michigan retail customers into an RTO wholesale market. Toward that end, the Commission has attached a draft notice of opportunity to comment to this order as Exhibit A. The Electric Utilities seeking relief from the Commission shall be responsible for and are directed to arrange publication of the notice of opportunity to comment.

Any interested person may submit written or electronic comments regarding appropriate rules and regulations for the direct participation of Michigan retail customers into an RTO wholesale market. Initial comments must be filed with the Commission no later than 5:00 p.m. on December 4, 2009. Reply comments must be filed no later than January 6, 2010. All written comments shall be addressed to: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, MI 48909. Electronic comments shall be e-mailed to mpscedockets@michigan.gov. All comments should reference Case No. U-16020. All information submitted to the Commission in this matter will become public information available on the Commission's website and subject to disclosure.

THEREFORE, IT IS ORDERED that:

A. The Detroit Edison Company, Indiana Michigan Power Company, the electric utility members of the Michigan Electric and Gas Association, and Consumers Energy Company shall publish the notice of opportunity to comment, attached as Exhibit A, in newspapers throughout their service territories by October 22, 2009. These utilities shall file proofs of publication in this docket by November 5, 2009.

B. Interested persons shall have until 5:00 p.m. December 4, 2009 to submit comments in this docket.

C. Interested persons shall have until 5:00 p.m. January 6, 2010 to submit reply comments in this docket.

D. The Commission's Executive Secretary shall send a copy of the order to the Midwest Independent Transmission System Operator, Inc., and PJM Interconnection, L.L.C. as notice of the pendency of this proceeding and the fact that the Commission intends to assert its jurisdiction over the matter.

E. Commencing immediately and until further order of the Commission, the participation of Michigan retail customers in any regional transmission organization wholesale market shall be temporarily restricted during the pendency of this proceeding.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

____
Orjiakor N. Isiogu, Chairman

____
Monica Martinez, Commissioner

____
Steven A. Transeth, Commissioner

By its action of September 29, 2009.

____
Mary Jo Kunkle, Executive Secretary

Exhibit A

In the matter of the joint request of **THE DETROIT EDISON COMPANY, INDIANA MICHIGAN POWER COMPANY, THE MICHIGAN ELECTRIC AND GAS ASSOCIATION and CONSUMERS ENERGY COMPANY** to initiate an investigation of the licensing rules, and regulations needed to address the effect of the participation of Michigan retail customers, including those associated with aggregators of retail customers, in a regional transmission organization wholesale market.	)	Case No. U-16020

NOTICE OF OPPORTUNITY TO COMMENT

On August 13, 2009, The Detroit Edison Company, Indiana Michigan Power Company, and Michigan Electric and Gas Association (Electric Utilities) filed an application seeking an order initiating an investigation into the rules and regulations governing the direct participation of Michigan Retail Customers into a Regional Transmission Organization (RTO) wholesale electric market, including those customers who choose to participate in conjunction with aggregators of retail customers, and make a determination regarding necessary licensing requirements and appropriate rules and regulations related to the activities of these customers. On August 21, 2009, Consumers Energy Company filed a letter of support for the application and joined the filing parties in seeking relief from the Commission.

On September 29, 2009, the Commission issued an order commencing an investigation, soliciting comments on the relief requested in the application, and temporarily restricting participation of Michigan retail customers in any regional transmission organization wholesale markets during the pendency of this proceeding.

Copies of the application and the Commission's order may be viewed at www.michigan.gov/mpscedockets .

Written and electronic comments by any interested person may be filed with the Commission and must be received no later than 5:00 p.m. on December 4, 2009. Reply comments must be submitted no later than January 6, 2010.

Written comments should be sent to the: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, Michigan 48909. Electronic comments should be e-mailed to: mpscedockets@michigan.gov . All comments should reference Case No. U-16020. Comments received in this matter will become public information, posted on the Commission's website, and subject to disclosure.

[Utility name]

P R O O F   O F   S E R V I C E

STATE OF MICHIGAN)

Case No. U-16020

County of Ingham)

Mignon Middlebrook being duly sworn, deposes and says that on September 29, 2009 A.D. she served a copy of the attached Commission orders by first class mail, postage prepaid, or by inter-departmental mail, to the persons as shown on the attached service list.

____
Mignon Middlebrook

Subscribed and sworn to before me
this 29th day of September 2009

____
Sharron A. Allen
Notary Public, Ingham County, MI
My Commission Expires August 16, 2011

Richard J. Aaron
Fahey Schultz Burzych Rhodes PLC
4151 Okemos Road
Okemos MI 48864

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Xcel Energy

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Telephone (608) 280-7303
Fax (608) 280-7359

April 15, 2009

Sandra J. Paske, Secretary to the Commission
Public Service Commission
P.O. Box 7854
Madison, WI 53707-7854

RE: Comments on Use of Aggregators of Retail Customers in the Wholesale Electric Markets — Docket 5-UI-116

Dear Ms. Paske:

Northern States Power Company, a Wisconsin corporation (NSPW) and wholly owned subsidiary of Xcel Energy Inc. (d/b/a Xcel Energy) supports the limitation of aggregators of retail customers (ARCs) in the wholesale markets. Initially, NSPW expected the ARCs mentioned in FERC order 719 to be active only in those states with retail choice. With MISO's recent actions, however, it appears MISO is attempting to allow ARCs to operate over its entire footprint. As a result, NSPW supports limiting the activities of the ARCs in the wholesale markets, including Wisconsin. Our support for limitations is based on the potential need to change retail rate schedules, potential conflicts with existing demand response programs, and existing consumer rules.

NSPW believes that allowing third party aggregators to operate in Wisconsin could harm its retail customers. There are two scenarios where retail customers could be harmed, one where an ARC work with retail customers who participate in NSPW's existing interruptible load programs, and the other, where an ARC worked with a customer on a non-interruptible schedule.

If a third party aggregator sold decreased demand from a customer that was part of NSPW's existing interruptible load programs, then that reduction in demand would essentially be double sold. This may result in that decrease in load being unavailable when NSPW needed the relief for system emergencies, potentially driving up prices and costs for other NSPW retail customers. Secondly, if a third party aggregator attempted to sell decreased demand from our retail customers, other NSPW customers could be financially harmed. If NSPW purchased the full forecasted load in the day-ahead market, NSPW would have to sell back the portion of load that decreased due to the third party aggregators actions in the real time market. There is no guarantee that the real time price would be higher then the day-ahead price thus potentially adding cost to the NSPW system and its retail customers.

Currently the Wisconsin ratepayers subsidize or pay for the cost of the demand response programs. The programs are used, as their payment suggests, similar to a peaking plant. To compete with an ARC, the retail tariffs would have to be altered to allow NSPW to offer similar products and compensation.

For these reasons, we support a position to limit ARCs participation in the Wisconsin wholesale market at this time. If you have any questions about these comments, please contact me at (608) 280-7308 or by e-mail at david.d.donovan@xcelenergy.com.

Sincerely,

David Donovan

David D. Donovan
Manager, Regulatory Policy

C: D. Reck
L. Noailles
S. Beuning
E. Engelking.

in wholesale markets would reduce barriers to demand response, expand the development of

[1] Final Rule, *Wholesale Competition in Regions with Organized Electric Markets*, Docket Nos. RM07-19-000 and AD07-7-000, 125 FERC ¶ 61,071 (2008) (Order 719) and Order on Rehearing, 128 FERC ¶ 61,059 (2009) (Order 719-A).

> operator and regional transmission organization must accept bids from an aggregator of retail customers that aggregates the demand response of: (1) the customers of utilities that distributed more than 4 million megawatt-hours in the previous fiscal year, and (2) the customers of utilities that distributed 4 million megawatt-hours or less in the previous fiscal year, where the relevant electric retail regulatory authority permits such customers' demand response to be bid into organized markets by an aggregator of retail customers. *An independent system operator or regional transmission organization must not accept bids from an aggregator of retail customers that aggregates the demand response of: (1) the customers of utilities that distributed more than 4 million megawatt-hours in the previous fiscal year, where the relevant electric retail regulatory authority prohibits such customers' demand response to be bid into organized markets by an aggregator of retail customers*, or (2) the customers of utilities that distributed 4 million megawatt-hours or less in the previous fiscal year, unless the relevant electric retail regulatory authority permits such customers' demand response to be bid into organized markets by an aggregator of retail customers.

18 C.F.R. § 35.28(g)(1)(iii) (emphasis added).

For electric utilities that distribute more than 4 million megawatt-hours (MWh) per year, the rule requires a state commission to affirmatively "opt-out" if it determines that ARCs are prohibited under state law. There are four Wisconsin public utilities that distribute more than 4 million MWh per year. These are Northern States Power Company-Wisconsin (NSPW), Wisconsin Power and Light Company (WP&L), Wisconsin Electric Power Company (WEPCO), and Wisconsin Public Service Corporation (WPSC).

Following the issuance of Order 719 and subsequent activities by the MISO to implement its provisions, the Commission issued an Amended Notice of Investigation and Request for Comments, dated April 2, 2009, seeking comments about possible ARC operations in Wisconsin.

markets, where prices are based on marginal costs and tend to be more volatile. Customers take their contract right to receive retail electric service, which is an option right, and transfer and assign it to an ARC. This option to purchase electric energy then becomes part of the ARC's demand response bid in the RTO energy market or ancillary services market. Essentially, retail customers sell to ARCs their option right to purchase electricity at an average cost that exists because of state regulation. ARCs then resell this option in the wholesale market.

ARCs could bring both advantages and disadvantages to Wisconsin retail customers and electric utilities. As to potential benefits, ARCs may encourage the implementation of innovative demand response technologies and bring economies of scale to demand response programs. For retail customers that take service at multiple locations from more than a single electric utility, ARCs may also provide them an opportunity to consolidate their demand response activities with a single vendor.

However, the Commission's preliminary investigation reveals that customers selling load reductions through ARCs, or acting as ARCs themselves, have the potential for securing electricity at net lower rates than the rates authorized by the Commission. Utilities could also be

[2] Comments were received from the following: Wisconsin Industrial Energy Group, Inc., and Wisconsin Paper Council (initial and supplemental joint comments); Madison Gas and Electric Company, WEPCO, WP&L, WPSC, and WPPI Energy (joint comments); Municipal Electric Utilities of Wisconsin; NSPW; Citizens' Utility Board, Clean Wisconsin and RENEW Wisconsin (joint comments); and Customers First! Coalition.

within the MISO region. Moreover, it appears that additional information would be useful to long-term Commission consideration of ARCs and their proper role, if any, in Wisconsin energy needs. Further investigation is warranted about the effective utilization of demand response options in retail and wholesale markets that will provide benefits to all Wisconsin consumers.

In light of the foregoing considerations, the Commission concludes that it is appropriate to prohibit the transfer of demand response load reductions to MISO markets directly by retail customers or by third-party ARCs of the four Wisconsin electric utilities which distribute more than 4 million MWh per year. 18 C.F.R. § 35.28(g)(1)(iii).

This Order is issued pursuant to the Commission's jurisdiction under Wis. Stat. §§ 196.02(1), 196.03(1), 196.19, 196.20, 196.22, 196.26, 196.28, 196.37(2), 196.39, 196.395, 196.40, 196.44(1), 196.60(1) and (3), 196.604, 227.01(13)(c), and other provisions of Wis. Stat. ch. 196 and 227 as may be pertinent.

It Is Ordered:

1. This Order shall be effective the day after the date of mailing and shall continue in effect until rescinded, in whole or in part, by further Commission order.

2. As a condition on the provision of electric service, demand response load reductions of retail customers of the four Wisconsin electric utilities which distribute more than

Sandra J. Paske
Secretary to the Commission

SJP:MSV:JEF:mem:g:\order\pending\5-UI-116 Temp. Order.doc

See attached Notice of Rights

The following notice is served on you as part of the Commission's written decision. This general notice is for the purpose of ensuring compliance with Wis. Stat. § 227.48(2), and does not constitute a conclusion or admission that any particular party or person is necessarily aggrieved or that any particular decision or order is final or judicially reviewable.

PETITION FOR REHEARING

If this decision is an order following a contested case proceeding as defined in Wis. Stat. § 227.01(3), a person aggrieved by the decision has a right to petition the Commission for rehearing within 20 days of mailing of this decision, as provided in Wis. Stat. § 227.49. The mailing date is shown on the first page. If there is no date on the first page, the date of mailing is shown immediately above the signature line. The petition for rehearing must be filed with the Public Service Commission of Wisconsin and served on the parties. An appeal of this decision may also be taken directly to circuit court through the filing of a petition for judicial review. It is not necessary to first petition for rehearing.

PETITION FOR JUDICIAL REVIEW

A person aggrieved by this decision has a right to petition for judicial review as provided in Wis. Stat. § 227.53. In a contested case, the petition must be filed in circuit court and served upon the Public Service Commission of Wisconsin within 30 days of mailing of this decision if there has been no petition for rehearing. If a timely petition for rehearing has been filed, the petition for judicial review must be filed within 30 days of mailing of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition of the petition for rehearing by operation of law pursuant to Wis. Stat. § 227.49(5), whichever is sooner. If an *untimely* petition for rehearing is filed, the 30-day period to petition for judicial review commences the date the Commission mailed its original decision.[3] The Public Service Commission of Wisconsin must be named as respondent in the petition for judicial review.

If this decision is an order denying rehearing, a person aggrieved who wishes to appeal must seek judicial review rather than rehearing. A second petition for rehearing is not permitted.

Revised: December 17, 2008

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[3] *See State v. Currier*, 2006 WI App 12, 288 Wis. 2d 693, 709 N.W.2d 520.

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February 16, 2010

—Via Electronic Filing—

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: COMMENTS IN RESPONSE TO THE COMMISSION'S NOTICE CONCERNING FERC ORDERS 719 AND 719-A AND AGGREGATORS OF RETAIL CUSTOMERS
DOCKET NO. E-999/CI-09-1449

Dear Dr. Haar:

Northern States Power Company, a Minnesota corporation ("Xcel Energy" or the "Company") respectfully submits the attached Comments in response to the Minnesota Public Utilities Commission's (the "Commission") January 13, 2010 *Notice of Comment Period* soliciting comments on the potential effects of Aggregators of Retail Customers ("ARCs") on utility rates, reliability, demand-side management, conservation programs; on participating and non-participating utilities and customers; and other relevant issues, to help inform the Commission on whether it should take action with respect to the possible operation of ARCs in Minnesota.

Pursuant to Minn. Stat. § 216.17, subd. 3, we have electronically filed this document with the Commission, and copies have been served on the parties on the attached service list.

Please contact Peter Hulbert at (612) 330-5816 or peter.r.hulbert@xcelenergy.com or me at (612) 330-6270 or allen.krug@xcelenergy.com if you have any questions regarding this filing.

Sincerely,

/s/

ALLEN D. KRUG
MANAGING DIRECTOR
REGULATORY ADMINISTRATION

Enclosures
c: Service List

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

David C. Boyd	Chair
J. Dennis O'Brien	Commissioner
Thomas Pugh	Commissioner
Phyllis A. Reha	Commissioner
Betsy Wergin	Commissioner

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 (ARCS) UNDER FERC ORDERS 719 AND 719-A

Docket No. E-999/CI-09-1449

COMMENTS

INTRODUCTION

Northern States Power Company, a Minnesota corporation ("Xcel Energy" or "the Company"), respectfully submits to the Minnesota Public Utilities Commission ("Commission") these comments in response to the Commission's January 13, 2010 *Notice of Comment Period* soliciting comments from interested stakeholders on the potential effects of Aggregators of Retail Customers ("ARCs") on utility rates, reliability, demand-side management, conservation programs; on participating and non-participating utilities and customers; and other relevant issues, to help inform the Commission on whether it should take action with respect to the possible operation of ARCs in Minnesota.

We appreciate this opportunity to provide comments and look forward to reviewing the comments and concerns of other parties. The Company respectfully requests the Commission take action in response to Federal Energy Regulatory Commission ("FERC") Order No. 719 *et al.*, in order to affirm the Commission's regulatory jurisdiction over Minnesota retail electric utility rates and protect the interests of Minnesota ratepayers. If the Commission does not take action, the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO" or "MISO") Tariff will automatically authorize ARCs to operate in Minnesota starting as soon as June 1, 2010. The Company believes that the participation of third-party ARCs between retail customers and the Midwest ISO wholesale energy and ancillary services market would not improve the efficiency of either the retail or wholesale electric utility market and has the potential to increase the cost of service for non-participant Minnesota retail ratepayers.

I. PROCEDURAL BACKGROUND

On October 17, 2008, the FERC issued Order No. 719,[1] which amended FERC regulations to seek to improve the operation of organized wholesale electric power markets, such as the Midwest ISO wholesale regional energy and ancillary services market. In particular, Order No. 719 focused on the following areas: (1) the role of demand response in organized markets and greater use of market prices to elicit demand response during periods of operating reserve shortage; (2) increasing opportunities for long-term power contracting; (3) strengthening market monitoring; and (4) enhancing the responsiveness of regional transmission organizations ("RTOs") or independent system operators ("ISOs") to customers and other stakeholders. Order No. 719 directed RTOs and ISOs, like Midwest ISO, to submit compliance filings to modify their tariffs to, among other things, allow the operation of ARCs within their region, or demonstrate that their existing tariff and market design satisfied the requirements of Order No. 719. FERC required RTOs and ISOs to make a compliance filing within six months of the date Order No. 719 was published in the Federal Register.

Various stakeholders made timely requests for rehearing or for clarification of Order No. 719. In response, FERC issued Order No. 719-A on July 16, 2009,[2] which generally affirmed Order No. 719's ARC-related provisions, and made two additional ARC-related requirements: RTOs and ISOs were required to submit compliance filings on the use of a threshold for distinguishing small utilities and on the sharing of ARC registration-related information with affected load serving utilities.[3]

Orders No. 719 and 719-A were published in the Federal Register, and Order No. 719-A went into effect on August 28, 2009. On December 17, 2009, FERC issued Order No. 719-B.[4] Order 719-B denied rehearing certain aspects of Order No. 719-A, but provided further clarification to certain portions of Orders No. 719 and 719-A.

The critical aspect of Order No. 719 *et al.*, important to this filing, is that FERC required Midwest ISO to modify its Tariff to allow ARCs to provide direct services to retail customers within the 15 state Midwest ISO region, including Minnesota. The

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[1] *Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719, FERC Stats. & Regs. ¶ 31,281, 73 FR 61,400 (Oct. 28, 2008) (hereinafter "Order No. 719").
[2] *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292, 74 FR 37,776 (July 29, 2009) (hereinafter "Order No. 719-A").
[3] Order No. 719-A at ¶¶ 60–64 and ¶ 69.
[4] *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719-B, 129 FERC ¶ 61,252 (Dec. 17, 2009) (hereinafter "Order No. 719-B").

Midwest ISO's compliance filings to Order No. 719-A *et al.* has been submitted to FERC, and is pending approval. The proposed Tariff changes would allow ARCs to potentially begin operating in Minnesota as early as June 1, 2010. However, as discussed in more detail below, FERC has also consistently ruled that ARCs may be prohibited or regulated by individual states if the applicable state regulatory authority takes specific action.[5] The proposed Midwest ISO Tariff provisions retain this authority. Xcel Energy respectfully urges the Commission to promptly take specific action prior to June 1, 2010, so as to protect its jurisdiction, the jurisdiction of the Office of Energy Security ("OES") over utility conservation and demand side management programs, and prevent harm to the longstanding and well-developed utility DSM programs and ratepayers who may be negatively affected by introduction of non-regulated ARCs in Minnesota.

The benefits of ARCs that FERC envisioned in Order No. 719 *et al.* can and should come from states in the Midwest ISO region where either retail competition or a lack of existing utility demand response programs means that ARCs could increase efficiency in capacity use and operating reserves. However, the regulated utilities in Minnesota—and particular Xcel Energy—already effectively operate in a manner similar to an ARC to facilitate coordinated and effective retail demand response, thereby enhancing efficient utilization of existing capacity and reserves. Introduction of ARCs in Minnesota could reduce the efficiency of longstanding utility demand response programs, to the detriment of ratepayers as a whole. This outcome would not serve the public interest.

II. Company Comments

A. General Framework

Question 1: Which Minnesota retail utilities will be affected by FERC Orders 719 and 719-A, and the operation of ARCs in Minnesota? How and Why?

In Orders No. 719, 719-A, and 719-B FERC amended its rules to allow ARCs aggregating the demand response of retail customers of utilities that annually distribute more than 4 million MWh to bid those resources into the Midwest ISO's wholesale regional energy or ancillary services market, unless the relevant electric retail regulatory authority—such as the MPUC—prohibits such action.[6] Therefore, unless the Commission takes action to prohibit (or regulate) the operation of ARCs in Minnesota prior to June 1, 2010, ARCs could begin participation on that date. Since

[5] *See* 18 C.F.R. § 35.28(g)(1)(iii).
[6] *See Order 719* at P 129–64 and *Order 719-A* at P 17–71. ARCs can aggregate the demand of retail customer for utilities that distribute 4 million MWh or less if the relevant regulatory authority permits such action. 18 C.F.R. § 35.28(g)(1)(iii).

the Company annually distributes more than 4 million MWh, ARCs could provide services within the Company's service area unless the Commission takes action.

Xcel Energy and its customers may be adversely affected by the operation of ARCs in Minnesota. The operation of ARCs may, among other things, have unintended consequences to the price which retail customers pay for electricity (Question 5), create increased difficulty for the Company to forecast load requirements (Question 8), and duplicate the Company's robust and very successful demand response programs (Questions 11 and 13).

Orders No. 719, 719-A, and 719-B make it clear, however, that state commissions retain ultimate authority over ARCs within their jurisdiction. In Order 719-A, FERC explained that the ARC rule neither determined nor restricted state commission action:

> The Final Rule also does not make findings about retail customers' eligibility, under state or local laws, to bid demand response into the organized markets, either independently or through an ARC. [FERC] also does not intend to make findings as to whether ARCs may do business under state or local laws, or whether ARC contracts with their retail customers are subject to state and local law. Nothing in the Final Rule authorizes a retail customer to violate existing state laws or regulations or contract rights. In that regard, we leave it to the appropriate state or local authorities to set and enforce their own requirements.[7]

In Order 719-B, FERC suggested that it may be necessary for state commissions to act, especially in instances where retail aggregation programs already exist. According to FERC, "it is up to the relevant electric retail regulatory authorities, if they so choose, to decide whether existing retail aggregation programs provide benefits and whether retail customer participation in wholesale demand response programs, individually or through an ARC, could adversely affect those programs."[8]

As indicated, the Company distributes more than 4 million MWh annually. The Company therefore respectfully requests the Commission prohibit or regulate the operation of ARCs in Minnesota. Doing so will affirm the Commission's regulatory jurisdiction over Minnesota retail electric utility rates and protect the interests of

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[7] *Order 719-A* at P 54. In regulating ARCs, including completely precluding them in its jurisdiction, FERC stated that a regulatory authority's "decisions or policy should be clear and explicit so that the RTO or ISO is not tasked with interpreting ambiguities." Order No. 719-A at P. 50.
[8] *Order 719-B* at P 27.

Minnesota ratepayers, system planning and reliability, and existing demand responses programs.

QUESTION 2: Which retail utilities operating in Minnesota distribute more than 4 million MWh per year and which distribute less?

As noted above in Question 1, Xcel Energy distributes more than 4 million MWh per year.

QUESTION 3: What, if any, Minnesota laws, rules and/or Commission orders could prohibit or restrict ARCs from aggregating utility customers in Minnesota? For example, would the operation of ARCs in Minnesota create the opportunity for rate discrimination?

The Company believes operation of ARCs is not consistent with the goals of public utility regulation set forth in Minnesota statutes, in particular Chapter 216B. Public utilities are regulated in Minnesota to ensure customers receive "reliable service at reasonable rates." [9] ARCs may undermine both reliability and reasonableness by making system planning and coordination more difficult and created unintended consequences to the price which retail customers pay for electricity.

Moreover, the Company believes ARCs likely qualify as public utilities under Minnesota Law.[10] Minnesota Statutes section 216B.02, subd. 4 defines a public utility as "persons, corporations or other legal entities . . . operating, maintaining, or controlling . . . equipment or facilities for furnishing at retail . . . electric service to or for the public or engaged in the production and retail sale thereof." Electric service is statutorily defined as "the installation, removal, or repair of equipment or facilities for delivering or measuring . . . electricity."[11] ARCs would furnish services to retail customers in Minnesota by aggregating demand response, just as the Company now aggregates retail demand response to reduce the need to produce or purchase capacity or energy in the Midwest ISO regional energy market. If ARCs qualify as public utilities under Minnesota law, then the Commission should regulate the service they provide. Thus the Commission should review an ARC's rates for reasonableness

[9] Minn. Stat. § 216B.01.
[10] The statutory definition of a public utility includes several exceptions, two of which may be pertinent to ARCs. First, unless otherwise provided, the provisions of Minn. Stat. § 216B do not apply to "any sale of… electricity by any public utility to another public utility." Minn. Stat. § 216B.02, subd. 4. If the sale of aggregated demand by an ARC to Midwest ISO qualifies as a utility-to-utility transaction, then an ARC could be exempted from several provisions of chapter 216B. Second, if a person "produces or furnishes service to less than 25 people," it is not a public utility under the statutory definition. *Id.*
[11] Minn. Stat. § 216B.02, Subd. 6. Administering a demand response program requires installation of equipment to monitor and control electricity consumption at the customer's facility. *See* http://www.xcelenergy.com/SiteCollectionDocuments/docs/OW_SaversSwitchMNBrochure.pdf.

under Minnesota Statutes section 216B.03 and approve any competitive rate authorized under Minnesota Statutes section 216B.162.

Further, the operation of ARCs is contrary to an electric utility's right to exclusive service under Minnesota Statutes section 216B.40. Under that statute "each electric utility shall have the exclusive right to provide electric service at retail to each and every present and future customer in its assigned service area and no electric utility shall render or extend electric service at retail within the assigned service area of another electric utility unless the electric utility consents thereto in writing."[12] Under longstanding Commission and statutory policy, the provision of electric service in Minnesota includes the provision of demand response and conservation services under Minnesota Statutes 216B.241.

Finally, permitting ARCs to operate in Minnesota could impact retail electric tariffs and consumer service rules (such as the Company's retail tariffs) under Commission jurisdiction pursuant to Minnesota Statutes section 216B.162, resource plans filed under Minnesota Statutes section 216B.2422, and conservation and demand side management programs under OES jurisdiction pursuant to Minnesota Statutes section 216C.09.

The Company believes the operation of ARCs in Minnesota could provide the opportunity for rate discrimination unless ARCs are regulated by the Commission. The Company's demand response programs and tariffs are regulated by the OES and Commission, and the Company must provide these services in a non-discriminatory manner. Unless ARCs are regulated, the ARC providers could increase costs to non-participant customers who are not attractive to the ARC providers. Careful consideration of this potential impact is clearly within the Commission's jurisdiction.

QUESTION 4: What actions have other state regulatory authorities taken regarding ARCs, particularly what actions in states in which Minnesota utilities operate, and states both within and without the MISO region?

Due to the potential conflicts with state retail programs, both states in which our affiliate Northern States Power Company, a Wisconsin corporation ("NSPW"), operates and the State of Indiana have elected to prohibit operation of ARCs within their boundaries, at least on a temporary basis.[13] Approval of the Midwest ISO's

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[12] While the definition of "electric service" in the exclusive service statutes differs from the general statutory definition above, the Minnesota Court of Appeals has held that the "electric service" as defined in the exclusive service statutes "was intended to distinguish between retail electric service and wholesale electric service, rather than to indicate that service must be furnished to or received by customers." *In re Kandiyohi Coop. Elec. Power Ass'n*, 455 N.W.2d 102, 105 (Minn. Ct. App. 1990).

[13] *See In re the Joint Request of the Detroit Edison Company, Indiana Michigan Power Company, the Michigan Electric and Gas Association and Consumers Energy Company to Initiate an Investigation of the Licensing Rules and Regulations Needed to Address the*

October 2nd compliance filing to Order No. 717-A may result in further and more permanent prohibition of ARC's in affected states.

The relevant electric retail rate authorities in Wisconsin, Michigan, and Indiana have all issued orders currently restricting the operation of ARCs pending further investigation. As such, restricting or regulating ARCs in Minnesota is consistent with the actions taken by the Commission's neighboring members of the Organization of Midwest ISO States ("OMS").

a. Wisconsin

In Wisconsin, the Public Service Commission of Wisconsin ("PSCW") initiated its own investigation into ARCs. The docket was initially opened to develop and analyze load management options in accordance with the recommendations of the Governor's Task Force on Global Warming. On April 2, 2009, the PSCW amended the notice of investigation and requested comments on whether and to what extent the PSCW should prohibit the participation of ARCs in Wisconsin.[14] NSPW submitted letter comments to the PSCW, suggesting that ARCs should be limited because of the potential need to change retail rate schedules, potential conflicts with existing PSCW-approved retail demand response programs, and potential conflicts with existing consumer rules.

On October 14, 2009, the PSCW issued an order temporarily prohibiting operation of ARCs in Wisconsin. In doing so, the PSCW noted that

1. ARCs have the potential for securing electricity at net lower rates than the rates authorized by the Commission; and

2. The operation of ARCs could have a discriminatory effect on ratepayers (i.e., if utilities had to pay the associated costs of providing adequate generating capacity for customers which are reselling the capacity into the wholesale market through an ARC).[15]

Effect of the Participation of Michigan Retail Customers, including those Associated with Aggregators of Retail Customers, in a Regional Transmission Organization Wholesale Market, Case No. U-16020, Order at 6 (Mich. P.S.C. Sept. 29, 2009); *Investigation to Develop and Analyze Alternative Electric and Natural Gas Design and Load Management Options which have the Potential to Reduce Emissions of Greenhouse Gases*, Docket No. 5-UI-116, Order Temporarily Prohibiting Operation of Aggregators of Retail Customers at 4 (Wis. P.S.C. Oct. 14, 2009); *In the Matter of the Commission's Investigation into any and all Matters Related to Commission Approval of Participation by Indiana end-use Customers in Demand Response Programs Offered by the Midwest ISO and PJM Interconnection*, Cause No. 43566, Order on Requests for Interim Relief (I.U.R.C. Feb. 25, 2009).

[14] *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*, Amended Notice of Investigation and Request for Comments at 2 (Wis. P.S.C. Apr. 2, 2009).

[15] *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 at 3–4 (Wis. P.S.C. Oct. 14, 2009).

NSPW's written comments in the PSCW docket[16] and the PSCW Order are attached to this filing.[17]

b. Michigan

On August 13, 2009, the Detroit Edison Company, Indiana Michigan Power Company, and the Michigan Electric and Gas Association (which includes NSPW as a member) (jointly, the "Utilities") filed an application with the Michigan Public Service Commission ("MPSC") seeking an order initiating an investigation into the rules and regulations governing customer participation in ARCs and a determination regarding necessary licensing requirements and appropriate rules and regulations related to ARCs. The Utilities raised several concerns:

1. Discrimination Concern: ARCs could create conflicts with existing demand response programs and have unintentional detrimental financial consequences for non-participating retail customers;

2. Planning Concern: ARCs could jeopardize an Load Serving Entity's ability to forecast energy and capacity requirements; and

3. Forecasting Concern: Under NERC Standards MOD-019-0 and MOD-020-0, utilities must know their forecasts and amounts of interruptible demand and direct control management available to transmission operators and reliability coordinators. Compliance with these NERC Standards necessitates state rules and regulations for ARCs.

The MPSC agreed to open an investigation into the rules and regulations governing customer participation in ARCs.[18] In addition, the MPSC restricted participation of Michigan retail customers in ARCS until further order of the MPSC.[19] The Utilities' request[20] and the MPSC Order are attached to this filing.[21]

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16 *See* Attachment A.
17 *See* Attachment B.
18 *See* Docket No. U-16020.
19 *In the Matter of the Joint Request to Initiate an Investigation of the Licensing Rules, and Regulations Needed to Address the Effect of the Participation of Michigan Retail Customers, including those Associated with Aggregators of Retail Customers, in a Regional Transmission Organization Wholesale Market*, Order at 6, Case No. U-16020 (Mich. P.S.C. Sept. 29, 2009).
20 *See* Attachment C.
21 *See* Attachment D.

c. Indiana

On August 13, 2008, the Indiana Utility Regulatory Commission ("IURC") denied an industrial group's request to condition approval of participation in the Midwest ISO Ancillary Services Market ("ASM") on the revision of electric tariffs to allow participation by retail customers in Midwest ISO's demand response programs.

IURC's denial of the industrial group's request prompted the IURC to commence an investigation into end-use customer participation in demand response programs offered by Midwest ISO and PJM Interconnection. On February 25, 2009, the IURC expressly barred end-use customer participation in RTO demand response programs until further order, unless an end-use customer received IURC authorization to participate in such programs. In so ordering, the IURC explained that they were maintaining the status quo in Indiana: "the legislature has not found that it is in the public interest to alter its traditional regulation of the relationship between retail power use and utilities. In Indiana, which follows a more traditional cost-of-service model, [the Commission] exercise[s] broad oversight over retail sales and service."[22]

C. Utility Rates Cost and Reliability

QUESTION 5: How would the participation of ARCs in Minnesota affect the price of electricity for retail and non-retail customers regulated by the Commission?

The operation of ARCs in Minnesota may have unintended consequences to the price which retail customers pay for electricity. If the commission does not act, an ARC located with Xcel Energy's area and selling energy into the Midwest ISO market will be paid directly at the full market price by Xcel Energy's customers. This could result in Xcel Energy's customers paying for energy they did not use, and wholly subsidizing ARCs.

For example, an ARC would be paid the full real time spot energy price (the "Locational Marginal Price" or "LMP") for not to using a certain volume of energy. Xcel Energy will be charged the LMP for the energy that was not used. This cost would be invoiced through the MISO bill under the asset energy charge type because MISO will artificially increase Xcel Energy's load volume. That increased cost would flow through the Fuel Clause Adjustment ("FCA") to all retail customers.

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[22] *In the Matter of the Commission's Investigation into any and all Matters Related to Commission Approval of Participation by Indiana end-use Customers in Demand Response Programs Offered by the Midwest ISO and PJM Interconnection*, Cause No. 43566, Order on Requests for Interim Relief at 2(I.U.R.C. Feb. 25, 2009) (quoting *In re Verified Join Petition of Duke energy Indiana, Inc. et al.,* Cause No. 43426 Phase I Order at 18 (I.R.U.C. Aug. 13, 2008).

The Company provides service at cost based, regulated rates, and we are required to offer our native load resources into the Midwest ISO energy market in a manner that reserves the least cost resources for native load customers. An ARC could be under no such restriction. The ARC would profit, and the Company's customers would pay higher energy costs through the FCA.

If an ARC did not participate in the energy market, and only participated in the capacity market (planning reserves) under Module E to the Midwest ISO Tariff, then the Company would be required to purchase the capacity the ARC sells. The ARC could sell this capacity back to the Company, or to a different load serving entity in the MISO footprint. In this example, the Company would be required to procure more planning reserves than it needs to reliably serve the load, thereby shifting the cost impact to the Company and its customers. The Company provides an example of the potential impact on the Company and its customers in its response to Question 10.

If the Commission allows Minnesota ARCs to participate in MISO's Energy and Operating Reserve Market, the Commission should set a Marginal Foregone Retail Rate ("MFRR")—a proxy for the price that retail customers would have paid under a company's tariff for the energy they did not consumer and for which the ARC received compensation from Midwest ISO—to ensure that the Minnesota utilities and customers are not harmed by the ARCs action. Setting an MFRR that appropriately balances the interests of the Company's customers and the obligation to supply ARC sales will be a difficult and complicated process.

Alternatively, if the Commission were to allow ARCs to operate in Minnesota, it will be necessary to substantially modify the rate design and pricing in the Company's current interruptible tariffs to price services to customers who elect to participate in ARCs so those customers are not able to leverage the difference between short term energy market rates and cost-based regulated rates to the disadvantage of other non-participant customers.

QUESTION 6: How would the participation of ARCs in Minnesota affect utilities and customers of utilities that are not regulated by the Commission?

The Company will not comment on how the participation of ARCs in Minnesota might affect the cooperative or municipal utilities in Minnesota. However, operation by ARCs in Minnesota would likely affect services not regulated by the Commission. Because the Company and NSPW operate an integrated system (the "NSP System") in five states, the costs associated with ARC participation in Minnesota would be allocated partially to Xcel Energy customers in other states.

QUESTION 7: MISO proposed revisions to its Tariff filed on October 2, 2009. Do these proposed revisions provide adequate compensation in the event ARCs are allowed to operate in Minnesota?

The adequacy of the Midwest ISO's proposed Tariff provisions depends on Commission action and policy. The Commission should prohibit the operation of ARCs until it can fully evaluate the extent to which it wants ARCs to operate in Minnesota. Once the evaluation is complete, if the Commission were to decide to allow ARCs to operate in Minnesota, the Commission will need to set an appropriate MFRR for the sale of demand response as Energy in MISO's Energy and Operating Reserves Market. The Commission should prohibit ARCs participation in Midwest ISO Module E, or develop a similar MFRR related to the sale of capacity. Capacity is not settled through the Midwest ISO process and therefore is somewhat outside the scope of Midwest ISO's October 2, 2009 Tariff filing.

QUESTION 8: How would the participation of ARCs in Minnesota effect utility system reliability?

Under the Midwest ISO Tariff, the Company is a Load Serving Entity ("LSE") in the Energy and Operating Reserve Markets. ARCs may create increased difficulty in forecasting load requirements in the Midwest ISO day-ahead markets since the LSEs will need information from the ARCs concerning the volume of demand response that they intend to offer into the market the following day. LSEs need clear information to properly adjust their own load forecast or deploy its own demand response for the operating horizon. Improper coordination could lead to an over scheduling of generation (and resulting Midwest ISO charges), overload or underload distribution systems, or even adverse power flows or transmission congestion.

QUESTION 9: How will system reliability be impacted in an ARC fails to provide the demand response it has bid into the market?

Please see our response to Question 8.

In addition, if an ARC fails to act, it may result in shedding of firm load in the Xcel Energy control area. This is because an ARC can sell the demand response as emergency energy to be counted on in a capacity emergency and used just before shedding firm load. If this demand response is sold to Xcel Energy or another entity, and the load does not reduce in the emergency, then Xcel Energy may not have enough capacity to serve its firm customers. The next step in the capacity emergency procedure is to shed firm load, so if the ARC does not respond when needed, Xcel Energy will shed firm load to keep the system reliable and in balance.

For example, assume a large retail customer offers 200 MW of capacity into the Midwest ISO market through an ARC for the next operating day. MISO as the balancing athority assumes the customer will in fact interrupt its use and will not require generation to serve that 200 MW. However, if the customer is unable (or unwilling) to actually interrupt during the actual operating day, the balancing authority may be short of capacity and operating reserves. If the balancing authority (MISO) cannot acquire capacity and reserves to cover the extra 200 MW of retail demand, the balancing authority could be required under NERC reliability standards to load shed. MISO will then direct Xcel Energy to shed firm load. The customers affected by the load shedding will likely not be the customer who failed to interrupt as promised.

The Company's existing retail tariffs include service requirements and non-performance penalties that encourage interruptible customers to interrupt pursuant to their contractual and tariff requirements. If the "rules of the road" are not constructed carefully, some of those protections may be lost in an ARC operating environment. It is for this reason the Commission must carefully consider whether to allow ARCs to operate in Minnesota and, if so, what rules must be adopted to prevent abuses and harm to non-participant customers.

QUESTION 10: How might ARCs impact the ability of utilities to obtain capacity savings from customers and the costs incurred to obtain these savings?

The MISO ARC proposal could cause retail customers to pay higher capacity costs. This result would be caused by not recognizing that utility capacity requirements will be reduced by ARC capacity sales.

This is illustrated in the following example of a Minnesota regulated utility with a 9000 MW system peak and a 15 percent reserve margin. This example requires a total 10,350 MW capacity requirement (9000 MW x 1.15), which retail customers support through traditional embedded cost rates.

An ARC that registers 300 MW of load as capacity in the MISO market under Module E can actually sell 345 MW of capacity (300 MW plus the 15 percent reserve margin). The ARC can sell this capacity to any utility in the MISO wholesale market. As part of this sale, the ARC certifies that the load will be off the system in an emergency, which would happen in system peaking conditions. In other words, the ARC certifies that the load will controlled on the peak day.

However, the ARC transaction will reduce the Minnesota utility peak load by only 300 MW, down to 8700 MW. Although the resulting lower peak will reduce the Minnesota utility capacity requirement from 10,350 MW to 10,005 MW (8700 MW x

1.15), the utility must still maintain 345 MW of generation to supply an ARC sale to a different utility, because the retail customer is effectively reselling the Company's capacity through the ARC.

The ARC may argue that because its customer has already paid for that 345 MW of capacity through average cost retail rates, the customer owns that capacity and is entitled to sell it in the MISO market to the highest bidder. However, this argument ignores the fact that the Minnesota retail utility and its non-participant retail customers will continue their full cost responsibility for the peaking capacity no longer required as a result of the 345 MW ARC sale.

When ARC capacity is sold to another retail jurisdiction, the Minnesota customers that supply the capacity would not be adequately compensated because there is no recovery mechanism in the MISO market for the extra 345 MW of physical capacity. This capacity cost is spread over all customers and is not specifically assigned to ARC participants.

The Company does not support this potential subsidy from retail customers to ARCs and the customers they represent. The Company notes that the Commission would be unable to regulate this cost if they allow ARCs to participate in MISO's resource adequacy construct (Module E). Therefore, the Company recommends that the Commission prohibit ARC participation in the MISO Module E Resource Adequacy construct.

In any event, this example again shows the complexities that will be introduced by ARCs, and the potential for cost shifts to non-participant customers if the "rules of the road" are not established in advance. It will take time to understand the complexities, and conduct the rulemakings necessary to establish appropriate requirements for ARC participation in Minnesota. The Commission should thus prohibit operation of ARCs at this time and determine whether additional discussion of these issues is merited at this time.

QUESTION 11: How will the participation of ARCs in Minnesota affect the operation of existing and future capacity savings programs, including interruptible and "buy back" programs?

Historically, demand response initiatives in Minnesota have been developed, implemented, and managed by LSEs for the purpose of minimizing power supply costs for the benefit of their retail rate payers. These demand response programs were developed pursuant to the terms and conditions of retail tariffs approved by the Commission. The state-authorized demand response programs: (1) help reduce the need for, and therefore cost of, planning and operating reserves; (2) ensure the integrity of Minnesota's integrated resource planning regime; and (3) help meet state-established demand response goals;

The Midwest ISO's proposed ARC Tariff raises substantial questions about the interplay and effects of Midwest ISO wholesale ARC programs which would be largely duplicate the Company's existing retail demand response infrastructure, and the consequent impact of ARCs costs to non-participant retail customers. The Company is concerned about the impact that Midwest ISO's proposed ARC program will have on the Company's demand response programs in Minnesota, as more fully discussed below.

The Midwest ISO region includes states where electric utility service has been unbundled and where retail competition has been introduced, as well as states, like Minnesota, where electric utility service remains fully integrated and where traditional cost-based regulation remains. In Minnesota, utilities are subject both to extensive state-mandated integrated resource planning processes and some of the most aggressive demand response requirements anywhere in the United States.

Xcel Energy currently offers demand response programs to all customer classes. We have 346,000 residential and 14,750 small business customers enrolled in Saver's Switch. In addition, we have 2800 small business and commercial and industrial customers participating on interruptible tariffs. We continue to grow these programs as needed to meet peak load relief requirements. The NSP Companies have developed an extremely robust demand response program that provides more than 1000 MW of system peak load control (more than 10% of the NSP System total requirements load).[23]

These retail programs demand response are subject to comprehensive state regulatory review and cost-effectiveness analysis. All customers benefit by mitigating peak load conditions, lowering capacity requirements (and associated costs) and responding to system emergencies, while still supporting a least-cost retail rate regime and the integrated resource planning policies. In particular, the customers who participate in the retail demand response programs receive more than $80 million per year in rate discounts or credits, which is a cost avoided capacity and is include in the rates paid by all customers. This retail market demand response benefits the entire Midwest ISO footprint by mitigating peak load conditions for the entire Midwest ISO system and by providing a source of load reduction that can be used to system emergencies.

The NSP Companies demand response program is not only large, it is robust and reliable and has gone through numerous refinements and continued expansion over

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[23] Information about the NSP Companies demand response and conservation programs in the five state region is available at the Xcel Energy web site (www.xcelenergy.com).

the past 30 years. During Midwest ISO's peak in 2006, more than 100% of the NSP Companies' requested (dispatched) demand response was obtained, providing benefits to Xcel Energy's retail customers (its intended purpose). However, implementation of the Company's demand response programs also benefited the Midwest ISO region by lowering reserve requirements and energy prices.

The NSP Companies have already fully developed the potential demand response from its customers. The introduction of third party ARCs could negatively impact a portion (perhaps a large portion) of the Company's existing demand response program customer base, thereby rendering the remaining base much less cost-effective. Furthermore, the NSP Companies also reflect the impact of deployment of their demand response programs in their system load bids in the Midwest ISO energy and ancillary service markets, as well as the Midwest ISO's resource adequacy construct.

Fundamentally, the Company is concerned that ARCs may lead to: (1) negative impacts to existing robust retail demand response programs; and (2) replacement of those programs by ARCs that may be smaller or less cost-effective. The Company is also concerned that the NSP ratepayers could end up paying twice for the same demand response and that many benefits could go to other entities in the Midwest ISO footprint. Xcel Energy believes that participation by its customers in both the Company's retail demand response programs and Midwest ISO wholesale ARC program raises serious economic concerns. Customers participating in both programs could receive double compensation for volunteering to curtail their demand, which would artificially increase the cost of service for all other customers; whether it is within or across classes is unimportant.[24] The potential for double-counting of demand resources and double-payment to customers calls into question whether participating in both the Company's demand response program and wholesale ARC programs would be in all customers' best interest.[25] Thus, it is the Company's recommendation to prohibit ARCs at this time.

QUESTION 12: If ARCs are allowed to operate in Minnesota, how would this affect Day-Ahead and Real-Time bids in the MISO Day 2 (energy) market and the Ancillary Services Markets?

ARCs operation in Minnesota would not affect the Company's bids and offers into MISO's Day-Ahead and Real-Time market. Because the Company would not know about ARC's bids and offers, the Company would not be able to take into account the ARCs actions when bidding into the MISO market. Because of this, ARC participation in Minnesota will not be well coordinated with NSP System retail

[24] Minn. Stat. § 216B.162 subd. 4(4); Minn. Stat. § 216B.03.
[25] Minn. Stat. § 216B.162 subd. 7.

ratepayers. The NSP System will need to purchase the full amount of expected load irrespective of if load is controlled by an ARC. This is likely an additional disadvantage that retail customers would face compared to the existing regime, where utilities' DSM programs are well coordinated with our day-ahead and real-time bids.

D. Utility DSM, Conservation, and Resource Planning Programs

QUESTION 13: How might the participation of ARCs in Minnesota affect utility demand-side management and conservation improvement programs?

As indicated in the response to Question 11, the participation of ARC's in Minnesota might lower the level of participation in the utility based demand response program. Having customer choice in the Minnesota demand response market may cause customer confusion from competing programs with a variety of options. Xcel Energy's demand response program has over 6250 participants from the small business, commercial and industrial classes. Xcel Energy incurs certain fixed costs for systems and personnel to administer these programs. In the event ARC's are allowed to participate in Minnesota it is likely they will target large commercial and industrial customers, potentially luring those customers away from their current participation in Xcel Energy's demand response program. The impact of removing these customers with large demand response resources would result in the allocation of Xcel Energy's unchanged fixed costs across fewer customers and significantly fewer MWs of demand response.

Additionally, the Company is concerned that ARCs would impact the customer/Company relationship and make it difficult for the Company to secure CIP opportunities (of which the Company has invested a considerable amount to encourage conservation) and also create customer confusion and frustration resulting from two (or more) competing providers of DR programs

QUESTION 14: How would the participation of ARCs in Minnesota affect utilities' ability to meet the state's statutory energy savings goal of 1.5 percent?

Demand response programs are not strong contributors to energy savings goals. The purpose of energy efficiency programs are to reduce overall energy usage on our system. The purpose of demand response is to reduce energy usage during peak periods (i.e., reduce capacity needs). Our Resource Planning group relies on both energy savings and demand response to efficiently run our system. Our current Minnesota Triennial DSM Plan includes both energy efficiency and demand response to meet external regulatory and internal resource planning requirements

QUESTION 15: If a utility had customers participating in an ARC, how would that utility need to adjust its resource and load planning? What specific assumptions would need to be made as part of the planning process?

If the Company's customers participated in an ARC, the Company would have to take into account the uncertainty associated with the ARC in both its resource and load planning. The Company is still responsible for serving the load associated with an ARC, irrespective of if or when that load is controlled. Because of that, both resource and load planning would have to plan as if the load was not and will not be controlled. As the ARCs are outside of the Company's purview, the Company would have to reevaluate the planning process to fully understand the impact of ARC participation on the planning process and analysis. Then, the Company would have to gross up the relevant inputs to the analysis to account for ARC participation.

E. Potential Commission Actions

QUESTION 16: Should the Commission prohibit demand response resources from retail customers of utilities that distribute more then 4 millions MWh in Minnesota from being into the wholesale market?

Yes. The Company believes that ARCs may have an impact on retail electric customers and that such "third-party" participants pose significant regulatory authority issues for the Commission and OES under Minnesota statutes. Therefore, the Company recommends that the Commission issue an order prohibiting the participation of ARCs in the Minnesota state retail electric utility market, at least until the Commission can fully evaluate the extent to which it wants ARCs to operate in Minnesota, and then adopt new rules to regulate ARCs accordingly.

QUESTION 17: Should the Commission allow demand response resources from retail customers of utilities that distribute less then 4 million MHh to be bid into the wholesale market?

No. The Commission should prohibit all operation of ARCs in Minnesota until the Commission can fully consider the issues raised by ARC operations and, if necessary, conduct rulemakings to regulate ARCs.

CONCLUSION

The Company appreciates the opportunity to provide comments and respectfully requests that the Commission take action to protect its regulatory jurisdiction and Minnesota ratepayers by promptly issuing an order prohibiting the operation of ARCs in Minnesota. At a minimum, additional proceedings to determine whether to allow

ARCs to operate in Minnesota in addition to rulemakings or other proceedings would be necessary to appropriately regulate the operations of ARCs.

Dated: February 16, 2010

Northern States Power Company,
a Minnesota corporation

BY: /S/

ALLEN D. KRUG
MANAGING DIRECTOR
REGULATORY ADMINISTRATION

CERTIFICATE OF SERVICE

I, Aimee K. Lemen, hereby certify that I have this day served copies or summaries of the foregoing document on the attached list of persons.

xx by depositing a true and correct copy thereof, properly enveloped with postage paid in the United States Mail at Minneapolis, Minnesota

xx electronic filing

DOCKET NO. E-999/CI-09-1449

Dated this 16th day of February 2010

/s/

____
Aimee K. Lemen

Service List Name	First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
SPL_SL_9-1449_Interested Parties	Alan	Jenkins	aj@jenkinsatlaw.com	Jenkins at Law, LLC	Suite 100 2265 Roswell Road Marietta, GA 30062	Paper Service	No
SPL_SL_9-1449_Interested Parties	Andrew	Moratzka	apm@mcmlaw.com	Mackall, Crounse and Moore	1400 AT&T Tower 901 Marquette Ave Minneapolis, MN 55402	Paper Service	No
SPL_SL_9-1449_Interested Parties	Annete	Henkel	mui@mnutilityinvestors.org	Minnesota Utility Investors	413 Wacouta Street #230 St.Paul, MN 55101	Paper Service	No
SPL_SL_9-1449_Interested Parties	Arshia	Javaherian	arshiajavaherian@alliantenergy.com	Interstate Power and Light.	PO Box 351 Cedar Rapids, IA 524060351	Paper Service	No
SPL_SL_9-1449_Interested Parties	Art	Dunn	N/A		520 Lafayette Rd Saint Paul, MN 55155-4194	Paper Service	No
SPL_SL_9-1449_Interested Parties	Ashley	Houston			120 Fairway Rd Chestnut Hill, MA 24671850	Paper Service	No
SPL_SL_9-1449_Interested Parties	Beth H.	Soholt	bsoholt@windonthewires.org	Wind on the Wires	Suite 203 1619 Dayton Avenue St. Paul, MN 551046206	Paper Service	No
SPL_SL_9-1449_Interested Parties	Bill	Heaney	billheaney@billheaney.com	IBEW Minnesota State Council	P. O. Box 65397 St. Paul, MN 551550397	Paper Service	No
SPL_SL_9-1449_Interested Parties	Bill	Bullard		South Dakota Public Utilities Commiss	Capitol Building Pierre, SD 575015070	Paper Service	No
SPL_SL_9-1449_Interested Parties	Bob	Bridges	bob.bridges@versopaper.com	Verso Paper	100 East Sartell Street Sartell, MN 56377	Paper Service	No
SPL_SL_9-1449_Interested Parties	Brenda A.	Bjorklund	brenda.bjorklund@centerpointenergy.com	CenterPoint Energy	800 LaSalle Avenue Floor 14 Minneapolis, MN 55402	Paper Service	No

Service List Name	First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
SPL_SL_9-1449_Interested Parties	Brian	Draxten		Otter Tail Power Company	P.O. Box 496 215 South Cascade Street Fergus Falls, MN 565380498	Paper Service	No
SPL_SL_9-1449_Interested Parties	Brian	Elliott		Clean Water Action Alliance	326 Hennepin Ave. E. Minneapolis, MN 55414	Paper Service	No
SPL_SL_9-1449_Interested Parties	Bruce	Gerhardson	bgerhardson@ottertail.com	Otter Tail Corporation	PO Box 496 215 S Cascade St Fergus Falls, MN 565380496	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Burl	Haar	burl.haar@state.mn.us	MN Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 55101-2147	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Casey	Jacobson	cjacobson@bepc.com	Basin Electric Power Cooperative	1717 East Interstate Avenue Bismarck, ND 58501	Paper Service	No
SPL_SL_9-1449_Interested Parties	Charlie	Higley	higley@wiscub.org	Citizens Utility Board	Suite 530 16 North Carroll Street Madison, WI 53703	Paper Service	No
SPL_SL_9-1449_Interested Parties	Chris	Duffrin	chrisd@thenec.org	Neighborhood Energy Connection	624 Selby Avenue St. Paul, MN 55104	Paper Service	No
SPL_SL_9-1449_Interested Parties	Christopher	Clark	christopher.b.clark@xcelenergy.com	Xcel Energy	5th Floor 414 Nicollet Mall Minneapolis, MN 554011993	Paper Service	No
SPL_SL_9-1449_Interested Parties	Christopher	Sandberg	cksandberg@locklaw.com	LOCKRIDGE GRINDAL NAUEN PLLP	Suite 2200100 Washington Avenue South Minneapolis, MN 55401	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Christopher	Greenman	ChristopherGreenman@excelsiorenergy.com	Excelsior Energy	Suite 305 - 11100 Wayzata Boulevard Minnetonka, MN 55305	Paper Service	No

Service List Name	First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
SPL_SL_9-1449_Interested Parties	Christopher	Anderson	canderson@allete.com	Minnesota Power	30 W Superior St Duluth, MN 558022191	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Clair	Moeller		Midwest ISO	</p> 1125 Energy Park Drive St. Paul, MN 551085001	Paper Service	No
SPL_SL_9-1449_Interested Parties	Clifford	Porter	N/A	Lignite Research Council	1016 E Owens Ave Ste 200 PO Box 2277 Bismarck, ND 58502	Paper Service	No
SPL_SL_9-1449_Interested Parties	Curt	Punt		Western MN Municipal Power Agency	Suite 102 25 2nd Street NW Ortonville, MN 56278	Paper Service	No
SPL_SL_9-1449_Interested Parties	Curt	Dieren	cdieren@dgrnet.com	L&O Power Cooperative	1302 South Union Street PO Box 511 Rock Rapids, IA 51246	Paper Service	No
SPL_SL_9-1449_Interested Parties	Dale	Sollom	dsollom@minnkota.com	Minnkota Power Cooperative, Inc.	PO Box 13200 Grand Forks, ND 582083200	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Dale	Christensen		LD Exchange.Com, Inc.	Suite 230 2510 North Redhill Avenue Santa Ana, CA 927055542	Paper Service	No
SPL_SL_9-1449_Interested Parties	Dana	Badgerow	N/A		200 Administration Bldg 50 Sherburen Ave Saint Paul, MN 55155	Paper Service	No
SPL_SL_9-1449_Interested Parties	Darrell	Gerber		Clean Water Action Alliance of Minnesota	308 Hennepin Ave. E. Minneapolis, MN 55414	Paper Service	No
SPL_SL_9-1449_Interested Parties	Darryl	Tveitbakk		Northern Municipal Power Agency	123 Second Street West Thief River Falls, MN 56701	Paper Service	No

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SPL_SL_9-1449_Interested Parties	Dave	McNary		Hennepin County DES	417 N. Fifth Street Minneapolis, MN 55401	Paper Service	No
SPL_SL_9-1449_Interested Parties	David	Strom	davids@mnfmi.org	Minnesota Free Market Institute	P.O. Box 120449 St. Paul, MN 55112	Paper Service	No
SPL_SL_9-1449_Interested Parties	David	Aafedt	daafedt@winthrop.com	Winthrop & Weinstine, P.A.	Suite 3500, 225 South Sixth Street Minneapolis, MN 554024629	Paper Service	No
SPL_SL_9-1449_Interested Parties	David	Thornton		MN Pollution Control Agency	520 Lafayette Road St. Paul, MN 55101	Paper Service	No
SPL_SL_9-1449_Interested Parties	David	Moeller	dmoeller@allete.com	Minnesota Power	30 W Superior St Duluth, MN 558022093	Electronic Service	No
SPL_SL_9-1449_Interested Parties	David L.	Blair		East River Electric Power Cooperative	121 SE First Street PO Box 227 Madison, SD 57042	Paper Service	No
SPL_SL_9-1449_Interested Parties	Dean	Sedgwick		Itasca Power Company	PO Box 457 Spring Lake, MN 566800457	Paper Service	No
SPL_SL_9-1449_Interested Parties	Dianne	Mandernach	N/A		Department of Health 85 E Seventh Pl Ste 400 Saint Paul, MN 55164-0882	Paper Service	No
SPL_SL_9-1449_Interested Parties	Don	Ferber		Sierra Club - Midwest Office	4700 Allis Ave. Madison, WI 53716	Paper Service	No
SPL_SL_9-1449_Interested Parties	Douglas	Larson	dlarson@dakotaelectric.com	Dakota Electric Association	4300 220th St W Farmington, MN 55024	Paper Service	No
SPL_SL_9-1449_Interested Parties	Douglas M.	Carnival		McGrann Shea Anderson Carnival	Straugn & Lamb 800 Nicollet Mall, Suite 2600 Minneapolis, MN 554027035	Paper Service	No

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SPL_SL_9-1449_Interested Parties	Edward	Garvey	garveyed@aol.com		32 Lawton Street St. Paul, MN 55102	Paper Service	No
SPL_SL_9-1449_Interested Parties	Elizabeth	Goodpaster	bgoodpaster@mncenter.org	MN Center for Environmental Advocacy	Suite 206 26 East Exchange Street St. Paul, MN 551011667	Paper Service	No
SPL_SL_9-1449_Interested Parties	Eric	Swanson	eswanson@winthrop.com	Winthrop & Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Paper Service	No
SPL_SL_9-1449_Interested Parties	Gary	Connett		Great River Energy	12300 Elm Creek Blvd N Maple Grove, MN 553694718	Paper Service	No
SPL_SL_9-1449_Interested Parties	Gary	Chesnut	gchesnut@agp.com	AG Processing Inc. a cooperative	12700 West Dodge Road PO Box 2047 Omaha, NE 681032047	Paper Service	No
SPL_SL_9-1449_Interested Parties	George	Crocker	gwillc@nawo.org	North American Water Office	PO Box 174 Lake Elmo, MN 55042	Paper Service	No
SPL_SL_9-1449_Interested Parties	Gerald P.	Kohanski	gpkohanski@cleveland-cliffs.com	Cleveland-Cliffs Inc.	Suite 1500 1100 Superior Avenue Cleveland, OH 441142518	Paper Service	No
SPL_SL_9-1449_Interested Parties	Gordon	Hauk	ghauk@ford.com	Ford Motor Company	330 Town Center Suite 1100 Dearborn, MI 48126	Paper Service	No
SPL_SL_9-1449_Interested Parties	Greg	Geisler	N/A	Tenaska Power Services Co	1701 E Lamar Blvd Ste 100 Arlington, TX 76006	Paper Service	No
SPL_SL_9-1449_Interested Parties	Greg	Oxley		MMUA	Suite 400 3025 Harbor Lane North Plymouth, MN 554475142	Paper Service	No

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SPL_SL_9-1449_Interested Parties	Heidi	Konynenbelt	hkonynenbelt@otpco.com	Otter Tail Power Company	215 S. Cascade Street, PO Box 496 Fergus Falls, MN 565380496	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Henry	Fischer	terry.grabau@ecemn.com	East Central Energy	412 North Main Braham, MN 550060039	Paper Service	No
SPL_SL_9-1449_Interested Parties	Jacob	Hendricks, Esq.	jhendrcks@feJhber.com	Felhaber. Lason, Fenlon & V ogt, P .A.	Suite 2200 220 South Sixth Street Minneapolis, MN 55402	Paper Service	Yes
SPL_SL_9-1449_Interested Parties	James	Alders		Xcel Energy	7th Floor 414 Nicollet Mall Minneapolis, MN 554011993	Paper Service	No
SPL_SL_9-1449_Interested Parties	James C.	Erickson	jericksonkbc@gmail.com	Kelly Bay Consulting	17 Quechee St Superior, WI 54880-4421	Paper Service	No
SPL_SL_9-1449_Interested Parties	James D.	Larson		Avant Energy Services	200 S 6th St Ste 300 Minneapolis, MN 55402	Paper Service	No
SPL_SL_9-1449_Interested Parties	James J.	Bertrand	james.bertrand@leonard.com	Leonard Street & Deinard	Suite 2300 150 South Fifth Street Minneapolis, MN 55402	Paper Service	No
SPL_SL_9-1449_Interested Parties	James M.	Strommen	jstrommen@kennedy-graven.com	Kennedy & Graven, Chartered	470 U.S. Bank Plaza 200 South Sixth Street Minneapolis, MN 55402	Paper Service	No
SPL_SL_9-1449_Interested Parties	James R.	Talcott		Northern Natural Gas Company	1111 South 103rd Street Omaha, NE 68124	Paper Service	No
SPL_SL_9-1449_Interested Parties	Jeffrey A.	Daugherty	jeffrey-daugherty@centerpointenergy.com	CenterPoint Energy	800 LaSalle Ave Minneapolis, MN 55402	Paper Service	No

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SPL_SL_9-1449_Interested Parties	Jennifer	Feyerherm		Sierra Club - Midwest Office	Suite 830 122 W. Washington Ave. Madison, WI 53703	Paper Service	No
SPL_SL_9-1449_Interested Parties	Jeremy	Kalin		MN House	100 Rev Dr. Martin Luther King, #579 St. Paul, MN 55101	Paper Service	No
SPL_SL_9-1449_Interested Parties	Jim	Garness	N/A	Xcel Energy	414 Nicollet Mall Minneapolis, MN 55401	Paper Service	No
SPL_SL_9-1449_Interested Parties	John	Knofczynski		Heartland Consumers Power District	PO Box 248 203 W. Center Street Madison, SD 570420248	Paper Service	No
SPL_SL_9-1449_Interested Parties	John	Dwyer	johndwyer@lignite.com	Lignite Energy Council	1016 E. Owens Avenue P.O. Box 2277 Bismarck, ND 58502	Paper Service	No
SPL_SL_9-1449_Interested Parties	John	Helmers	helmers.john@co.olmsted.mn.us	Olmsted County Waste to Energy	2122 Campus Drive SE Rochester, MN 559044744	Paper Service	No
SPL_SL_9-1449_Interested Parties	John	Bailey	bailey@ilsr.org	Institute For Local Self-Reliance	1313 5th St SE Ste 303 Minneapolis, MN 55414	Electronic Service	No
SPL_SL_9-1449_Interested Parties	John	McWilliams	jmm@dairynet.com	Dairyland Power Cooperative	3200 East Ave SPO Box 817 La Crosse, WI 54601-7227	Paper Service	No
SPL_SL_9-1449_Interested Parties	John	Moir	N/A	City of Minneapolis	City Hall Rm 301 M 350 South 5th Street Minneapolis, MN 55415-1376	Paper Service	No
SPL_SL_9-1449_Interested Parties	John	Senseman		EVTAC Meeting	P.O. Box 180 Eveleth, MN 55734	Paper Service	No

Service List Name	First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
SPL_SL_9-1449_Interested Parties	John A.	Knapp	jknapp@winthrop.com	Winthrop & Weinstine	Suite 3500 225 South Sixth Street Minneapolis, MN 554024629	Paper Service	No
SPL_SL_9-1449_Interested Parties	John C.	Reinhardt		Laura A. Reinhardt	3552 26Th Avenue South Minneapolis, MN 55406	Paper Service	No
SPL_SL_9-1449_Interested Parties	Jonathan M.	Drews	jdrews@utilityresearchcllc.com	Utility Research	P.O. Box 230 Fergus Falls, MN 56538	Paper Service	No
SPL_SL_9-1449_Interested Parties	Jonathon	Bloomberg			3232 Holmes Ave. Minneapolis, MN 55408	Paper Service	No
SPL_SL_9-1449_Interested Parties	Julia	Anderson	Julia.Anderson@state.mn.us	MN Office Of The Attorney General	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes
SPL_SL_9-1449_Interested Parties	Julie	Ketchum		Waste Management	1901 Ames Drive Burnsville, MN 55306	Paper Service	No
SPL_SL_9-1449_Interested Parties	Julie	Goehring	N/A		708 70th Ave. NW Moorhead, MN 56560	Paper Service	No
SPL_SL_9-1449_Interested Parties	K Frank	Morehouse	N/A	Great Plains Natural Gas Company	PO Box 176 Fergus Falls, MN 56537-0176	Paper Service	No
SPL_SL_9-1449_Interested Parties	Karen Finstad	Hammel	Karen.Hammel@state.mn.us	MN Office Of The Attorney General	1400 BRM Tower 445 Minnesota Street St. Paul, MN 551012131	Paper Service	No
SPL_SL_9-1449_Interested Parties	Karlene	Fine	kfine@nd.gov	Industrial Commission of North Dakota	14th Floor 600 E. Boulevard Avenue, Dept. 405 Bismarck, ND 58505	Paper Service	No
SPL_SL_9-1449_Interested Parties	Katie	Nekola		Clean Wisconsin	Suite 200 122 State Street Madison, WI 53703	Paper Service	No

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SPL_SL_9-1449_Interested Parties	Kavita	Maini	kmaini@wi.rr.com	KM Energy Consulting LLC	961 N Lost Woods Rd Oconomowoc, WI 53066	Paper Service	No
SPL_SL_9-1449_Interested Parties	Ken	Smith	ken.smith@districtenergy.com	District Energy St. Paul Inc.	76 W Kellogg Blvd St. Paul, MN 55102	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Kenneth A.	Colburn	kcolburn@symbioticstrategies.com	Symbiotic Strategies, LLC	26 Winton Road Meredith, NH 32535413	Paper Service	No
SPL_SL_9-1449_Interested Parties	Kent	Ragsdale	kentragsdale@alliantenergy.com	Alliant Energy-Interstate Power and Light Company	P.O. Box 351 200 First Street, SE Cedar Rapids, IA 524060351	Paper Service	No
SPL_SL_9-1449_Interested Parties	Kristen	Eide-Tollefson	ket@wro-ns.net	R-CURE	P O Box 130 Frontenac, MN 55026	Paper Service	No
SPL_SL_9-1449_Interested Parties	LARRY	ANDERSON	LL.ANDERSON@SMMPA.ORG	SMMPA	500 1ST AVE. SW ROCHESTER, MN 55902-3303	Paper Service	No
SPL_SL_9-1449_Interested Parties	Larry	Johnston	lw.johnston@smmpa.org	Southern Minnesota Municipal Power Agency	500 1st Ave SW Rochester, MN 55902-3303	Paper Service	No
SPL_SL_9-1449_Interested Parties	Larry J.	Koshire		Rochester Public Utilities	4000 East River Road NE Rochester, MN 559062813	Paper Service	No
SPL_SL_9-1449_Interested Parties	Larry L.	Schedin	Larry@LLSResources.com	LLS Resources, LLC	12 S 6th St Ste 1137 Minneapolis, MN 55402	Paper Service	No
SPL_SL_9-1449_Interested Parties	Leslie	Davis		Earth Protector, Inc.	PO Box 11688 Minneapolis, MN 554110688	Paper Service	No
SPL_SL_9-1449_Interested Parties	Linda	Chavez	linda.chavez@state.mn.us	State of MN - DOC	85 7th Place E Ste 500 Saint Paul, MN 55101-2198	Electronic Service	Yes

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SPL_SL_9-1449_Interested Parties	Linda S.	Jensen	linda.s.jensen@state.mn.us	State of MN - OAG	1400 BRM Tower 445 Minnesota Street St. Paul, MN 551012131	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Lisa	Veith		City of St. Paul	400 City Hall and Courthouse 15 West Kellogg Blvd. St. Paul, MN 55102	Paper Service	No
SPL_SL_9-1449_Interested Parties	Lloyd W.	Grooms	lgrooms@winthrop.com	Winthrop & Weinstine	Suite 3500 225 South Sixth Street Minneapolis, MN 554024629	Paper Service	No
SPL_SL_9-1449_Interested Parties	Lori	Frisk Thompson	lorift@utplus.com	Central Minnesota Municipal Power Agency	459 S Grove St Blue Earth, MN 56013	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Margaret	Hodnik	mhodnik@mnpower.com	Minnesota Power	30 West Superior Street Duluth, MN 55802	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Mark	Lindquist		The Minnesota Project	1026 North Washington Street New Ulm, MN 56073	Paper Service	No
SPL_SL_9-1449_Interested Parties	Mark	Holsten	mark.holsten@dnr.state.mn.us	Department of Natural Resources	500 Lafayette Road St. Paul, MN 55155	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Mark F.	Dahlberg	markdahlberg@nweco.com	Northwestern Wisconsin Electric Company	P.O. Box 9 104 South Pine Street Grantsburg, WI 548400009	Paper Service	No
SPL_SL_9-1449_Interested Parties	Mary Beth	Peranteau	mperanteau@wheelerlaw.com	Wheeler Van Sickle & Anderson SC	Suite 801 25 West Main Street Madison, WI 537033398	Paper Service	No
SPL_SL_9-1449_Interested Parties	Matthew J.	Schuerger P.E.		Energy Systems Consulting Services, LLC	P.O. Box 16129 St. Paul, MN 55116	Paper Service	No

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SPL_SL_9-1449_Interested Parties	Michael	Krikava	mkrikava@briggs.com	Briggs And Morgan, P.A.	2200 IDS Center80 South 8th Street Minneapolis, MN 55402	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Michael	Sarafolean	MSarafolean@gerdauameristeel.com	Gerdau Ameristeel US, Inc.	4221 W Boy Scout Blvd Ste 600 Tampa, FL 33607	Paper Service	No
SPL_SL_9-1449_Interested Parties	Michael	Bradley	bradleym@moss-barnett.com	Moss & Barnett	4800 Wells Fargo Ctr 90 S 7th St Minneapolis, MN 55402-4129	Paper Service	No
SPL_SL_9-1449_Interested Parties	Michael	Loeffler		Northern Natural Gas Co.	CORP HQ, 714 1111 So. 103rd Street Omaha, NE 681241000	Paper Service	No
SPL_SL_9-1449_Interested Parties	Michael J.	Vickerman		Renew Wisconsin	222 South Hamilton Street Madison, WI 53703	Paper Service	No
SPL_SL_9-1449_Interested Parties	Michael R.	Gravelle	michael.gravelle@avantenergy.com	Avant Energy Services	Suite 300 200 South Sixth Street Minneapolis, MN 55402	Paper Service	No
SPL_SL_9-1449_Interested Parties	Mike	McDowell		Heartland Consumers Power District	PO Box 248 Madison, SD 570420248	Paper Service	No
SPL_SL_9-1449_Interested Parties	Mrg	Simon	mrgsimon@mrenergy.com	Missouri River Energy Services	3724 W. Avera Drive P.O. Box 88920 Sioux Falls, SD 571098920	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Nancy	Kelly	nkelly@greeninstitute.org	The Green Institute	#110 2801 21st Avenue Minneapolis, MN 55407	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Nate	Jones	njones@hcpd.com	Heartland Consumers Power	PO Box 248 Madison, SD 57042	Electronic Service	No

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SPL_SL_9-1449_Interested Parties	Nico	Kieves		Excelsior Energy Inc.	Suite 305 11100 Wayzata Boulevard Minnetonka, MN 55305	Paper Service	No
SPL_SL_9-1449_Interested Parties	Pam	Marshall	pam@energycents.org	Energy CENTS Coalition	823 7th St E St. Paul, MN 55106	Paper Service	No
SPL_SL_9-1449_Interested Parties	Pam	Fergen		Henepin County Government Center CAO	A2000 300 S. Sixth Street Minneapolis, MN 55487	Paper Service	No
SPL_SL_9-1449_Interested Parties	Paul	White	paul@projectresources.net	Project Resources Corp.	618 Second Avenue SE Minneapolis, MN 55414	Paper Service	No
SPL_SL_9-1449_Interested Parties	Paul	Eger	N/A		520 Lafayette Rd St. Paul, MN 55155-4194	Paper Service	No
SPL_SL_9-1449_Interested Parties	Paula N.	Johnson		Interstate Power and Light Company	200 First Street SE PO Box 351 Cedar Rapids, IA 524060351	Paper Service	No
SPL_SL_9-1449_Interested Parties	Pete	Grills			5414 Ashhurst Street Indianapolis, IN 46220	Paper Service	No
SPL_SL_9-1449_Interested Parties	Peter G.	Mikhail	pmikhail@kennedy-graven.com	Kennedy & Graven, Chartered	470 U.S. Bank Plaza 200 South Sixth Street Minneapolis, MN 55402	Paper Service	No
SPL_SL_9-1449_Interested Parties	Peter J.	Nelson		Center of the American Experiment	Suite 1024 12 South Sixth Street Minneapolis, MN 55402	Paper Service	No
SPL_SL_9-1449_Interested Parties	Randy	Kramer		Water and Soil Resources Board	1501 Second Avenue South Wheaton, MN 56296	Paper Service	No

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SPL_SL_9-1449_Interested Parties	Raymond	Sand	rms@dairynet.com	Dairyland Power Cooperative	P.O. Box 8173200 East Avenue South LaCrosse, WI 546020817	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Richard	Savelkoul	rsavelkoul@felhaber.com	Felhaber, Larson, Fenlon & Vogt, P.A.	444 Cedar St Ste 2100 St. Paul, MN 55101-2136	Paper Service	No
SPL_SL_9-1449_Interested Parties	Richard	Johnson	johnsonr@moss-barnett.com	Moss & Barnett	4800 Wells Fargo Center90 South Seventh Street Minneapolis, MN 55402	Paper Service	No
SPL_SL_9-1449_Interested Parties	Richard	Haubensak	RICHARD.HAUBENSAK@CONSTELLATION.COM	Constellation New Energy Gas	Suite 200 12120 Port Grace Boulevard La Vista, NE 68128	Paper Service	No
SPL_SL_9-1449_Interested Parties	Robert	Harris	rharris@wapa.gov	Western Area Power Administration	U.S. Dept. Of Energy 2900 4th Avenue North, PO Box 35800 Billings, MT 591075800	Paper Service	No
SPL_SL_9-1449_Interested Parties	Robert H.	Schulte	rhs@schulteassociates.com	Schulte Associates LLC	15347 Boulder Pointe Road Eden Prairie, MN 55347	Paper Service	No
SPL_SL_9-1449_Interested Parties	Robert K.	Sahr	bsahr@eastriver.coop	East River Electric Power Cooperative	P.O. Box 227 Madison, SD 57042	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Robert S	Lee	RSL@MCMLAW.COM	Mackall Crounse & Moore Law Offices	1400 AT&T Tower 901 Marquette Ave Minneapolis, MN 554022859	Paper Service	No
SPL_SL_9-1449_Interested Parties	Robert S.	Carney, Jr.			4232 Colfax Ave. S. Minneapolis, MN 55409	Paper Service	No
SPL_SL_9-1449_Interested Parties	Roger	Warehime	warehimer@owatonnautilities.com	Owatonna Public Utilities	208 South WalnutPO Box 800 Owatonna, MN 55060	Paper Service	No

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SPL_SL_9-1449_Interested Parties	Roger	Boehner	lorenbrft@aol.com		6511 Humboldt Avenue N., #210 Brooklyn Center, MN 55430	Paper Service	No
SPL_SL_9-1449_Interested Parties	Ron	Elwood		Legal Services Advocacy Project	2324 University Ave Ste 101 St. Paul, MN 55114	Paper Service	No
SPL_SL_9-1449_Interested Parties	Ronald M.	Giteck	ron.giteck@state.mn.us	Office Of Attorney General	Residential Utilities Division 445 Minnesota Street, 900 BRM Tower St. Paul, MN 55101	Paper Service	No
SPL_SL_9-1449_Interested Parties	SaGonna	Thompson	Regulatory.Records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Sandi	Tabor	SandiTabor@lignite.com	North Dakota Transmission Authority	P.O. Box 22771016 East Owens Avenue Bismarck, ND 585022277	Paper Service	No
SPL_SL_9-1449_Interested Parties	Sara	Cardwell	sara.j.cardwell@xcelenergy.com	Xcel Energy	414 Nicollet Mall, 7th Fl Minneapolis, MN 554011993	Paper Service	No
SPL_SL_9-1449_Interested Parties	Shane	Henriksen	shane.henriksen@enbridge.com	Enbridge Energy Company, Inc.	1409 Hammond Ave FL 2 Superior, WI 54880	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Sharon	Ferguson	sharon.ferguson@state.mn.us	State of MN - DOC	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	Yes
SPL_SL_9-1449_Interested Parties	Sheila	Reger	N/A		200 Administration Bldg St. Paul, MN 55155	Paper Service	No
SPL_SL_9-1449_Interested Parties	Sheldon	Strom		Center For Energy And Environment	212 3rd Ave N Ste 560 Minneapolis, MN 554011459	Paper Service	No

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SPL_SL_9-1449_Interested Parties	Sherry	Gaugler	sherry.jcplaw@comcast.net	Jeffrey C. Paulson & Associates, Ltd.	Suite 325 7301 Ohms Lane Edina, MN 55439	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Sheryl	Corrigan		Minnesota Pollution Control Agency	520 Lafayette Road North St. Paul, MN 551554194	Paper Service	No
SPL_SL_9-1449_Interested Parties	Steve	Thompson		Central Minnesota Municipal Power Agency	459 S Grove St Blue Earth, MN 56013-2629	Paper Service	No
SPL_SL_9-1449_Interested Parties	Steve	Sanda			101 Park Circle Ottertail City, MN 565717003	Paper Service	No
SPL_SL_9-1449_Interested Parties	Steven	Bosacker		City of Minneapolis	City Hall, Room 301M 350 South Fifth Street Minneapolis, MN 554151376	Paper Service	No
SPL_SL_9-1449_Interested Parties	Susan	McCarville			58 Harrison Ave S Hopkins, MN 55343	Paper Service	No
SPL_SL_9-1449_Interested Parties	Thomas	Bailey	tbailey@briggs.com	Briggs And Morgan	2200 IDS Center 80 S 8th St Minneapolis, MN 55402	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Thomas L.	Osteraas	tomosteraas@excelsiorenergy.com	Excelsior Energy	Suite 305 11100 Wayzata Boulevard Minnetonka, MN 55305	Paper Service	No
SPL_SL_9-1449_Interested Parties	Tim	Barth		Marathon Petroleum Company	P.O. Box 3128 Houston, TX 77253	Paper Service	No
SPL_SL_9-1449_Interested Parties	Todd J.	Guerrero	tguerrero@fredlaw.com	Fredrikson & Byron, P.A.	Suite 4000 200 South Sixth Street Minneapolis, MN 554021425	Electronic Service	No
SPL_SL_9-1449_Interested Parties	Tom	Sorel	N/A		MN Dept of Transportation 395 John Ireland Blvd St. Paul, MN 55155	Paper Service	No

Service List Name	First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret
SPL_SL_9-1449_Interested Parties	Tom	Holt	N/A	East River Electric Power Coop., Inc.	121 SE 1st St PO Drawer E Madison, SD 57042	Paper Service	No
SPL_SL_9-1449_Interested Parties	Trudy	Richter		Minnesota Resource Recovery Assn.	477 Selby Avenue St. Paul, MN 55102	Paper Service	No
SPL_SL_9-1449_Interested Parties	Wade	Worthy	lwworthy@marathonoil.com	Marathon Petroleum Company LLC	PO Box 3128 Houston, TX 77253	Paper Service	No
SPL_SL_9-1449_Interested Parties	William	Grant	bgrant@iwla.org	Izaak Walton League, Midwest Office	1619 Dayton Ave Ste 202 St. Paul, MN 551046206	Paper Service	No
SPL_SL_9-1449_Interested Parties	William	Pickrell		North American Hydro	PO Box 167 116 State Street Neshkoro, WI 54941	Paper Service	No
SPL_SL_9-1449_Interested Parties	William	Harrington	williamh@excelsiorenergy.com	Excelsior Energy Inc.	Suite 305 11100 Wayzata Boulevard Minnetonka, MN 55305	Paper Service	No
SPL_SL_9-1449_Interested Parties	William A.	Blazar	bblazar@mnchamber.com	Minnesota Chamber Of Commerce	Suite 1500 400 Robert Street North St. Paul, MN 55101	Paper Service	No

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

Northern States Power Company	**)**	**ORDER PROHIBITING OPERATION**
Petition Requesting Commission	**)**	**OF ARCS PENDING FURTHER**
Action re Operation of Aggregators	**)**	**COMMISSION ACTION**
of Retail Customers	**)**	**EL10-____**

On March 1, 2010, Northern States Power Company, a Minnesota corporation ("Xcel Energy" or "the Company") filed a letter with the Commission requesting that the Commission take action with respect to the possible operation of Aggregators of Retail Customers ("ARCs") in South Dakota. The Commission is considering whether it should take action to prohibit or regulate the operation of ARCs under South Dakota Codified Code Title 49-34, *et seq.*

1. Prior Commission Rulings

The Company is a transmission-owning member of the Midwest Independent Transmission System Operator ("MISO" or "Midwest ISO") regional transmission organization ("RTO"). The Commission previously approved the Company's proposed accounting for certain costs and revenues under the Midwest ISO "Day 2" energy market in 2005[1] and the Midwest ISO Ancillary Services Markets ("ASM") in 2009.[2]

In each of the Commission's prior proceeding regarding the Company's participation in the Midwest ISO RTO under the MISO Tariff on file with the Federal Energy Regulatory Commission ("FERC"), the Company's applications emphasized that the evolutionary change at the wholesale market level would not change the nature of retail service to the Company's customers in South Dakota: the Company would continue to use its own transmission system and generation resources (plus purchased transmission services and purchase energy resources) to serve the electric service needs of customers within the Company's exclusive retail service territory.

2. FERC Orders No. 719, 719-A, and 719-B

On October 17, 2008, the FERC issued Order No. 719, which amended FERC's regulations to improve the operation of organized wholesale electric

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[1] The Company's application for tariff changes and accounting treatment of MISO Day 2 energy market charges and revenues was approved in Docket No. EL05-008, order dated April 7, 2005.

[2] In the Matter of Filing by Xcel Energy for Fuel Clause Adjustment Recovery of MISO Ancillary Services Net Costs and Revenue, *Order Approving Accounting and Fuel Clause Treatment of MISO ASM Charges and Revenues*, Docket No. EL08-025 (February 12, 2009).

power markets, such as the Midwest ISO regional energy and ancillary services market. In particular, Order No. 719 focused on the following areas: (1) the role of demand response in organized markets and greater use of market prices to elicit demand response during periods of operating reserve shortage; (2) increasing opportunities for long-term power contracting; (3) strengthening market monitoring; and (4) enhancing the responsiveness of regional transmission organizations ("RTOs") to customers and other stakeholders. Order No. 719 directed RTOs, like MISO, to modify their tariffs or demonstrate that their existing tariff and market design satisfied the requirements of Order No. 719. FERC required RTOs to make a compliance filing within six months of the date Order No. 719 was published in the *Federal Register*.

Various stakeholders made timely requests for rehearing or for clarification of Order No. 719. In response, FERC issued Order No. 719-A on July 16, 2009, which generally affirmed Order No. 719's provisions related to ARCs, and made two additional ARC-related requirements: RTOs and ISOs were required to submit compliance filings on the use of a threshold for distinguishing small utilities and on the sharing of ARC registration-related information with affected load serving utilities.

On December 17, 2009, FERC issued Order No. 719-B. Order 719-B denied rehearing certain aspects of Order No. 719-A, but provided further clarification to certain portions of Orders No. 719 and 719-A

FERC required Midwest ISO to modify its Tariff to allow ARCs to provide direct services to retail customers within the 15 state Midwest ISO region, including South Dakota. The Midwest ISO's compliance filings to Order No. 719-A *et al*. have been submitted to FERC, and are pending approval. The proposed Tariff changes would allow ARCs to potentially begin operating in South Dakota as early as June 1, 2010. However, as discussed in more detail below, FERC has also consistently explained that ARCs may be prohibited or regulated by individual states if the applicable state regulatory authority takes specific action. The proposed Midwest ISO Tariff provisions retain this authority.

3. Orders No. 719, 719-A, and 719-B Give the Commission Power to Determine Whether ARCs Can Operate in its Jurisdiction

Under Orders No. 719, 719-A, and 719-B, FERC amended its rules to allow ARCs to bid demand response resources from retail customers into the Midwest ISO's wholesale regional energy or ancillary services market, unless the relevant electric retail regulatory authority—such as the Commission—prohibits such action. As such, unless the Commission prohibits the operation of ARCs in South Dakota prior to June 1, 2010, ARCs could begin providing services to retail end use customers of certain utilities in South Dakota on that date, in particular customers of the Company.

The final ARC rule, 18 C.F.R. § 35.28(g)(1)(iii), is divided into four subparts. Two subparts relate to ARCs that aggregate the demand response for customers of utilities that distributed 4 million megawatt-hours ("MWh") or less in the previous fiscal year. For these utilities, ARCs can only aggregate demand response for customers, if the relevant regulatory authority *permits* such action.

The other two subparts provide rules for ARCs that aggregate the demand response for customers of utilities that distributed more than 4 million MWh last fiscal year:

1. Each FERC-approved independent system operator and regional transmission organization **must accept bids** from an ARC that aggregate more than 4 million MWh in the previous fiscal year.

2. An independent system operator of regional transmission organization **must not accept bids** from an ARC that aggregates the demand response of the customers of utilities that distributed more than 4 million MWh in the previous fiscal year, **where the relevant electric retail regulatory authority prohibits such customers' demand response to be bid** into organized markets by an ARC.

The Company's petition indicated that it distributed more than 4 million MWh in 2009 in its three state service area (eastern North Dakota, eastern South Dakota and Minnesota).

In *Order 719-A*, FERC explained that the ARC rule did not determine or restrict state commission action:

> The Final Rule also does not make findings about retail customers' eligibility, under state or local laws, to bid demand response into the organized markets, either independently or through an ARC. [FERC] also does not intend to make findings as to whether ARCs may do business under state or local laws, or whether ARCs's contracts with their retail customers are subject to state and local law. Nothing in the Final Rule authorizes a retail customer to violate existing state laws or regulations or contract rights. In that regard, we leave it to the appropriate state or local authorities to set and enforce their own requirements.

The ARC rule does not require regulatory authorities to take any specific action regarding ARCs, but if the a regulatory authority decides to preclude ARCs, "their decisions or policy should be clear and explicit so that the RTO or ISO is not tasked with interpreting ambiguities."

4. The Commission Has Jurisdiction to Prohibit ARCs

South Dakota Codified Laws section 49-34A-4 gives the Commission the power to regulate every public utility. A public utility is “any person operating, maintaining, or controlling in this state, equipment or facilities for the purpose of providing gas or electric service to or for the public in whole or in part, in this state.” S.D. Codified Laws § 49-34A-1(12). Because ARCs would control equipment of facilities for providing electric service, the Commission has jurisdiction over their operation.

The operation of ARCs may be contrary to the South Dakota Codified Laws Title 49-34A and related administrative code. Under 49-34A-42, for example, each electric utility has the exclusive right to provide electric service at retail to its customers. ARCs aggregating the demand response of retail customers may be contrary to this law. In addition, the operation of ARCs may negatively impact system planning and reliability in contravention of traditional goals of the Commission’s public utility regulation.

ORDERED, that the Commission has jurisdiction over the operation of ARCs in the State of South Dakota. ARCs are prohibited from operating in the State of South Dakota until further notice from the Commission.

Dated at Pierre, South Dakota this _____ day of March, 2009.

BY ORDER OF THE COMMISSION