

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

Midwest Independent Transmission System Operator, Inc.)	ER11-4081-001
)	

REPLY BRIEF OF THE ORGANIZATION OF MISO STATES

Pursuant to the Commission’s *Order Initiating Briefing Procedures* issued by the Federal Energy Regulatory Commission (“Commission” or “FERC”) on August 12, 2013,¹ and the Notice issued by the Commission on August 30, 2013, establishing November 25, 2013, as the deadline for parties in this proceeding to file reply briefs, the Organization of MISO States (“OMS”) respectfully submits the following Reply Brief in the above-captioned docket, supporting the Commission’s decision to reject the use of a minimum offer price rule (“MOPR”) for the capacity auction of the Midcontinent Independent System Operator, Inc. (“MISO”).²

I. Reply

As of November 7, 2013, with the exception of NRG, the Capacity Suppliers and the IMM, all of the initial briefs filed in this proceeding support the Commission’s decision to reject the MOPR for the MISO region. Indeed, it appears that of the 20 briefs filed in this proceeding, only those three objected to the Commission’s decision with respect to the MOPR. As discussed below, the briefs filed by NRG, the Capacity Suppliers and the IMM include arguments and discussion that go beyond the scope of issues the Commission set for this briefing.

¹ Midwest Independent Transmission System Operator, Inc., 144 FERC ¶ 61,125 (2013) (“August 12 Order”).

² Effective April 26, 2013, MISO changed its name from “Midwest Independent Transmission System Operator, Inc.” to “Midcontinent Independent System Operator, Inc.”

Accordingly, this OMS Reply does not address those issues herein and recommends that the Commission disregard those arguments in its consideration. The OMS also responds to the rhetorical question posed by MISO’s Independent Market Monitor (“IMM”) and notes evidence showing that load serving entities (“LSEs”) in the MISO footprint have no incentive to engage in price suppressing behavior.

A. Arguments on Topics Other Than MOPR Should Be Disregarded.

The briefs submitted by the Capacity Suppliers, NRG, and the IMM offer arguments and discussion that go well beyond the scope of the specific issues the Commission set for briefing. In particular, NRG urges the Commission to revisit its order approving MISO’s resource adequacy construct and direct MISO to adopt other reforms, including a sloped demand curve and the requirement to procure the resource adequacy needs of the entire system in the auction.³ Likewise, the IMM proposes numerous revisions to MISO’s resource adequacy construct.⁴ Finally, the Capacity Suppliers urge the Commission to implement a mandatory capacity construct with effective buyer market power mitigation at the earliest possible date.⁵

The August 12 Order was specific concerning the scope of the arguments that parties were to address, inviting briefs: “with respect to the Commission’s rejection of MISO’s proposed minimum offer price rule.”⁶ Given the specificity of the Commission’s direction, the OMS recommends that the arguments and discussion submitted by the Capacity Suppliers, NRG, and the IMM that are outside of the scope of the August 12 Order be disregarded.

³ NRG Brief, at 2.

⁴ IMM Brief, at 3-6.

⁵ Capacity Suppliers Brief, at 3.

⁶ August 12 Order, at P 4.

B. The Rhetorical Question Posed By the IMM Misses the Point of This Proceeding.

OMS appreciates the IMM's evident willingness to reconsider his previous position regarding the value of a MOPR in relation to other factors regarding MISO's proposed capacity market. The IMM does not undertake to rebut the numerous and substantial arguments presented against the MOPR, thereby implicitly acceding to the OMS position. However, the IMM asserts that the following is an "important threshold question:"

Is the purpose of the capacity market to provide price signals (together with the energy and ancillary services markets) to facilitate efficient investment, retirement, and maintenance decisions that will satisfy MISO's resource adequacy needs?⁷

The IMM's question is rhetorical in nature and misses the point of this proceeding. The real question at issue in this proceeding is whether the Commission should impose a MOPR in pursuit of a goal to cause the price signal produced by the MISO capacity auction to become the predominant (or only) influence on investment, retirement and maintenance decisions by OMS member jurisdictions. As explained in the OMS's Initial Brief, OMS members determine resource adequacy through multi-faceted, long-term determinations that account for a variety of demand, environmental, energy efficiency, fuel diversity, and other concerns affecting the overall public welfare. Wholesale capacity prices are not the sole determining factor for resource adequacy decisions by OMS members. As a result, a MOPR is not necessary or desirable.

The OMS and MISO are currently engaged in a coordinated long term resource adequacy survey initiative that is intended to supplement the price signals produced by the MISO capacity auction. The OMS looks forward to continued positive initiatives with MISO and the MISO market participants in regards to the issue of resource adequacy. However, adoption of a MOPR

⁷ IMM Brief, at 2.

by the Commission would substantially and adversely impact the policy and regulatory methods OMS members use to ensure resource adequacy and would also undermine any additional coordinated resource adequacy initiatives that OMS could engage in with MISO.

The question faced by the Commission in this case is whether imposing a MOPR in pursuit of a goal of “improving” the price signal produced by MISO’s capacity auction is worth what would be lost by such a pursuit. The OMS strongly states that the answer to this question is “no.” The Commission cannot both institute a MOPR *and* respect the states’ authority concerning public policy and traditional regulatory decision-making.

C. As Explained in the OMS’s Initial Brief and in the Affidavit of Mr. James F. Wilson, on Behalf of the Midwest TDUs, Load Serving Entities in the MISO Region Generally Do Not Have an Incentive to Engage in Price Suppression Strategies.

The OMS commends to the Commission’s attention the affidavit of Mr. James F. Wilson, on behalf of the Midwest TDUs. In particular, Mr. Wilson notes:

“A new resource, such as a new gas-fired power plant, would have to be under construction years before any PRA [Planning Resource Auction] for which it would be eligible, giving the market years to adjust to the knowledge that the incremental capacity will become available before the PRA is held.”⁸

Under this condition, which prevails in the MISO region, developers or LSEs with which a developer might contract are very unlikely to even attempt capacity price suppression efforts. The long-term generation and resource determinations of OMS members effectively preempt the pricing signal of a capacity auction and any embedded sloped demand curve, which according to the IMM is the predicate to the need for a MOPR.⁹

⁸ Initial Brief of Midwest TDUs on MOPR Issues, Ex. 1 Affidavit of James F. Wilson in Support of the Brief of the Midwest TDUs, at P 48.

⁹ IMM Brief, at 5-6.

II. Conclusion

The Commission should not be swayed by the flawed arguments of the IMM, NRG and the Capacity Suppliers. There is no reason for the Commission to consider adopting a MOPR in the MISO region. The Commission's decision to reject MISO's proposed MOPR provisions was based on substantive evidence, including the significant differences between the MISO region and the regions of other RTOs and the regulatory structure in the MISO region that already ensures resource adequacy. The Commission's decision rejecting the MOPR proposed by MISO is correct and should be affirmed.

Wherefore, for all of the reasons explained above, the OMS requests that the Commission deny the requests for rehearing by the IMM and the Capacity Suppliers.

The OMS submits this Brief because a majority of its members have agreed to generally support it. Individual OMS members reserve the right to file separate pleadings regarding the issues discussed herein. The following members generally support this Brief:

Arkansas Public Service Commission
Illinois Commerce Commission
Indiana Utility Regulatory Commission
Iowa Utilities Board
Kentucky Public Service Commission
Louisiana Public Service Commission
Michigan Public Service Commission
Minnesota Public Utilities Commission
Mississippi Public Service Commission
Missouri Public Service Commission
Montana Public Service Commission
City of New Orleans
North Dakota Public Service Commission
South Dakota Public Utilities Commission
Wisconsin Public Service Commission

The Public Utility Commission of Texas abstained from voting on this pleading. The Manitoba Public Utilities Board did not participate in this pleading.

The Indiana Office of Utility Consumer Counsellor, the Minnesota Department of Commerce, the Iowa Office of Consumer Advocate, and the Missouri Office of the Public Counsel, as associate members of the OMS, participated in this Brief and generally support it.

Respectfully Submitted,
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Dated: November 25, 2013

CERTIFICATE OF SERVICE

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

Dated at Des Moines, Iowa, this 25th day of November, 2013.

William H. Smith, Jr.