

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

Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators))))	Docket No. AD13-7-000
Winter 2013-2014 Operations and Market Performance in Regional Transmission Organizations and Independent System Operators))))	Docket No. AD14-8-000

REPLY COMMENTS OF THE ORGANIZATION OF MISO STATES

On November 25, 2014, in the above-captioned docket, the Federal Energy Regulatory Commission (Commission) ordered Regional Transmission Operators (RTOs) and Independent System Operators (ISOs) to file reports on efforts to address market and system performance associated with fuel assurance issues. The Midcontinent Independent System Operator (MISO) filed its Fuel Assurance Report on February 18, 2015 (February Report)¹ The Organization of MISO States (OMS) respectfully submits these comments to add additional detail on the activities related to fuel assurance that take place within regulatory commissions in the MISO footprint.

Background on Applicable Retail Regulatory Construct

As MISO noted in the February Report, “state regulated utilities make up the vast majority of the MISO footprint[,]” and as such, direct decisions regarding fuel assurance within MISO “generally are the outcome of the traditional, vertically-integrated state regulatory

¹ *Midcontinent Independent System Operator, Inc. Fuel Assurance Report*, FERC Docket No. AD-13-7 and AD14-8 (February 18, 2015).

planning processes, rate cases and oversight.”² MISO retail regulators typically monitor resource availability issues for jurisdictional entities under the basic tenet of utility regulatory authority: ensuring safe and reliable utility service at reasonable rates. Though most states’ enabling statutes do not specifically address fuel assurance, they do encompass maintaining adequate fuel to ensure reliable service in a cost-effective manner.

Under the traditionally vertically-integrated framework, retail regulators rely on two major tools to oversee fuel assurance issues. The first is cost recovery. In addition to general rate cases, many jurisdictions have fuel adjustment clauses or “trackers” that can be adjusted throughout the year. Typically these mechanisms require some type of fuel procurement plan that is reviewed by the regulator prior to implementation, as well as a prudence review after the fact, typically through retail cases and fuel reconciliation procedures. This process provides an opportunity for discussions around the right balance of firm and non-firm transportation, fuel inventory management, and supply hedging activities that often result in the adoption of conservative approaches to fuel procurement that prove quite valuable during times of high demand or unusual weather.

The other tool is the utility planning process employed by the individual states, typically known as Integrated Resource Plans (IRPs). Other forward-looking reviews include filings such as energy assessments, individual utility plan filings, or special reviews when NERC’s Annual Long Term Reliability Assessment (10 years) highlights an issue. These plans provide prospective assessments that include, but are not limited to, new generation additions, retirements, contracts, fuel mix choices and procurement approaches. When evaluating the reasonableness of the aforementioned filings, retail regulators consider other things (e.g.

² February Report at 12-13. The OMS notes that the Michigan Public Service Commission and the Illinois Commerce Commission do not have the same jurisdictional authority over these issues as the other OMS members.

portfolio diversity, transportation security) to ensure the utilities' plan manages externalities, uncertainty, and market inefficiencies.

In addition to formal cases or procedures, utility regulators meet with jurisdictional entities, formally and informally, throughout the year where issues and concerns are discussed. Utilities would be remiss to fail to inform regulators about issues that could impact their ability to provide reliable service since their ability to recover costs could be impacted. Utilities typically submit general fuel procurement plans as part of rate filings, many of which are also subject to some form of prudence review. An open dialog about any unusual activity in this area is the best approach for utilities and regulators have found that they are kept well informed.

Emergency Management

Retail regulators usually have a role in emergency response, sometimes with explicit authority and generally in coordination with other state response agencies. Retail commissions also maintain awareness of situations that may lead to limitations on the ability of utilities to maintain adequate service levels. Most are focused on ensuring priority service to essential services like hospitals and nursing homes while others allow government officials, sometimes the regulators themselves, to waive laws or rules that restrict access to necessary fuel supply.

In response to requests from the regulators, MISO established a communication system to provide emergency notification to state officials. Certain commission staff receive email/text alerts of any real time, severe emergency power crisis event. The system is tested weekly. The purpose is to coordinate communications within the regulators and the public.

What MISO Can/Should Do

As noted in its February 18 report, MISO supports the work of its member utilities, with oversight from regulators, in meeting resource adequacy and fuel assurance needs by providing a regional view of these issues.³ MISO should continue to share data concerning regional availability and deliverability of various types of generator fuels to inform regulators and utilities of developing concerns that may not be apparent in an individual jurisdiction.

The OMS also supports continued efforts by MISO to coordinate and increase communication with natural gas pipelines in the region to provide greater transparency into how each industry manages operations, particularly during times of potential shortages.⁴ Individual regulators' staff participate in MISO's Electric and Natural Gas Coordination Task Force (ENGCTF) and monitor the issues with other RTO's.

What the Commission Can/Should Do

As noted above, retail regulators in the MISO footprint actively and successfully use the tools available to ensure that energy is provided to customers in a reliable and cost-effective manner, which includes the availability of resources necessary to keep generators online. Therefore, the need for Commission involvement specific to the MISO region is limited. However, there are some general things the Commission can do to support retail regulators' activities. For example, the Commission can continue to monitor and facilitate efforts in the coordination of electric and natural gas processes nationwide which will have significant value as reliance on natural gas for generation grows.

Further, the OMS has expressed cautious support for raising or eliminating offer caps to provide market certainty of cost recovery in well-functioning markets that are not subject to

³ MISO report pg. 13.

⁴ MISO report pg. 10.

manipulation. However, the OMS remains concerned that incentives could result in excessive charges and believe that retail regulators are better situated to find the appropriate balance of certainty and risk as it applies to each LSE.

The fuel assurance issues that have impacted the MISO region tend to be those applicable nationally, like coal delivery issues, and not usually related to the economic issues of spot market fuel procurement. Therefore, most of the market-focused enticements under consideration in other RTOs are unnecessary in MISO due the prevalence of the traditional vertically-integrated, state-regulated model therein.⁵

Retail Jurisdiction Summaries

The following is a summary of each state's authority and methods to monitor and assess fuel assurance:

Arkansas

- The Commission staff regularly communicates with the jurisdictional utilities regarding operations throughout the year. The sessions are informal. They include fuel procurement practices and solid fuel inventory management.
- In the event of any events or factors affecting the availability of fuel, the utilities notify staff and their plans in response.
- The Commission's general statutory authority encompasses fuel assurance issues including energy emergencies and related circumstances.
- The Commission is authorized and has approved energy cost recovery tariff mechanisms for reasonable and prudent incurred fuel costs.

Indiana

- State quarterly fuel filings are made by jurisdictional utilities,
- Public meetings are held as summer approaches for utilities to report on reliability preparations.
- Specific concerns like low-river flow conditions that limit planned operations or barge deliveries are addressed as they arise and tracked through informal reporting.
- IC8-1-2-42(d) authorizes fuel adjustment mechanisms and includes required finding, specifically a finding that the utility has provided supply at the lowest reasonable fuel cost. A fuel cost audit (conducted by the Consumer Counselor's office) is a statutorily required part of the process.

⁵ Ninety-two percent of MISO load is served by utilities subject to state or local jurisdiction.

Illinois

- Pursuant to The Electric Service Customer Choice and Rate Relief Law of 1997 (220 ILCS 5/16-101, et seq.), electric utilities in Illinois have either sold their generation assets or established affiliate generation companies. Accordingly, the Illinois Commerce Commission does not have regulatory authority over generators or their fuel supply decisions.
- The ICC holds annual public meetings with Illinois utilities to discuss both summer and winter preparedness.
- Electricity customers that have not switched to competitive suppliers are supplied by the local utility as a basic service provider.
- The ICC does not regulate municipals or cooperatives.

Iowa

- Iowa law provides for use of an energy adjustment clause (EAC) and EACs are currently in place for the three utilities that the IUB rate regulates. Iowa law allows the board to initiate a proceeding to review fuel procurement practices (which address energy supply and cost review) through a contested case proceeding.
- The board has the authority to work with other state agencies to coordinate on propane supply issues.
- Fuel supply issues can also be addressed in rate case proceedings.

Kentucky

- The Kentucky Commission regulates four IOUs and two G&T Cooperatives and each company files a monthly report pursuant to the Commission's Fuel Adjustment Clause ("FAC") regulation, 807 KAR 5:056.
- The monthly FAC report shows the company's generation (i.e., coal burned, oil burned, gas burned) and power purchases. The company also submits a back-up file with detailed supporting information on fuel inventory for the expense month. There is a two-month lag from when the FAC report is filed and the expense month.
- The Kentucky Commission initiates formal FAC reviews at six-month and two-year intervals.

Louisiana

- The LPSC's constitutional authority includes cost recovery of fuel purchases.
- Jurisdictional utilities (does not include municipals) are required by General Order dated November 6, 1997, ("FAC Order") to file with the LPSC a monthly calculation of their fuel cost adjustment and are required to include enough detail to permit the LPSC and staff, as well as customers, to determine the type and quantity of all fuel used by the utilities for generation.
 - The FAC Order includes specific language encouraging utilities to use risk management tools in order to meet their particular fuel needs and to accommodate the risks associated with those needs. The LPSC has final authority for the approval of such plans.
 - IRPs conducted at least every four years include fuel-related issues.
 - The FAC Order allows dollar for dollar recovery of fuel purchases, subject to a later prudence audit of all purchases, which is required bi-annually.

- Emergency fuel and power are also covered in the FAC Order and those costs are considered recoverable.
- Fuel supply emergencies would be communicated to the Executive Secretary of the LPSC, as well as to the Commissioners, as they arise.
- The LPSC currently has a rulemaking docket in progress to address long-term natural gas hedging.
- LA Rev Stat. 30:571 grants the governor the power to declare a state of emergency as a result of extreme shortages of intrastate natural gas. The priorities are given to public health, safety, and welfare to maintain service for priority customers such as hospitals.

Manitoba

- The Public Utilities Board does not routinely receive fuel reports and is not statutorily responsible for resource planning (a Government and Manitoba Hydro issue). Fuel availability is not an issue as Manitoba generators are mostly powered from dams. The water supply is monitored for use over a period of years.
- On average Manitoba exports about 30% of its electric generation.

Michigan

- Michigan has an abundance of natural gas storage that helps hedge any unusual activities in the markets.
- Act 3 of 1939 gives the MPSC authority to put into rates appropriate cost of service items.
- Act 304 of 1982 establishes cost recovery clauses in rates and requires MPSC review of both plans for upcoming procurement plans to serve customers and a review afterward for prudence.
- AP 191 of 1982 authorizes the Governor to declare an energy emergency and allows actions to ease an emergency, including:
 - Suspending statutes or other rules that hinder the ability to cope with an energy emergency
 - Directing specific use of resources to provide for the health, safety, and welfare of certain facilities, like hospitals and schools.

Minnesota

- Utilities are subject to automatic energy cost adjustment mechanisms that are subject to monthly and annual prudence reviews.
- MN DOC assesses the cost and benefit of firm fuel supply as part of a risk analysis.
- Minn. Stat. 216B.01 – utilities are required to provide adequate and reliable electric service at reasonable rates
- Minn.Stat.216B.045 – commission may declare a natural gas supply emergency and maybe suspend any contract providing for the sale and transportation of natural gas through an intrastate pipeline.

Mississippi

- Consultants and staff annually audit fuel-related aspects of jurisdictional IOUs and evaluate utility fuel management as required by statute.
- Fuel assurance is part of IRP. The commission may adjust at any time the rates for fuel cost recovery on a forward looking basis with an annual true up.
- The commission may adopt recommendations on utility fuel management practices that are implemented by the utility and subject to compliance filings.

Missouri

- 4 CSR 240-3.190(3)(D) requires the utility to report reductions of coal inventory below a 30 day supply and reductions of oil inventory below 50% of normal inventory. Reported on an as needed basis.
- 4 CSR 240-3.190(1)(B) requires utilities report monthly burned fuel for each carbon based fuel generating unit. Reported on a monthly basis.
- The PSC is the lead agency for Emergency Response Function for Energy (ESF-12) with the State Emergency Management Agency (SEMA).
- IOU resource planning is based on minimum requirements in 4 CSR 240-22 Electric Utility Resource Planning. A key component of Chapter 22 is risk analysis, and fuel available is a risk factor which is first evaluated when screening supply-side options. As the planning analysis proceeds, fuel price risk is evaluated.
- Missouri statutes (RSMO 386.266) and the PSC rules (4 CSR 240.3-161 and 4 CSR 240-20.090) include provisions for Commission approval of fuel adjustment clauses. The statute allows for periodic rate adjustments for fuel and purchased power costs.

Montana

- The Montana Public Service Commission receives monthly tracking filings from utilities, which detail changes in fuel and energy purchase costs and result in immediate rate adjustments. Once a year, an “annual true-up” is filed, which incorporates all tracker adjustments over the past year and makes a permanent adjustment to the rate. All tracker and true-up filings include data on coal, natural gas, and energy purchase contracts.
- Montana law allows the Public Service Commission to establish temporary rates. Through orders in rate cases for individual utilities, the Commission has established guidelines for tracker and true-up filings.
- Resource plans in Montana are filed every two years. Fuel assurance issues are addressed prospectively. The actual cost recovery processes, i.e., trackers and true-ups, are executed according to terms adopted in individual rate-case orders.

City of New Orleans

- Utilities have an obligation to notify the Council if their fuel costs are projected to increase by more than 25%.
- Under Section 3-130 of the Home Rule Charter, the Council has issued decisions related to generation capacity and location, fuel diversity, and cost recovery that indirectly address fuel assurance, as well as to take action during emergency situations that impact the supply of electricity to protect ratepayers.

- Utilities are required to provide information on financial and physical hedging on an annual basis.
- IRP process accounts for fuel type and available sources in the modeling. Sources that are not as reliable are de-prioritized to produce a plan based on fuel sources that are reasonably available.

North Dakota

- Generally, voluntary reports/communications on coal and gas supply situations come on an “as-needed” basis, when there is an issue the company wants to make the commission aware of.
- Under the Commission’s general authority, fuel assurance is incorporated into the overall risk assessment of resource decisions. Fuel adjustment clauses are also allowed for recovery of fuel purchases.

South Dakota

- The SDPUC regulates 6 IOU’s and each reports its fuel supply in a different manner.
- The normal process is an annual basis, but reports and communication can come on an “as-needed” basis when the Commission needs to be made aware of a development.
- The fuel assurance is a part of overall risk assessment covered under general authority.
- There is a fuel adjustment clause for recovery of purchases.

Texas (Regulated Entities)

- Utilities are required to file monthly fuel cost and use information reports covering fuel cost, fuel efficiency, fuel purchases, and monthly peak demand and sales. Contracts are required to be provided upon request.
- Utility fuel costs are recovered through monthly fuel factors rather than base rates. They are recovered through fuel factors that cover fuel and purchased power, may be adjusted and subject to periodic reconciliation. There are rules for recovery of fuel costs, including the determination of eligible fuel expenses, calculation of fuel factors, and the schedule and procedures for fuel factor adjustment and reconciliation.
- PUCT rules specifically allow a utility to request an emergency interim fuel factor if it believes it has materially under-recovered fuel costs due to fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other unforeseeable circumstances.
- Where there is potential for supply disruption, such as frigid weather or hurricanes, the PUCT maintains informal communications with the affected entities and requires them to provide information and reports as needed.

Wisconsin

- Initiated a special “General File” Docket 5-GF-256 for checking Wisconsin coal inventory statistics for electric power plants serving Wisconsin customers. This covers 6 major electric utilities with coal inventories at 15 plant stations. This was done with full confidential filing protection of the data per State administrative code. The report covers all major utilities, including cooperatives and wholesale municipal groups, which are not under PSC rate jurisdiction. Reports are due every two weeks.
- Utilities have an adjustment clause that allows changes in inventory or fuel sources if necessary.

- The PSCW is the lead coordinating agency in Emergency Support related to energy by state statute.
- The PSCW can issue an order to build more generation than the minimum planning reserve level.

Conclusion

The OMS appreciates the opportunity to share the numerous activities that are taken by retail regulators in the MISO region to ensure needed fuel is available to maintain reliability. Any action considered by the Commission related to fuel assurance would be best focused on purely interstate activities that will not impede the important and effective efforts already underway under regulators retail jurisdiction.

The OMS submits these comments with the support of a majority of its members.

Respectfully Submitted,

Tanya Paslawski

Tanya Paslawski
Deputy Executive Director
Organization of MISO States
E-mail: tanya@misostates.org
Tel: 515-243-0742