

relevant government entities and state commissions as appropriate; and intervene in proceedings before the Commission to express the positions of the OMS member agencies.

Service of pleadings, documents, and communications should be made on the following:

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Background

The responsibility for resource adequacy (“RA”) within the MISO footprint primarily falls on the members of the OMS. As such, the OMS provides these comments from the position of jurisdictional authority over areas directly impacted by this filing. The OMS has been actively involved in the development of, and changes to, the MISO Resource Adequacy Construct (“RAC”). This involvement has largely taken the form of reinforcing the unique nature of the retail structure in MISO relative to other RTOs and ensuring changes to aspects of the RAC do not violate state jurisdiction.²

Through actions of the OMS Board of Directors and Resources Work Group, the OMS has been actively engaged in the twelve-month process that has led to these proposed modifications to the MISO RAC, known as the CRS. Since the first engagement of MISO with its stakeholder community³ on the issue of resource adequacy in competitive retail areas, our members have been focused on four major areas for the CRS, namely: (1) maintaining state jurisdiction over resource adequacy decisions, (2) assessing the impacts to non-retail choice

² References to “state jurisdiction,” “state” or “states” shall also include the Council of the City of New Orleans.

³ Meeting of the MISO Supply Adequacy Working Group, October 29, 2015.

areas, (3) ensuring adequate analysis and information is available to make an informed decision, and (4) ensuring system reliability is maintained.

On March 3, 2016, the OMS Resources Work Group submitted comments⁴ as part of the CRS stakeholder process that included the OMS's long-held resource adequacy principles⁵ to ensure they were upheld during the development of the CRS proposal.⁶ Several principles were highlighted as particularly important, such as Principle 3 that states that any capacity product must "remain standardized and tradable." Principle 4 says "revenue generation or cost recovery... should be a byproduct of efficient market design, and not a specific goal of resource adequacy." Further, Principle 5 clearly states the OMS position that a mandatory, centralized forward-based capacity market is not needed in MISO. In addition, OMS Principle 13 connects RA to system reliability, highlighting how important it is to "protect the adequacy of the system and to prevent jeopardizing system reliability or force parties that are complying with RA requirements from subsidizing noncomplying parties."

After sharing the organization's principles on RA, the OMS requested that MISO conduct specific analysis to assess the impacts the proposed modifications would have on vertically-integrated⁷ areas and provide further data on the nature of the concern in retail choice areas. This request was made on April 25, 2016 through the official CRS feedback request process.

⁴ OMS Resource Work Group comments to MISO, March 3, 2016, available at http://misostates.org/images/stories/Filings/staff_comments/2016/RWG-CRSTTPinciples-Filed3March16.pdf.

⁵ The OMS Resource Adequacy Principles can be found at: <http://www.misostates.org/files/OMSPrinciplesforResourceAdequacyAug2010.pdf>.

⁶ The OMS Resource Adequacy Principles discussed here are separate and distinct from the MISO Resource Adequacy Principles that are discussed in the MISO filing. The MISO Resource Adequacy Principles were reviewed by the MISO Markets Committee of the Board in early 2016, but were never formally approved by the committee or the entire MISO Board of Directors.

⁷ The term "vertically-integrated" is used broadly herein to include those areas with regulatory oversight of generation planning and procurement, even if the transmission system is not owned by the same entity that owns the generation and distribution systems.

Finally, the OMS communicated to the MISO Board of Directors on July 25, 2016 that the request for analysis had not yet been met, leaving state regulators unable to fully assess the proposal.⁸ The effort to ensure sufficient time and information was available to assess the impacts of the CRS was a major priority for state regulators. Additional analysis was produced on September 19, 2016 by MISO and The Brattle Group that largely addressed the April request.

Comments

Now that MISO's CRS proposal has been presented to the Commission for approval, there are several important areas of concern to the OMS, discussed in detail below.

A. A centralized forward capacity market is not needed to meet the resource adequacy requirements for the vast majority of MISO.

States have exclusive jurisdiction over resource adequacy under the Federal Power Act.⁹ Capacity planning and procurement is not energy for sale in interstate commerce and is specifically "subject to regulation by the States."¹⁰ State regulators determine the timing, type, quantity, and location of generation construction through integrated-resource and other long-term planning processes covering over 91% of load within MISO, making it distinguishable from other RTOs. As FERC recently ordered on November 20, 2015 ("November Order"),¹¹ these state processes have been working well to maintain resource adequacy within the vertically-integrated portion of the MISO footprint for years. The Commission found that a mandatory centralized capacity market, or the associated components such as a downward sloping demand

⁸ State Regulator Sector Response to MISO Board, July 26, 2016.

http://misostates.org/images/stories/Filings/MISO/2016/OMS_CRS_Comments_to_MISO_BOD_final.pdf

⁹ 16 USC §824(a).

¹⁰ *Id.* Each member of OMS exercises regulatory oversight over the electric industry within its jurisdiction with regard to resource planning and acquisition matters. However, the oversight over vertically-integrated electric utilities has historically differed from the oversight of Alternative Electric Suppliers (AESs) regarding resource planning and acquisition matters in states having retail choice options (i.e., Michigan and Illinois). In such states, an AES's generation assets and other capacity resources have not been subject to long-term planning. This is the concern that MISO's CRS is intended to address.

¹¹ *Midwest Indep. Transmission System Operator, Inc.*, 153 FERC ¶ 61,229 (2015).

curve ("DSDC") or forward procurement, are not needed in MISO. Specifically, the Commission stated:

The need for new capacity in MISO is driven by a variety of considerations, including, but not limited to, state resource planning and the opportunity to recover costs from the energy, ancillary services, and capacity markets. Accordingly, ensuring resource adequacy in the MISO region will be a product of a wide range of factors in addition to the auction clearing prices, such as market prices for other energy and reserve products, the terms of bilateral arrangements, and state regulatory resource planning. This market and regulatory framework, with the largely vertically-integrated nature of the MISO region, has provided the basis for resource sufficiency in MISO for a significant period of time, and therefore there appears to be no need on the basis of this record to require a mandatory auction to manage resource adequacy.¹²

In MISO, most generation is either under long-term contract or owned by utilities regulated under cost-of-service regulation. Either of these models provides long-term revenue assurances of cost recovery to new resources. Revenue from the capacity market is not necessary in MISO to finance needed new generation, and thus, ensuring reliability does not require an auction with a long forward period.¹³

An administratively-determined sloped demand curve would inappropriately diminish the deference given to states in the MISO capacity construct... Additionally, we have found that the vertical demand curve is a reasonable method for ensuring that LSEs procure sufficient capacity.¹⁴

Nothing has occurred over the twelve months since the Commission issued this Order that would warrant changes to this policy. State regulators in the MISO footprint continue to actively and successfully work with the Load Serving Entities ("LSEs") within their jurisdiction to ensure resource sufficiency. As such, the Commission should reaffirm the policies and findings of the November Order and make clear that a centralized forward capacity market like the CRS is not necessary for vertically-integrated areas within MISO. The CRS need not, and should not, be considered as a template for the rest of the footprint.

¹² *Id.* P 46.

¹³ *Id.* P 138.

¹⁴ *Id.* P 155.

In addition, the CRS should not be viewed as the default means to maintain RA within retail choice areas. The Commission should consider any proposal to address RA concerns first and foremost as a state jurisdictional matter, even in retail choice areas. For example, the Prevailing State Compensation Mechanism (“PSCM”), which will be utilized by Michigan, is not applicable to the rest of the MISO footprint, nor the only possible option. The CRS proposal filed by MISO should be viewed as another alternative. MISO should capture this concept in their tariff by including language that specifies that the proper regulatory body in any new retail choice jurisdiction will initiate an approval process to select an appropriate mechanism for RA in that jurisdiction.

B. Adverse impacts to vertically-integrated areas within MISO should be minimized to the degree possible and any harm to these areas remedied expeditiously.

MISO incorporated “Respecting Jurisdictional Processes” as one of their four foundational principles to guide the development of the CRS.¹⁵ Within this principle, referring to vertically-integrated jurisdictions, MISO stated, “any solution must maintain a minimal impact on these existing long standing planning processes.” Impacts to the vertically-integrated areas, intended or unintended, are a significant concern for the members of the OMS.

The CRS proposal cannot be allowed to limit flexibility in the existing RAC. Flexibility and optionality in meeting RA requirements in MISO is a critical component of the existing RAC and must remain in place, especially the ability for LSEs to satisfy their capacity obligations through MISO's balancing auction. The CRS, with the Forward Resource Auction (“FRA”), operates on a different timeline, with a much smaller portion of load, than the existing Planning Resource Auction (“PRA”). As such, the proper integration of the CRS within the

¹⁵ CRSTT Framing Document, Foundational Principle Number 2, January 29, 2016 CRSTT meeting.

existing construct is extremely important. Any modifications that are ultimately adopted by FERC for MISO's retail choice areas need to ensure that state and local resource planning activities in MISO's vertically-integrated areas are not adversely impacted and continue unobstructed.

Any potential for adverse spill over impacts to the vertically-integrated portion of the footprint must be carefully evaluated prior to and during implementation. Should an adverse impact be identified at any time during the implementation process, MISO and the stakeholders must address the concern expeditiously. In addition, the Commission should not make any revisions to the MISO proposal that create adverse impacts to the vertically-integrated areas.

1. Forward auction design should not be subject to less stringent reliability requirements than PRA.

In order to avoid negative impacts to the vertically-integrated portion of the footprint, the portion of the Competitive Retail Area (“CRA”) that relies on the CRS forward auction must be subject to the same reliability level as rest of the footprint. As such, the same deficiency charge should apply to the CRA if resources procured are below the level of reliability required for the vertically-integrated portion of the footprint. Within MISO, under the PRA, LSEs in the vertically-integrated portion of the footprint face a $2.748 * \text{Cost of New Entry (“CONE”)}$ deficiency charge if they procure capacity to levels below 1-in-10 Loss of Load Expectation (“LOLE”). Under the CRS proposal, load that utilizes the forward auction is capped at $1.4 * \text{Net CONE}$. There should be parity in the financial consequence of introducing additional risk within the MISO footprint.

In addition, since lower levels of reliability than the 1-in-10 Planning Reserve Margin Requirements (“PRMR”) can be cleared in the CRA (using the downward sloping demand curve), the applicability of MISO emergency procedures should be reviewed in order to reflect

the additional risk and prevent undue harm to the rest of the footprint. Other RTOs with centralized capacity markets have accepted a downward sloping demand curve and the collective associated reliability levels with opt-out programs. No such discussions have taken place among MISO stakeholders to understand the implications and remedies if sufficient capacity is not available.

2. The load that is allowed to participate in the CRS must remain narrowly focused, as filed in this proposal.

In order to limit negative impacts on vertically-integrated areas from MISO's CRS proposal, the scope of the RAC modifications should be limited to retail choice areas that have a potential to impact reliability, as defined by the materiality threshold. MISO's proposed tariff revisions define a CRA and establish a process by which capacity can be procured on a long-term basis to meet the needs of Competitive Retail Demand. It is imperative that these terms, as proposed in MISO's filing, continue to limit the load that can participate in the CRS to retail choice loads in zones 4 and 7 and make no allowance for vertically-integrated loads to opt-in to the CRS.

C. MISO needs to clarify language in the CRS proposal regarding the use of generation located within the CRA that is serving load outside of the CRA.

There are two specific issues in the proposed tariff language that raise concerns about the proper treatment of generation that is located in the CRA but that serves load in a vertically-integrated or non-CRA area.

1. *Capacity from a portion of a generator that is owned and committed to vertically-integrated loads outside of the CRA should not be subject to mandatory participation in the CRS.*

The language in the MISO filing, as well as other related language in the MISO tariff, do not make it clear that a portion of a generator located inside the CRA, that serves load outside of

the CRA, can be eligible for exemption from participation in the CRS under the Safe Harbor mechanism.¹⁶ Access to capacity should continue to be available to the entities that purchased or built that capacity without any restrictions, regardless of geographic location. Not allowing such access could constitute a taking¹⁷.

Though MISO has acknowledged this issue, and stated that it would consider capacity from a portion of a generator in the CRS as it does under the existing PRA (which does allow partial capacity from a generator to be subdivided across LRZs), current language of the relevant provisions of both the proposed FRA and the current PRA would indicate that only an entire generator would be eligible. To address this, the Module A definition of Generation Resource must be modified to make it clear that it can refer to either a portion of a generator, or an entire generator.

The definitions of “Planning Resource” (69A.12.5, in the Safe Harbor Exemption) and “Capacity Resource” (69A.12.6, discussing FRA Market Participant Offer Requirements)¹⁸ in the instant tariff filing are used to describe what can be exempted from requirements to bid capacity into the CRS. However, when these terms are used in reference to capacity coming from a generator, both terms ultimately are defined as a “Generation Resource”, a term in the existing MISO tariff that refers to an entire generator. While the usage of “Planning Resource” and “Capacity Resource” appears to allow exemptions for situations where an entire generator’s capacity is owned or controlled by one utility, there is no language that allows exemptions when a utility owns or controls a portion of a generator’s capacity.

¹⁶ Proposed MISO Tariff Sheet, Module A, 1.S, 46.0.0

¹⁷ This is particularly important to the State of Missouri that relies on generation in Illinois to serve Ameren Missouri load.

¹⁸ This concern is also relevant to the proposed definition of “Relevant Capacity Resources” on proposed MISO Tariff Sheet, Module E-3, 69A.12.6

A problematic situation could arise when different portions of a generator's capacity could come under different requirements, with some portions required to bid into the FRA, and other portions exempt from that requirement. To the extent the proposed language says that exemptions to the FRA Market Offer Participant Requirements will be granted if "the Capacity Resource is included in a Safe Harbor Exemption", it is unclear whether capacity from the entire generator would be granted the exemption, or just the portion of the capacity controlled by the utility requesting the exemption.

The easiest way to solve this issue is to require a compliance filing to change the definition of "Planning Resource" and "Capacity Resource" to include a portion of a generator as follows:

Planning Resource: A Capacity Resource, Energy Efficiency Resource, or Load Modifying Resource that can be used to satisfy PRMR. ***This can include capacity from both a portion of a generator or an entire generator's capacity.*** (bold italics are proposed new language)

Capacity Resource: The Generation Resources, Demand Response Resource- Type I, Demand Response Resource-Type II, Dispatchable Intermittent Resources, External Resources, or Intermittent Generation that are available to meet Demand. ***This can include capacity from both a portion of a generator or an entire generator's capacity.*** (bold italics are proposed new language)

OMS acknowledges there is a complication, as the term "Planning Resource" is a term used in the existing MISO tariff where it is ultimately defined, in term of generation, as an entire generator. MISO should be required to make sure all tariff references in the current PRA Module E-1 correctly refer to either an entire generator's capacity or a portion of a generator's capacity.

Although the term in the existing MISO tariff is defined as an entire generator, this does not change the analysis of how that term will or should be used in current Module E-1.

Furthermore, the aspiration for complete unanimity in term definition should not override the need to correctly define terms in the instant filing before it is finalized in order to head off future

disagreements as to the definition's exact parameters. MISO should be required to make a compliance filing to ensure that all capacity owned or controlled in the CRA should be able to be utilized by entities outside the CRA.

2. *Decisions on exemptions from mandatory participation in the CRS should not be left to MISO's discretion for generation owned by vertically-integrated entities located in the CRA*

As noted above, it is imperative that capacity purchased or built by an LSE be available to that entity without restrictions, whether it's located in a CRA or a vertically-integrated area. Currently, the language in the proposed tariff related to exemptions to the Subsequent Year Offer Requirement, including the Safe Harbor (must offer) Exemption and others that allow capacity to be exported out of a CRA to a vertically-integrated area, all say such exemptions "may" be granted.¹⁹ MISO should not have the discretion to disallow capacity exports from the CRA by utilities that own or control capacity within the CRA and meet the exemptions listed in the proposed tariff sheet 69A.12.6. As such, the language in this section should be changed to say "Exemptions to the requirements above *will* be granted if..:" This change will provide the necessary certainty that such capacity will in fact be available for long-term planning by the entity that procured it, regardless of its location.

¹⁹ Proposed MISO Tariff Sheet, Module E-3, 69A.12.6.

D. Regular reporting should be required to evaluate the success of the CRS.

OMS is concerned that the operation of the CRS may have some unintended consequences that could harm MISO's vertically-integrated areas. Consequently, OMS asks that the Commission require MISO to file an annual report, every July 1, with the details of the implementation and effectiveness, including the amount of regulated and merchant generation clearing in the CRS and the level of reliability procured within each zone. Such a filing is necessary to allow OMS and other stakeholders to evaluate and confirm that the CRS is operating as intended and inform the Commission of any concerns and need for remedial action.

E. The Prevailing State Compensation Mechanism (“PSCM”) is an example of how states can utilize their jurisdiction to develop a tool for ensuring resource adequacy.

The OMS is in favor of maximum flexibility for states to determine the best approach within their authority to ensure sufficient resources are available to meet the long term needs of customers. The PSCM was developed by Michigan with MISO as a mechanism available to the Michigan Public Service Commission for maintaining RA, outside of the CRS, even though it would otherwise be applicable. As previously stated, should additional states in MISO adopt retail choice, those states should decide to participate in the proposed CRS or choose another approach. Additional tools for state regulators in retail choice areas to make decisions for the customers in their jurisdictions is universally viewed as positive.

F. The OMS-MISO RA Survey needs to be viewed in the appropriate context.

Within MISO’s filing, numerous references to this RA Survey are used to justify the need to modify the RAC. It is imperative that the Commission fully understand the context of these results. The RA survey is voluntarily completed by LSEs utilizing previously submitted Module E-1 load forecasts that look ahead 10 years. MISO appropriately identified the survey results as

“a real-time snapshot of current conditions,” but it is just that; a snapshot in time. MISO accurately characterized the survey in a prior filing:

The results are based on information provided by LSEs at the time they completed the survey. As is the case with all projections, there is a level of uncertainty associated with responses about demand and resources for future years, even if based on the best information known at the time. The LSEs are continuing to develop plans and make resource decisions for future years... Therefore, the survey results should not be viewed as a definitive statement about what will happen in 2016 and beyond. Instead, the OMS MISO survey is meant to provide increased transparency into the potential impacts of environmental regulations and other factors on generation resources in the MISO region.²⁰

In addition to the survey being a snapshot in time, there are a number of specific caveats to the 2016 survey results that must be considered. For instance, the RA Survey was conducted in a conservative manner, by considering all potential/announced retirements, but having fairly strict parameters around including new generation in the interconnection queue. As a result, the 2021 results show a potential footprint-wide capacity shortfall, including shortfalls in zones that are fully regulated. However, as MISO notes in the quote above, LSEs have plans that are discussed with their regulators that are not captured in the survey results to ensure sufficient capacity is available. The OMS and other stakeholders have discussed these concerns with MISO and will continue to work to make the survey results as accurate as possible going forward. Moreover, as MISO stated, it’s important to keep in mind that data projected further out is less accurate so the actual situation in the out-years captured in the survey results will certainly change and should not cause concern about continued resource adequacy in non-retail choice areas.

²⁰ MISO Answer to Indicated Capacity Suppliers Motion for Expedited Action, Docket No. ER11-4081-001, pg. 3 (Sept. 9, 2014).

Conclusion

For the reasons stated above, the Commission should reaffirm its finding in the November 20, 2015 Order on Rehearing in Docket No. ER11-4081-001 that capacity markets are not necessary in vertically-integrated areas, which includes 91% of the load in MISO. The CRS should remain narrowly-tailored to address concerns in retail choice jurisdictions and the CRS should not be viewed as the default means to maintain RA within retail choice areas. It is imperative that state regulators maintain maximum flexibility and authority over the resource adequacy decisions within their jurisdiction and that any negative impacts from the CRS on vertically-integrated areas, intended or unintended, must be addressed expeditiously.

The OMS submits this Notice of Intervention and Comments because the following members, which constitute a majority, are in support:

Arkansas Public Service Commission
Indiana Utility Regularity 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
Council of the City of New Orleans
North Dakota Public Service Commission
South Dakota Public Utilities Commission
Public Utility Commission of Texas
Wisconsin Public Service Commission

The Illinois Commerce Commission abstains. The Manitoba Public Utilities Board did not participate in this pleading. Individual OMS members reserve the right to file separately on the issues discussed herein.

CERTIFICATE OF SERVICE

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

Dated on this 14th day of December, 2016.

Tanya Paslawski