

information helpful to the disposition of an issue.⁵ This Answer satisfies the above criteria by aiding the Commission in its decision-making process and providing information helpful to the disposition of the issues raised by commenters related to the structure and implementation of the CRS.

II. BACKGROUND

On November 1, 2016, MISO filed its proposed CRS. MISO states that the CRS will “establish a Forward Resource Auction (“FRA”) that will complement the existing Planning Resource Auction and is designed to assure the resource adequacy needs of Competitive Retail Areas (“CRA”) are appropriately met.”⁶ A motion for an extension of time to file comments was submitted by the Public Utilities Commission of Texas (“PUCT”) on November 14, 2016, and on November 23, 2016, the Commission granted the request.⁷ OMS filed timely comments in this docket on December 14, 2016.⁸

III. ANSWER

The preeminent goal of the CRS Filing is to introduce an option to procure long-term resources for jurisdictions with retail choice while limiting any impact to non-retail choice areas and preserving the exclusive jurisdictional authority of states⁹ over resource adequacy. Numerous comments were filed in response to the CRS proposal; some for and some against. OMS submits this Answer to respond to the comments and protests challenging aspects of the CRS Filing. This Answer reinforces items that are important to ensuring the CRS Filing does

⁵ See e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100 at P 61,287, n. 11 (1999).

⁶ CRS Filing at 1.

⁷ Midcontinent Indep. Sys. Operator, Inc., Notice of Extension of Time (Nov. 23, 2016), eLibrary No. 20161123-3025.

⁸ Notice of Intervention and Comments of the Organization of MISO States, Docket No. ER17-284 (December 14, 2016) (“OMS Filing”).

⁹ References to “state”, “states”, or “state jurisdiction” shall also include the Council of the City of New Orleans.

not infringe upon the state jurisdictional boundaries related to resource adequacy in the MISO region and limits the impact of the proposal on non-retail choice areas.

- A. The FRA and downward sloping demand curve ("DSDC") are properly limited to CRAs in the CRS Filing; suggestions to expand these elements across the MISO footprint should be rejected.

Ameren Services Company ("Ameren") inappropriately recommended that the FRA and DSDC be applied across the MISO region and not constrained to just the CRAs.¹⁰ Ameren's concern regarding market bifurcation (e.g., the presence of multiple capacity products with different procurement timelines and requirements) is misplaced.¹¹

First, the FRA and DSDC are unnecessary outside of Illinois and a portion of Michigan, the only states in MISO with retail competitive choice. The MISO Independent Market Monitor ("IMM") and other parties, including OMS, appropriately pointed out that resource adequacy supply in MISO is unique as compared to other RTO capacity markets.¹² Ameren's suggestion completely ignores that, unlike in other RTOs, state regulators in the MISO footprint work with regulated utilities to ensure adequate resources for approximately 91% of MISO load and do not rely on market signals to ensure resource adequacy. Ameren's proposal, if adopted by the Commission, would undermine long-standing and effective state planning processes.

Second, the Commission has already concluded that MISO's capacity construct does not require a DSDC. In its November 20, 2015 Order in Docket No. ER11-4081 ("November Order"),¹³ the Commission concluded that ordering a DSDC "would inappropriately diminish the deference given to states in the MISO capacity construct" and "ensuring reliability does not

¹⁰ See Ameren Services Initial Comments at 3-5.

¹¹ *Id.*

¹² See MISO Independent Market Monitor Protest at 15.

¹³ *Midwest Indep. Transmission System Operator, Inc.*, 153 FERC ¶ 61,229 (2015).

require an auction with a long forward period.”¹⁴ Ameren’s proposal is a collateral attack on the Commission’s November Order and should be disregarded.¹⁵ The Commission’s rationale is equally relevant to the instant proceeding as it was to similar issues addressed in the November Order.

Third, Ameren’s suggestion is in direct conflict with Foundational Principle number 2 that MISO established at the onset of the stakeholder process leading to the CRS Filing and included in the filing itself; “Respect Jurisdictional Processes” and “any solution should retain existing requirements for entities with traditional planning processes.”¹⁶

The Commission should disregard Ameren’s proposal because it would violate states’ exclusive jurisdiction over the resource adequacy and, as the Commission has already concluded, is unnecessary.

- B. Supply-side mitigation, such as a Minimum Offer Price Rule (“MOPR”), is unnecessary to avoid price suppression in the MISO region and should not be adopted.

The Commission should reject suggestions that the CRS should include mitigation of certain supply-side offers, like application of a MOPR, to ensure that regulated and other generation receiving out-of-market revenues that participate in the CRS cannot artificially suppress auction prices. Such measures are unnecessary and could undermine resource adequacy pricing. MISO witness Jeff Bladen testified that the CRS includes, “additional requirements for capacity resources affiliated with non-competitive retail LSEs...[that] ensures price outcomes are

¹⁴ *Id.* at P 155.

¹⁵ *See, e.g., Equitrans, L.P.*, 99 FERC ¶ 61,210, at 61,887 (finding that concerns with tariff provisions approved in a prior order constituted out-of-time collateral attacks on the prior order), *order on reh’g*, 101 FERC ¶ 61,018 (2002); *H.Q. Energy Servs. (U.S.) Inc.*, 82 FERC ¶ 61,234, at 61,898 (1998) (holding that arguments previously raised and rejected in an earlier order and not raised on rehearing of that order but at a later date constituted an out-of-time request for rehearing or an impermissible collateral attack on the earlier order).

¹⁶ CRS Filing, Tab K, CRSTT Presentation, January 29, 2016, Foundational Principle number 2.

not suppressed.”¹⁷ Mr. Bladen explained that, “[the] use of a MOPR... might well have the perverse effect of MOPR pricing calculations becoming de-facto administratively determined clearing prices.”¹⁸

OMS shares this concern about the application of a MOPR in MISO. It is important that CRAs have access to excess generation when it is available, regardless of ownership. The ability of all types of generation to participate, without administrative price interference (*e.g.*, setting of prices too low or too high that are not reflective of market conditions), allows for CRAs to receive the benefits of participation in MISO and affords LSEs the flexibility to determine the best use of their resources.

And, as it did with the use of a DSDC in MISO, the Commission already rejected application of a MOPR in MISO finding, “incentive[s] to engage in, price suppression are greatly diminished, which indicates that a MOPR is unnecessary.”¹⁹ The Commission concluded: “We do not find that a MOPR is necessary to ensure just and reasonable rates in the MISO region, as we have in other regions.”²⁰

As such, a MOPR is unnecessary in MISO to achieve market-based auction outcomes, could impede the availability of excess generation through administratively set prices, and should not be adopted.

C. Introduction of retail choice was never meant to, and does not, cede state jurisdiction over resource adequacy and generation planning.

Main Line Generation (“Main Line”) mistakes ceding authority with the exercise of authority. Main Line is unnecessarily concerned that, “Competitive Retail Areas ceded the

¹⁷ CRS Filing, Bladen Testimony at 23:5-8

¹⁸ *Id.* at 25:3-5.

¹⁹ November Order at P 106.

²⁰ *Id.* at P 120.

primary responsibility for maintaining reliability to MISO by relying on wholesale market revenues to signal the need for capacity.”²¹

States have exclusive jurisdiction over resource adequacy and generation planning.²² As clearly stated in the PUCT's protest, “even if states have opened retail markets to competition, they retain authority under the Federal Power Act over resource adequacy generally and over generation specifically.”²³ Whether a state implements resource adequacy directly (e.g., with regulated utilities through integrated resource planning), or chooses an alternative approach (e.g., to coordinate with MISO to develop a hybrid approach using price signals developed in an auction), the state has not ceded its authority, it has exercised that authority.

MISO has attempted to capture this concept by recognizing the concept of a Prevailing State Compensation Mechanism; a term developed by MISO and the State of Michigan. As explained by Jeff Bladen, “if competitive retail demand is required, either by state statute or by an order from the RERRA, to participate in resource adequacy planning processes, then a core objective of the CRS, to maintain resource adequacy across all time horizons, is already being achieved.”²⁴ This is incorporated in the CRS through: (1) the inclusion of a long-term planning requirement opt-out provision,²⁵ and (2) the Prevailing State Compensation Mechanism (“PSCM”).²⁶

²¹ See Main Line Protest at 3.

²² 16 USC § 824(a).

²³ See PUCT Protest at 5-6.

²⁴ MISO CRS Filing, Bladen Testimony at 14: 14-17.

²⁵ MISO CRS Filing, Tariff Section 69A.12.1.

²⁶ MISO CRS Filing, Tariff Section 69A.12.1.2.b.

D. The Commission should adopt modifying language to clarify that a state introducing retail choice has the ability to adopt policies to achieve resource adequacy that are most appropriate for its region.

As stated above, exclusive jurisdiction for resource adequacy lies with the states.²⁷ As such, the CRS Filing should not limit the ability of a state that institutes retail choice to select the best policy for achieving resource adequacy for its jurisdiction. The PUCT requested MISO modify section 69A.12.1.2 of Tariff Module E-3 to clarify this concept as follows (adding the underlined language): “Competitive Retail Demand may be opted out of the Forward Resource Auction by: (a) An LSE selecting a Forward Fixed Resource Adequacy Plan, or (b) A RERRA electing a Prevailing State Compensation Mechanism, or (c) A RERRA electing to develop its own policies regarding resource adequacy.”²⁸ OMS believes PUCT's proposed change is consistent with appropriate jurisdictional authority and should be adopted.

To be clear, a state’s exercise of its resource adequacy authority (with or without retail competition) is not limited to integrated resource planning, MISO’s CRS proposal (including the PSCM and opt-out provision) or any other existing construct. As the authority with exclusive jurisdiction of resource adequacy, a state may use whatever mechanism it deems to be in the public interest without deference to or approval by MISO.

E. The definition of “Competitive Retail Area” should be modified to limit the application of the CRS to Local Resource Zones 4 and 7.

OMS supports revisions to the CRS proposal designed to ensure that the CRS Filing is limited to Local Resource Zones 4 and 7; the LRZs for which CRS was designed. MidAmerican and Wisconsin Electric point out in their protests that the as-filed tariff language defining a “Competitive Retail Area” has the potential to expand the CRS beyond the intended targets of

²⁷ 16 USC § 824(a).

²⁸ PUCT Protest at 6.

Local Resource Zones 4 and 7, even with the application of the Materiality Threshold. To correct what is likely an oversight by MISO, Mid-American proposed to modify the definition of CRA as follows (adding the underlined language): “[Local Resource Zone] with sufficient Competitive Retail Choice to satisfy the Materiality Threshold.”²⁹ The Commission should direct MISO to adopt this modification in a compliance filing to ensure that only LRZs 4 and 7 (and not LRZs with small amounts of retail choice) are subject to the CRS.

F. The Safe Harbor Provision needs to be modified to ensure LSEs maintain control over their supply.³⁰

Ameren raised serious concerns with the proposed CRS language that placed restrictions on supply that utilizes the Safe Harbor Provision.³¹ As proposed, the CRS would require any generation that utilizes the Safe Harbor Provision to be used in a FRAP in the prompt year auction. In OMS's view, there should be no distinction between generation in the 103% Safe Harbor buffer and any other regulated generation outside of a CRA to be utilized internally or sold as the market allows. Regulated utilities should be free to meet their load obligations however they see fit, maximizing the flexibility that the existing construct affords. To do otherwise would violate MISO's Foundational Principle number 2 to respect jurisdictional processes.

IV. CONCLUSION

For the reasons stated above, the Commission should only take action that appropriately respects state jurisdiction within MISO as it relates to the CRS filing. Comments suggesting more drastic changes to the resource adequacy construct within MISO should be rejected.

²⁹ MidAmerican Energy Company Comments at 6.

³⁰ The Mississippi Public Service Commission does not join this paragraph.

³¹ Ameren Protest at 7-8.

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
Wisconsin Public Service Commission

The Illinois Commerce Commission abstains and does not join this Answer. The Manitoba Public Utilities Board, Montana Public Service Commission, and Public Utility Commission of Texas did not vote on this filing. 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 this 6th day of January 2017.

Tanya Paslawski