

Finally, OMS' support for MISO's instant filing documenting the current process to avoid future risk on remand should not be construed as support for any possible future proposal to revise Module E-1, including MISO's future resource adequacy proposals that are briefly described. OMS will evaluate these proposals through the stakeholder process separately to ensure they are (1) within MISO's tariff authority to propose, and (ii) will improve the PRA and promote compliance with Tariff resource adequacy requirements.

I. NOTICE OF INTERVENTION

The OMS files this Notice of Intervention in accordance with 18 C.F.R. §385.214(a)(2). The OMS is a not-for-profit, self-governing organization of representatives from each regulatory body with retail jurisdiction over entities participating in MISO and serves as the regional state committee. The purpose of the OMS is to coordinate regulatory oversight among its members, to make recommendations to MISO, the MISO Board of Directors, the Commission, and other relevant government entities and state commissions as appropriate, and to intervene in proceedings before the Commission to express the positions of the OMS member agencies.

Service of communications should be made on:

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II. BACKGROUND

MISO originally filed Module E-1 of its Tariff with the Commission for approval in July 2011. In June 2012, the Commission conditionally accepted the filing and directed

MISO to make several changes on compliance.³ MISO submitted its compliance filing with the Commission in July 2012 and conducted its first PRA in March 2013. In April 2018, MISO will conduct the sixth PRA under the terms of Module E-1 and its related components with the Commission-approved changes adopted over time.

NRG Power Marketing LLC asked for rehearing of the Commission's order accepting MISO's July 2012 compliance filing and ultimately filed an appeal ("MISO NRG") at the United States Court of Appeals for the District of Columbia ("COA" or "Court").⁴ In July 2017, while the case was ripe for action by the Court, the COA issued a decision in another case ("NRG") that addressed the Commission's authority to direct changes to the construct of a Section 205 filing.⁵ As a result, in October 2017, the Commission asked for, and the Court granted, remand of the MISO NRG case so that the Commission could issue an order consistent with the Court's ruling in NRG.

Though the existing MISO Resource Adequacy Construct remains in place pending Commission action on the MISO NRG remand, the existence of an open docket on a long-passed version of the Resource Adequacy Construct creates significant procedural and regulatory uncertainty for the MISO region as the 2018-2019 PRA approaches.

III. Comments

A. The OMS supports MISO's strategy to avoid remand risk.

The OMS appreciates MISO's continued efforts to improve its Resource Adequacy Construct. As the number of changes adopted since approval of the 2012 Order on

³*Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199 (2012) ("June 2012 Order"), *reh'g denied*, 153 FERC ¶ 61,229 (2015), *order on compliance*, 153 FERC ¶ 61,230 (2015), Letter Order in Docket No. ER11-4081-003, issued March 16, 2016.

⁴*NRG Power Marketing LLC v. FERC*, No. 16-1027 (consolidated with No. 16-1019)(D.C. Cir. *pending*).

⁵*NRG Power Marketing, LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017).

Compliance indicates, MISO continues to work on improvements to the construct. The OMS members, representing several regulators in the region with plenary and exclusive jurisdiction over resource adequacy in MISO, continue their long-standing successful efforts to ensure sufficient resources are available when needed. As history has indicated, these efforts have effectively provided reliable and efficient resource availability in the MISO region.

Knowing the construct recognizes and respects the decisions of individual state and local regulators exercising their exclusive jurisdiction over resource adequacy, which can have impacts on the MISO market as a whole, the OMS has supported transparency surrounding future resource adequacy within the MISO footprint. The OMS-MISO Resource Adequacy Survey assists with this transparency and is an important tool to provide a regional picture of future resource availability for a moment in time.

B. The Commission should disregard statements in the Filing addressing future potential Tariff or Business Practice Manual changes as they are premature.

Though additional changes and improvements are often under discussion in the MISO stakeholder process, the current docket is not an appropriate forum to raise new issues or advocate for changes to the rules and processes in place today.⁶ As noted above, the next PRA is pending and providing certainty to market participants and other stakeholders is of the utmost importance. As an active participant in the MISO stakeholder process, the OMS will weigh in on future proposed changes and support those that provide benefits to ratepayers in the footprint. The current Resource Adequacy Construct has been effective and should be retained unless and until future modifications that are within MISO's authority to propose arise through MISO's well-developed stakeholder process and are presented to the Commission and approved.

⁶ See Filing, Richard Doing testimony at PP 11-12.

The need for new capacity in MISO, a Regional Transmission Organization comprised almost entirely by vertically integrated utilities, is driven primarily by state and local regulators with retail jurisdiction and the utilities under their purview that are obligated to serve load in those areas.⁷ As MISO and the Commission have acknowledged, the vast majority of Load Serving Entities (“LSEs”) in MISO are vertically integrated and responsible for acquiring adequate resources to serve load. An important component of ensuring resource adequacy is cost recovery. As the Commission noted:

The need for new capacity 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...⁸

In short, MISO's market helps facilitate the efficient balancing of resources, provides an opportunity for states with retail competition to procure necessary capacity, and state and locally-regulated LSEs to recover costs not recovered in their retail rates through the buying and selling of a capacity-related product - Zonal Resource Credits (“ZRCs”) - in an organized market. As such, the OMS supports MISO’s filing in this docket to maintain the current resource adequacy Tariff provisions and provide certainty for MISO market participants and stakeholders. In

⁷ MISO's filing and testimony attempts to characterize State/Local and MISO authority over resource adequacy. In some instances, those statements conflict. These characterizations are unnecessary for the purpose of this filing; OMS reserves the right to more accurately describe state and local regulators exclusive resource adequacy jurisdiction and the limited resource adequacy authority that the state/local regulators and load serving entities have granted to MISO.

⁸ Order on Rehearing, November 11, 2015, 153 FERC ¶ 61,229, at 46.

accordance with NRG, the OMS urges the Commission to accept the filing as presented, including the March 1, 2018 effective date, without modification.

The OMS submits these comments because a majority of its members have agreed to generally support them. The Illinois Commerce Commission abstains. The Manitoba Public Utilities Board did not participate in the filing. OMS members reserve the right to file separate comments regarding the issues discussed in these comments.

Respectfully Submitted,
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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 12th day of January 2018.

Tanya Paslawski