144 FERC ¶ 61,125
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Midwest Independent Transmission System Operator, Inc. — Docket No. ER11-4081-001

ORDER INITIATING BRIEFING PROCEDURES

(Issued August 12, 2013)

1. On June 11, 2012, the Commission issued an order conditionally accepting Midwest Independent Transmission System Operator, Inc.'s (MISO)[1] proposed resource adequacy construct.[2] On July 11, 2012, Capacity Suppliers[3] and Potomac Economics, Ltd. (Market Monitor), the independent market monitor for MISO, among other parties, filed requests for rehearing of the Resource Adequacy Order.

2. In the Resource Adequacy Order, the Commission rejected MISO's proposed minimum offer price rule, finding that buyers within MISO are "generally unlikely to benefit from exercising market power by subsidizing uneconomic entry . . . . [because] utilities own the vast majority of capacity within MISO."[4] Moreover, the Commission concluded that "even if utilities had a significant incentive to exercise buyer market

[1] Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

[2] *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199 (2012) (Resource Adequacy Order).

[3] Capacity Suppliers is an ad hoc coalition of power providers and load serving entities comprised of: Ameren Energy Marketing; Calpine Corporation; Dynegy Power Marketing, LLC; Dynegy Midwest Generation, LLC; Electric Power Supply Association; Exelon Corp.; FirstEnergy Solutions Corp.; and NextEra Energy Resources, LLC.

[4] Resource Adequacy Order, 139 FERC ¶ 61,199 at P 66.

power . . . MISO's proposed MOPR provisions would not likely be effective in deterring suppression of prices through the exercise of buyer market power."[5]

3. In its request for rehearing, the Market Monitor presents evidence suggesting that "a large share of the capacity requirements in MISO are satisfied via bilateral purchases, including purchases from outside MISO. Therefore, if capacity prices rise as capacity margins fall . . . states and regulated LSEs are likely to have the incentive to depress capacity prices."[6] Similarly, Capacity Suppliers argue that approximately one-fourth of the generation in MISO is "merchant or non-utility affiliated."[7]

4. We believe that the Commission would benefit in its further consideration of this matter by the receipt of briefs from parties in this proceeding addressing the matters raised in the requests for rehearing submitted by the Market Monitor and Capacity Suppliers with respect to the Commission's rejection of MISO's proposed minimum offer price rule. Accordingly, pursuant to Rule 713(d)(2) of the Commission's Rules of Practice and Procedure,[8] we will permit briefs to be submitted by any party to this proceeding on these issues. Initial briefs should be filed within 30 days of the date of this order. Reply briefs should be filed 21 days thereafter.

The Commission orders:

(A) The Commission hereby initiates briefing procedures pursuant to Rule 713(d)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(2), as discussed in the body of this order.

(B) Any party to this proceeding desiring to submit additional information with respect to the Commission's rejection of MISO's proposed minimum offer price rule shall submit initial briefs within 30 days of the date of this order and reply briefs within 21 days thereafter, as discussed in the body of this order.

[5] *Id.* P 68.

[6] Market Monitor Request for Rehearing at 9.

[7] Capacity Suppliers Request for Rehearing at 13.

[8] 18 C.F.R. § 385.713(d)(2) (2012).

(C) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of briefing procedures in Docket No. ER11-4081-001.

By the Commission. Commissioner Clark is dissenting with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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CLARK, Commissioner, *dissenting*:

MISO's resource adequacy construct is intended to promote regional reliability in concert with the local planning processes that have been used for years to meet resource adequacy needs in the Midwest. I am concerned that a minimum offer price rule (MOPR) in MISO could undermine these local planning processes and unwind the design changes recently accepted by the Commission in the Resource Adequacy Order.[1]

In their requests for rehearing, Potomac Economics and Capacity Suppliers dispute the Commission's finding[2] that most load serving entities (LSEs) in MISO would not have an incentive to exercise buyer-side market power. They base their argument on data showing that utilities obtain a portion of their resource adequacy needs through bilateral purchases. This is no revelation, however. The Commission has already acknowledged in this proceeding that resource planning in MISO is largely based on bilateral arrangements.[3] I see no reason to initiate briefing procedures based on this less-than-compelling information.[4]

My concern is that reopening the MOPR issue on rehearing could ultimately lead to changes that decrease the flexibility of MISO's resource adequacy construct. The Commission recognized this tension in the Resource Adequacy Order when it found that certain elements of MISO's resource adequacy construct, including the opt-out provision, would not allow for an effective MOPR.[5]

Yet, this flexibility is necessary for maintaining the balance between state and regional resource planning processes in MISO and it would be inappropriate to upset this balance by injecting Eastern RTO capacity market principles into it. In upholding the voluntary nature of the capacity auction, the Commission previously recognized that this feature

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[1] *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199 (2012) (Resource Adequacy Order).
[2] *See Id.* P 66.
[3] *Id.* P 40 (Finding MISO has not justified the need for a mandatory auction in resource planning due to a reliance on bilateral arrangements in MISO's footprint.). *See also* MISO July 20, 2011 Filing at 6.
[4] In addition, the Commission generally does not permit parties to introduce new evidence for the first time on rehearing. *See Potomac-Appalachian Transmission Highline, L.L.C.*, 133 FERC ¶ 61,152, at P 15 (2010) (citing *Ocean State Power II*, 69 FERC ¶ 61,146, at 61,548 & n.64 (1994) (holding that "[t]he Commission generally will not consider new evidence on rehearing, as we cannot resolve issues finally and with any efficiency if parties attempt to have us chase a moving target.")).
[5] *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199, at P 68 (2012).

allows LSEs and their regulators to maintain significant flexibility when developing resource plans based on their specific region.[6] Retaining this flexibility is a core issue for states in the MISO region. MISO's footprint is overwhelmingly composed of state-regulated, vertically-integrated utilities subject to integrated resource planning regimes. This regulatory framework places MISO in a different position than Eastern RTOs that are substantially relying on capacity markets, and administrative constructs such as a MOPR, to produce accurate price signals for resource development needs.

Given the seemingly poor fit of a MOPR in the MISO region, and lacking a compelling rationale for rehearing, I cannot support the decision to initiate briefing procedures. Circumventing the stakeholder process by reopening the MOPR issue in this narrow context interjects unnecessary uncertainty into MISO's resource adequacy construct at a time when the region is still adapting to the major design changes just recently approved. If market participants believe a MOPR will further the ability for the region to meet its resource adequacy needs, then they should bring these issues to the MISO stakeholder process where interested parties can comprehensively consider MOPR related issues.

For these reasons, I respectfully dissent from today's order.

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Tony Clark
Commissioner

[6] *Id.* P 39.