

Resource Auction; requiring such utilities to exceed MISO’s reliability standard is not just and reasonable.

I. Statement of Issues

Pursuant to Rule 713(c)(2), the issue presented for consideration on rehearing and the principal authorities supporting the Commission’s and the Coalition’s position on that issue, is as follows:

The Order violates the Federal Power Act and Administrative Procedure Act in finding that it is just and reasonable to require load-serving entities that opt out of participation in MISO’s Planning Resource Auction to purchase more capacity than MISO’s planning reserve margin indicates is needed, thus imposing excessive costs on consumers. In approving the Opt-Out Adder, the Order does not reflect reasoned decision-making and is not based on substantial evidence in the record.⁴

II. Background

MISO’s standard for resource adequacy centers on its goal of achieving a no more than 1 day in 10 years loss of load expectation (“1-in-10 LOLE”). This practice reflects general practice nationally, and “essentially means that it is acceptable for electric load not to be fully served due to a lack of generation capacity, fuel availability, or transmission for some amount of time on

⁴ Administrative Procedure Act, 5 U.S.C. § 706(2); Federal Power Act, 16 U.S.C. § 824e; *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *TransCanada Power Mktg. Ltd. v. FERC*, 811 F.3d 1 (D.C. Cir. 2015); *Louisiana Pub. Serv. Comm’n v. FERC*, 772 F.3d 1297 (D.C. Cir. 2014).

one day every 10 years."⁵ Selecting this 1-in-10 LOLE standard involves “taking multiple objectives into account, including reliability and affordability.”⁶ MISO then ensures this standard is achieved through an intricate series of engineering and modeling processes to develop a Planning Reserve Margin (“PRM”), which in turn is translated to a Planning Reserve Margin Requirement (“PRMR”) for each region, based on the size of that region’s projected load.⁷ Thus, the PRMR represents an amount of capacity that meets projected load in each region, modified by the MISO-wide PRM—*i.e.*, the amount of additional capacity that would meet each region’s load plus reserves. In MISO, load-serving entities (“LSEs”) have always had the principal responsibility for ensuring that they have sufficient capacity to meet their PRMR; and MISO operates a Planning Resource Auction (“PRA”) mostly as a “residual” market for small transactions to enable those entities to fluidly resolve shortfalls or sell surpluses.⁸ The PRA has historically cleared an amount of capacity that reflected its hard engineering-based PRMR.⁹

In its RBDC Proposal, MISO proposed changes to its Open Access Transmission Tariff to introduce the use of a downward-sloping demand curve in the PRA, known as the Reliability

⁵ Derek Stenlik et al., Energy Systems Integration Group, *New Resource Adequacy Criteria for the Energy Transition: Modernizing Reliability Requirements*, (Mar. 2024), at 6, available at <https://www.esig.energy/wp-content/uploads/2024/03/ESIG-New-Criteria-Resource-Adequacy-report-2024a.pdf>.

⁶ *Id.* at 7.

⁷ Midcontinent Independent System Operator, Inc.’s Reliability Based Demand Curve Transmittal Letter, Docket No. ER23-2977-000 (Sept. 29, 2023), Accession No. 20230929-5322, at 7 (“MISO Transmittal Letter”).

⁸ *Id.* at 10.

⁹ *Id.* at 7-9.

Based Demand Curve (“RBDC”).¹⁰ The RBDC is still designed around the PRMR, with the slope of the curve originating from the relevant PRMR for each region within MISO, but it introduces flexibility as to how much capacity clears the market based on capacity supply offer levels.¹¹ When clearing the auction against the RBDC, the amount of capacity cleared may exceed the PRMR if capacity is relatively abundant and inexpensive. If capacity is scarce or relatively high priced, the PRA may clear less than the planning reserve margin, at a higher price.¹²

In its filing, MISO proposes to allow LSEs to opt out of the PRA and procure their own capacity. However, such LSEs would then be required to procure an amount of capacity that reflects not just their own coincident peak forecast plus the PRM (*i.e.*, their PRMR), but also an adder (the Opt-Out Adder) that reflects the degree to which the PRA has exceeded the MISO-wide PRMR in the last three auctions. This Opt-Out Adder is not symmetrical—*i.e.*, it does not permit opting-out LSEs to ever procure less than the PRMR, even if recent auctions have cleared a quantity of capacity less than the PRM.

III. Argument

MISO’s Opt-Out Adder is not just and reasonable because it requires LSEs that choose not to participate in the PRA to purchase more capacity than is needed to meet the already-quite-conservative 1 day in 10 years LOLE standard that is the accepted standard for the MISO region.

¹⁰ *Id.* at 4.

¹¹ *Id.* at 14-15.

¹² *Id.*

As PIOs previously explained, it is both arbitrary and improper to impose the excess reserve margins created by a market construct whose principal purpose is to vary reserve margins in order to mitigate extreme price fluctuations and better guide resource investment decisions¹³ back on entities who are not participating in that market.¹⁴ Forcing LSEs that have opted out of the PRA to procure excess capacity undermines both the intricate policy considerations underscoring the creation of MISO’s LOLE standard, and the complex engineering and modeling work that annually translates that standard into a series of regional PRMRs.

The Commission’s Order in this matter fails to offer a reasoned basis for approving MISO’s Opt-Out Adder in light of PIOs’ evidence and arguments that this adder “will impose significant artificial costs on ratepayers of LSEs who utilize the Opt-Out mechanism, by requiring them to pay for more capacity than is needed to meet their resource adequacy needs.”¹⁵ As PIOs demonstrated, MISO’s mistaken concept of comparability or equity between LSEs opting into and out of the PRA lead it, and the Commission, to a result that imposes unnecessary costs and contravenes a common sense approach to resource adequacy.

The key flaw in MISO’s comparability analysis rests in the very different market dynamics that govern the PRA and LSEs that opt out. As a result of the shift to the RBDC, MISO’s PRA may now clear a quantity that is higher or lower than the PRMR. As PIOs’

¹³ MISO Transmittal Letter at 13-14.

¹⁴ Public Interest Organizations’ Limited Protest of MISO’s Proposed Tariff Revisions to Implement a Reliability Based Demand Curve, Docket No. ER-23-2977 (Sept. 29, 2023), Accession No. 20231103-5235, at 4 (“PIOs’ Protest”).

¹⁵ *Id.* at 2.

witness, economist James F. Wilson, explained, this “quantity variability is a necessary evil to gain the benefits of the sloped demand curve,” such as better price signals and reduced susceptibility to the exercise of market power.¹⁶ Procurements of excess capacity under a sloped demand curve can be reasonable from a consumer’s perspective because the auction will only clear capacity above the PRMR target if it is relatively inexpensive to do—*i.e.*, at a level that reflects the declining marginal reliability value of that extra capacity beyond the reserve margin. In other words, the possibility that the market might clear above the PRMR is balanced by the possibility that the market might clear below the PRMR; and the financial risk to ratepayers that they pay to secure more capacity than is needed to meet the 1-in-10 LOLE standard is mitigated by the reality that they will only do so when capacity is relatively affordable.¹⁷

This dynamic is turned on its head for LSEs that opt out of the PRA: where utilities directly take on the responsibility of meeting their PRMRs (and by extension achieving the 1-in-10 LOLE standard), they generally meet their obligations with the lowest-cost resources first. Thus, such entities do not see average capacity costs decline as they secure additional capacity beyond PRMR: to the contrary, they can expect their average capacity cost to increase, often significantly, the more they are required to procure.¹⁸ For these utilities and their customers, any requirement to procure additional capacity that goes beyond MISO’s carefully measured

¹⁶ PIOs’ Protest, Affidavit of James F. Wilson at PP 21, 23 (“Wilson Aff.”).

¹⁷ *Id.* at P 26 (“MISO’s proposed sloped demand curves are fairly steep, meaning that as the cleared quantity increases, the PRA clearing price decreases by a much larger percentage than the change in quantity. This means that total capacity cost (cleared price times cleared quantity) declines sharply as the cleared quantity rises.”).

¹⁸ *See* PIOs’ Protest at 6-7.

resource adequacy standard represents an expensive imposition, without any showing of commensurate reliability benefits.¹⁹

Any requirement for consumers to buy capacity at levels that exceed what is needed to meet the reliability standard must be accompanied by a truly compelling justification. The Commission has not identified, nor has MISO provided, such a justification for LSEs that opt out of the PRA. MISO's principal justification for the Opt-Out Adder "is to neither unfairly incent opt out, nor force RBDC participation, while also respecting states' rights toward resource adequacy."²⁰ To put it plainly, MISO's principal concern regarding comparability between LSEs that opt in and opt out appears to be avoiding having opted-out LSEs benefit in any way from the excess capacity that market participants may secure through the PRA in years where capacity is plentiful and relatively inexpensive.²¹ But this concern ignores that the opted-out LSEs are not in any way shirking responsibility for resource adequacy if they procure only MISO's PRM, *i.e.*, without the Opt-Out Adder. As federal courts have described the "free rider problem" in the context of planning reserve margins, it arises "where some utilities count on the capacity they expect others to buy in order to support their own reliability."²² That is not happening here: even without the Opt-Out Adder, opted-out LSEs will still be meeting their PRMR, *i.e.*, the target that

¹⁹ Nor does the design of the Opt-Out Adder enable opting out utilities to "make up the difference" in years by falling below the PRMR where capacity is particularly expensive or challenging to find, because the adder can only be positive, regardless of how short the PRA may have recently cleared.

²⁰ MISO Transmittal Letter at 26.

²¹ Midcontinent Independent System Operator, Inc.'s Motion for Leave to Answer and Answer, Docket No. ER23-2977 (Dec. 6, 2023), Accession No. 20231206-5149, at 10, ("MISO December 6 Answer").

²² *Connecticut Dep't of Pub. Util. Control v. FERC*, 569 F.3d 477, 479 (D.C. Cir. 2009).

MISO's planning department has determined reflects an appropriate balance of cost and reliability. That they may benefit incidentally from excess capacity procured through the operation of a market construct they choose not to participate in does not justify imposing these excessive costs.

Moreover, in its hyper-focus on preventing opted-out LSEs from in any way benefitting from *excess* capacity procured on behalf of LSEs that opt into the PRA, MISO completely ignores that LSEs within the PRA will also benefit from the opted-out LSEs' obligation to procure the PRMR in those years when the PRA clears *below* the PRMR—and that this benefit will by definition occur in years when PRA capacity is most expensive. The lopsided nature of MISO's proposed Opt-Out Adder belies MISO's purported "comparability" justification for the adder; the adder is not about ensuring comparability but instead functions as a one-way ratchet to require excess procurement of capacity by utilities that opt out of the PRA.

The Commission dismissed concerns about the excess capacity opted-out LSEs would need to procure by noting that it would be no greater than the excess capacity purchased by utilities participating in the PRA.²³ This is the wrong point of comparison: MISO's notion that the degree of excess procurement should be comparable between LSEs elevates a particular and misguided concept of fairness over common sense. Fundamentally, no consumer should be required to purchase more capacity than MISO has determined is necessary to meet MISO's resource adequacy standard without some countervailing tradeoff. If an LSE wishes to obtain the benefits of participating in an auction with a sloped demand curve, it may accept the relatively

²³ Order at P 143.

painless tradeoff of over-procurement. But LSEs who do not gain those associated benefits should not be required to artificially increase their capacity obligations to match the output of LSEs who obtain their capacity in a completely different manner.

The Commission’s other indirect response to PIOs’ concerns regarding over-procurement also lacks a reasoned basis. In paragraph 140, the Commission responds to PIOs’ argument that the Opt-Out Adder is arbitrarily applied because opted-out LSEs are differently situated by stating that without the adder, “LSEs procuring capacity through the Auction would bear the full cost of such additional capacity and share the associated reliability benefit with LSEs that opt out.”²⁴ This response in no way grapples with PIOs’ concerns, including the testimony of our witness explaining that LSEs opting into the PRA actually pay a declining share of total costs as the amount of any excess capacity procured grows.²⁵ The Order therefore does not reflect consideration of an important factor—the fundamentally different cost implications of capacity over-procurement within the PRA versus for opted-out LSEs. This difference is not only essential to a realistic assessment of comparability: it highlights why apparent cost-shifting considerations that underlie the Opt-Out Adder are invalid.

MISO’s Opt-Out Mechanism will force LSEs that don’t participate in the PRA to procure more capacity than is needed to meet MISO’s system reliability standards. Because the primary

²⁴ *Id.* at P 140.

²⁵ Wilson Aff. at P 29 (“Because, as the capacity construct clears larger quantities, the price and cost of PRA-priced capacity declines, but total capacity cost under opt out is likely stable, the *larger* the excess quantity cleared under the capacity construct, the *smaller* the share of *total* capacity cost borne by the LSEs using the capacity construct, and the *larger* the share of total cost borne by the opt out entities.”) (emphasis original).

purpose of the Federal Power Act is to protect consumers from excessive costs, such an expensive adder to the reserve margin requires a well-supported and logical justification. The Order fails to supply such a justification, rendering the Opt-Out Adder unjust and unreasonable.

IV. CONCLUSION

For the foregoing reasons, PIOs respectfully request that the Commission reconsider its approval of MISO's RBDC Proposal, and instead reject it with instructions for MISO to correct its problematic Opt-Out Adder.

Respectfully Submitted,

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