

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

AmerenEnergy Resources Generating)	
Company v. Midcontinent Independent)	Docket No. EL13-76-000
System Operator, Inc.)	
)	
Midcontinent Independent System Operator,)	Docket No. ER13-1962-000, -001
Inc.)	
)	

**REQUEST FOR REHEARING, OR, IN THE ALTERNATIVE,
MOTION FOR CLARIFICATION
OF THE INDEPENDENT MARKET MONITOR FOR PJM**

Pursuant to Rules 713 and 212 of the Commission’s Rules and Regulations,¹ Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM (“Market Monitor”), submits this request for rehearing, or, in the alternative, motion for clarification of the order issued July 22, 2014 (“July 22nd Order”) in the above styled proceeding.² The July 22nd Order apparently directed that the Midcontinent Independent System Operator, Inc. (“MISO”) revise its tariff to permit providers of System Support Resources service (“SSR Service”) to include unrecovered sunk fixed costs in SSR Service rates. If by “fixed costs,” the Commission only means fixed costs incurred specifically to provide SSR Service, the Market Monitor requests clarification on that point. The Market Monitor respectfully urges that if a finding that sunk fixed costs should be recovered through SSR Service rates was intended, that such a finding be reversed.

¹ 18 CFR §§ 385.713 & 385.212 (2014).

² *Midcontinent Independent System Operator, Inc., et al.*, 148 FERC ¶ 61,057.

If the Commission wishes to provide an incentive to providers of SSR, the Market Monitor recommends that the Commission implement an incentive rate component rather than sunk cost recovery. Including an incentive rate component would provide a transparent, uniform incentive to all SSR generation owners. Including an incentive rate component would avoid undue discrimination among generation owners having different levels of unrecovered sunk fixed costs. Including an incentive rate component would be consistent with the apparent concern about MISO's current approach to SSR Service rates.

In the alternative, if the finding is not reversed, the Market Monitor requests clarification of the scope of what the July 22nd Order requires. To assist the Commission, the Market Monitor suggests ways in which the scope could be defined in a manner that would reduce the harm to the competition-based regulatory model and the unfairness to customers and competing suppliers.

I. MOTION FOR REHEARING

In the July 22nd Order (at P 84), the Commission found, "it is unjust and unreasonable to not allow SSRs to receive compensation for the fixed costs of existing plant given MISO's authority under its Tariff to unilaterally require a generator that seeks to retire or suspend operations to remain online in order to address reliability concerns."

To the extent that by "fixed costs," the Commission only means fixed costs incurred specifically in order to provide SSR Service, the Market Monitor agrees that such new investment should be included, including a return on and of capital. If that is the only recovery that the Commission intended to permit, the Market Monitor requests clarification on that point and does not request rehearing. If the Commission meant to require the recovery of sunk fixed costs in SSR Service rates, then the Market Monitor does request rehearing, and, if rehearing is not granted, clarification about how such a requirement applies to the SSR Service rules.

The Market Monitor requests rehearing on the resolution of the issue concerning the treatment of sunk fixed costs. The rationale for requiring the recovery of sunk fixed costs (at

P 85) is that “MISO’s Tariff effectively denies the generator ... the opportunity to recover its fixed costs of existing plant even though the generator ... must continue to provide utility service.” The MISO tariff does not actually deny an opportunity for cost recovery because a provider of SSR Service does have the opportunity to recover from the market some or all of its fixed costs, or to receive amounts exceeding its fixed costs.³ Given the decision to retire, it is likely that such generators were not recovering some or all sunk costs even when they were operating in the market. Once a generation owner decides to retire a unit, it recognizes that it will receive no additional recovery of its sunk fixed costs. There can be no denial of an opportunity that does not exist. The goal of an SSR Service agreement should be to ensure that the generation owner recovers all the costs associated with providing SSR Service plus an incentive. The goal of an SSR Service agreement should not be to provide a windfall that the market would not otherwise provide. Such a windfall could actually create the unintended incentive to retire prematurely when a unit is required for reliability. An SSR Service agreement also means that the generation owner, unlike its competitors, is no longer exposed to potential losses.

In competitive markets, which the Commission relies on as an essential element of regulation, investors and not consumers manage investment risks.

The purpose of the SSR Service agreements is to ensure that a generation owner receiving such access keep a unit in service at no expense or risk, for a period long enough to permit system planners to accommodate deactivation and maintain system reliability. During the SSR Service period, the investors may gain but cannot lose. This is an advantageous position in a competitive market.

Also, in MISO, suppliers generally are able to include the fixed costs of generation assets in rate base under state regulation. Under these circumstances, it is not clear from the record in this proceeding how such recovery interacts with the SSR Service agreement. It is

³ See MISO FERC Electric Tariff Module C § 38.2.7i; *see also* PJM OATT Part V § 114.

important that the combined effect not be a double recovery of fixed costs in SSR Service rates and state-regulated electric service rates.

The Market Monitor agrees that an incentive to provide SSR Service is appropriate. A provision to collect unrecovered fixed costs is not an effective or equitable way to establish the appropriate incentive. Fixed costs likely will be different for every participant, and reliance on fixed costs would not provide a uniform incentive to all participants.

The rules for reliability must run service (“RMR Service”) in PJM Interconnection, L.L.C. (“PJM”), which is comparable to the SSR Service, allow providers to recover an incentive rate.⁴ An incentive rate is available regardless of whether or not a generation owner has unrecovered sunk fixed costs. In PJM, an incentive rate is included to encourage the provision of RMR Service on a voluntary basis. In MISO, where SSR Service is provided involuntarily, an incentive rate could be consistent with consumers paying just, reasonable and non-discriminatory rates for SSR Service. An incentive rate avoids unduly discriminatory treatment of suppliers of the same SSR Service. An incentive rate avoids unjustly and unreasonably shifting investment risks away from competitive suppliers and on to consumers.

Setting different rates based on unrecovered sunk fixed costs is discriminatory because it provides higher payments to SSR Service providers with unrecovered fixed costs than to providers who have fully recovered their costs. Such differing payment levels would penalize providers who made better decisions while operating in competitive markets and had lower unrecovered fixed costs as a result. There is no just and reasonable rationale to permit this difference.

MISO and portions of PJM include vertically integrated companies. Transmission owners play an important role in transmission planning, including in regions where there are supply assets owned by affiliates. Allowing for the recovery of sunk fixed costs through

⁴ See PJM Open Access Transmission Tariff Part V § 114.

SSR Service, which is required based on whether the transmission system is configured in a manner that can accommodate the retirement, would create bad incentives. Transmission owners should not be in a position to benefit from the timing of transmission investments in a manner that is against the interests of their customers. Customers rely on an independent planning process to protect their interests. The rules should avoid creating incentives that would mean such reliance is misplaced.

For the reasons expressed in the Market Monitor's pleadings filed in this proceeding, and incorporated herein by reference, a policy that requires customers to pay for the sunk fixed costs of assets used to supply SSR Service that are the same assets as those that were used to provide electric power at market prices is unjust and unreasonable. Consumers do not receive a refund when fixed costs are more than fully recovered through markets. Requiring the recovery of unrecovered sunk fixed costs through RMR Service is fundamentally incompatible with regulation through competition and denies to consumers in such markets one of the major benefits that this form of regulation offers: the assignment of competitive investment risk to suppliers rather than consumers.

The Market Monitor respectfully requests that the decision granting relief to Ameren on complaint be reversed.

If the Commission wishes to provide an incentive to providers of SSR, the Market Monitor recommends that the Commission implement an incentive rate component rather than sunk cost recovery.

II. MOTION FOR CLARIFICATION

If MISO is required to permit the recovery of sunk fixed costs in its rates for SSR Service, this raises a number of issues needing clarification. If rehearing is not granted, the Market Monitor requests that the Commission issue an order clarifying five issues identified below adopting the recommended approach.

First, the Market Monitor requests an order clarifying that other RTOs, such as PJM, which provide an incentive adder in order to secure RMR service, will not be required to

make any rule changes. An incentive rate can appropriately compensate suppliers for providing RMR service and avoids according a discriminatory preference to suppliers that were unable to recover their investment costs in the markets. Providing for an incentive adder is consistent with the rationale stated in the July 22nd Order. Also, an essential factor driving the holding in the July 22nd Order was that the MISO tariff required a generation owner to provide SSR Service unless the generating facility continued operating in the market. Under the PJM rules, a supplier has the ability to decline to provide RMR Service and proceed with deactivation.

Second, the Market Monitor requests an order clarifying how fixed costs may be recovered. If, for example, a supplier has an asset with \$5 million in unrecovered sunk costs, and the supplier is needed to provide SSR Service for two months, the supplier should not be permitted to recover the entire \$5 million over two months. Recovery of sunk fixed costs should be limited to a monthly payment based on the actual expected remaining life of the investment under expected market conditions at the time of the investment. This approach would make the result to customers more just and reasonable.

Third, the Market Monitor requests an order clarifying that a supplier who has written off in whole or in part sunk investment costs is not permitted to recover any of its written off sunk fixed costs in its rates for SSR Service. Once written off, the value written off should not be included the remaining sunk fixed costs and there should be no opportunity to recover such costs from customers when providing SSR Service. This approach would make the result to customers more just and reasonable.

Fourth, the Market Monitor requests an order clarifying that a supplier who has fully recovered its sunk fixed costs prior to providing SSR Service, and is required under the tariff to provide SSR Service, is not entitled to any recovery of sunk costs.

Fifth, in order to ensure that no double recovery of the same fixed costs occurs, the Market Monitor requests that recovery of any fixed costs be explicitly conditioned on prior confirmation from the participant that the asset subject to an SSR Service agreement is not included in rate base in any jurisdiction and that such costs are not otherwise subject to

recovery. It would be unjust and unreasonable to permit recovery of any costs through SSR Service agreements when those costs are already being recovered through regulated rates.

III. CONCLUSION

The Market Monitor respectfully requests that the Commission grant this request for rehearing, or, in the alternative, provide the requested clarification of the July 22nd Order.

Respectfully submitted,



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Dated: August 21, 2014

CERTIFICATE OF SERVICE

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

Dated at Eagleville, Pennsylvania,
this 21st day of August, 2014.



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