UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

AmerenEnergy Resources Generating Company v. Midcontinent Independent System Operator, Inc.	)	Docket No. EL13-76-000
Midcontinent Independent System Operator, Inc.	)	Docket No. ER13-1962-000 (not consolidated)

ANSWER AND MOTION FOR LEAVE TO ANSWER
OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rules 212 and 213 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 answer to pleadings filed on August 15, 2013, by the NRG Companies ("NRG"), the Electric Power Supply Association ("EPSA"), and AmerenEnergy Resources Generating Company, et al. ("Ameren"). In those pleadings, NRG, EPSA and Ameren raise new arguments attempting to explain why generating units providing System Support Resource ("SSR") service, or Reliability Must-Run ("RMR") service, the equivalent of MISO's SSR service in PJM ("SSR/RMR" service), should be permitted to recover embedded costs (investment unrecoverable from the market). NRG, EPSA and Ameren fail to justify any change in the current MISO and PJM rules. On the contrary, critical examination of their arguments shows why the current rules are appropriate for competitive markets.

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[1] 18 CFR § 385.212 & 213 (2013).

I. ANSWER

A. NRG, EPSA and Ameren Raise Arguments that Demonstrate Why Traditional Cost-of-Service Ratemaking Principles Do Not Apply to SSR/RMR Service.

NRG argues (at 2), "generators providing critical reliability services should be allowed to seek recovery of their full cost of providing that service in a manner comparable to investments in transmission service" because "a generating facility prevented from retiring because of transmission-related reliability concerns is effectively being converted to a transmission asset." NRG does not correctly characterize the nature of SSR/RMR units and the service that they provide. RMR units are not transmission assets. RMR units are retiring generation assets. Transmission assets are not competitive investments. Generating assets in MISO and PJM are competitive investments. Transmission assets and generation assets are regulated differently in competitive markets. The assertion that RMR units and transmission lines should be treated comparably for recovery of embedded costs is unsubstantiated and should be rejected.

EPSA argues (at 2), "The accepted meaning of the term "cost of service" in the electric power industry and other regulated industries indisputably includes costs of past investments, and that term cannot be read out of the PJM Tariff. EPSA explains (*Id.*):

> Although not defined in the PJM Tariff, the term "cost of service" has an accepted and well understood meaning in the electric power industry and other regulated industries, and "in the absence of a clear definition of a term in the tariff," the Commission will define a given "term consistent with its common industry usage." [footnote omitted] The common industry usage of the term "cost of service" clearly encompasses costs of past investments and allows for recovery of, and on, such investments. [footnote omitted] Indeed, the Supreme Court has recognized that a rate set "under the 'cost-of-service' method . . . ensures that a seller of electricity recovers its costs plus a rate of return sufficient to attract necessary capital."[footnote omitted]

EPSA's argument fails to account for the language in the tariff and fails to consider the nature of RMR service. The PJM tariff explicitly limits cost of service recovery to the

''entire cost of operating the generating unit until such time as the generating unit is deactivated."[2] Accordingly, it is not necessary to refer to industry norms in order to interpret this provision. Industry norms are, however, useful for interpreting what is meant by "operating costs," a term that cannot be reasonably read to include sunk or embedded costs.

EPSA fails to reflect on the cited rationale for traditional cost-of-service ratemaking, that cost of service of service recovery is necessary in order "to attract necessary capital." There is no need to "attract capital" to provide SSR/RMR service. The assets exist. This quote exposes why EPSA's argument that traditional cost-of-service principles should apply to SSR/RMR service makes no sense.

Traditional cost of service ratemaking as applied to wholesale electricity supply concerned compensation to the owners of assets over a long period of service. It applied to an entirely different regulatory model than the current model that applies competitive principles to investment recovery. SSR/RMR service is a stopgap measure to address situations where a unit must be retained in service for reliability reasons for a limited period of time after the owner chooses to retire the unit. MISO and PJM have adopted rules that recognize the new regulatory paradigm and have crafted the appropriate policies in response. MISO and PJM should not be required to use concepts that no longer apply to the regulatory approach that prevails in their markets.

NRG argues (at 2), "The principle that a generator prevented from retiring is entitled to seek full cost of service recovery is settled law." NRG has not shown that any of the precedent is relevant to compensation for RMR service in PJM. The PJM market rules, which were developed by stakeholders and approved by the Commission, govern the compensation for RMR service provided in PJM. This case shows that similar rules apply

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[2] OATT § 119.

for similar reasons in the Midwest Independent System Operator, Inc. The MISO and PJM tariff rules are settled. What remains unsettled is whether participants ignoring those rules will continue to be rewarded in proceedings that are not resolved on the merits.

Ameren responds to two arguments that the Market Monitor does not make. First, Ameren denies (at 7–8) that it is trying to "'leverage' its SSR status," explaining that MISO requested it to provide SSR services. No one claims the Ameren sought SSR status to obtain market power. A participant can obtain market power without seeking it. It is not improper to possess market power; it is improper to exercise it. Attempting to recover the lost value of market investments through SSR could constitute an exercise of market power, but this will not happen unless Ameren overturns MISO's current market rules that prevent the exercise of market power through SSR status.

Second, Ameren states (at 8–9): "[M]arket principles do not apply to a generator in SSR status. If they did, compensation would be set at the value of lost load, which almost certainly would be higher than Ameren's proposed cost of service rate." Market based compensation would mean receiving LMP but only when the unit produces energy. MISO's and PJM's SSR/RMR tariffs provide for compensation in addition to such market compensation, even if the unit does not operate. No one argues that Ameren should be compensated for SSR services solely through the market. For one thing, the SSR unit has market power, as illustrated by Ameren's statement about the extraordinary pricing power that an SSR unit has. The solution is to compensate SSR/RMR units for their going forward costs, just as the PJM and MISO rules provide.

B. Neither the MISO nor PJM Tariffs Allow Inclusion of Embedded Costs in the Recovery of the Costs for Providing SSR/RMR Service.

EPSA claims that the Market Monitor (and, by implication, PJM), misreads the tariff:

> In relevant part, Section 119 of the PJM Tariff provides that "a Generation Owner with a generating unit proposed for Deactivation that continues operating beyond its proposed Deactivation Date may file with the Commission a ***cost of service rate*** to recover the entire cost of operating the generating unit until such time as the generating unit is deactivated . . . ."[footnote

> omitted] Tellingly, the PJM IMM omits the highlighted language when quoting from this section [emphasis in original.

EPSA simply ignores the limiting language that follows the reference to "cost of service." That limiting language is the point of the rule. PJM market rules are not needed to authorize general filings for non market cost of service rates. Section 119 authorizes the kind of "cost of service" rate appropriate for RMR service.

EPSA also explains that section 119 of the PJM tariff has no purpose because operating costs can be collected under the formula rate at sections 114–115. EPSA overlooks that section 119 is necessary, among other things, if the level of *new* investment to provide RMR service going forward exceeds $2,000,000 because the formula caps new investment at that level.[3]

The language included in the MISO tariff that applies in this proceeding is much simpler than the more technical phrasing used in the PJM market rules. EPSA has little to argue about how MISO and the MISO Independent Market Monitor apply the language in the MISO tariff in this proceeding, which simply states, "The SSR Agreement will provide only for going forward costs."[4] PJM and its stakeholders have attempted to provide a formula rate and to codify the principles of compensation for RMR service in order to consistently compensate suppliers of RMR service, to avoid unnecessary litigation and streamline the administrative process and to protect customers from market power and preserve for customers the benefits of competitive markets. To date that approach has not worked as intended.

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[3] OATT § 115.

[4] MISO Tariff § 38.2.7.h.ii.

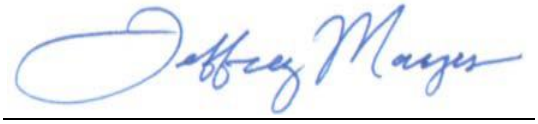
II. MOTION FOR LEAVE TO ANSWER

The Commission's Rules of Practice and Procedure, 18 CFR § 385.213(a)(2), do not permit answers to answers or protests unless otherwise ordered by the decisional authority. The Commission has made exceptions, however, where an answer clarifies the issues or assists in creating a complete record.[5] In this answer, the Market Monitor provides the Commission with information useful to the Commission's decision-making process and which provides a more complete record. Accordingly, the Market Monitor respectfully requests that this answer be permitted.

III. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to this pleading as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,



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[5] *See, e.g.*, *N.Y. Indep. Sys. Operator, Inc.*, 121 FERC ¶61,112 at P 4 (2007) (answer to protest accepted because it provided information that assisted the Commission in its decision-making process); *PJM Interconnection, L.L.C.*, 119 FERC ¶61,318 at P 36 (2007) (accepted answer to answer that "provided information that assisted … decision-making process"); *California Independent System Operator Corporation*, 110 FERC ¶ 61,007 (2005) (answer to answer permitted to assist Commission in decision-making process); *New Power Company v. PJM Interconnection, L.L.C.*, 98 FERC ¶ 61,208 (2002) (answer accepted to provide new factual and legal material to assist the Commission in decision-making process).

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Dated: September 23, 2013

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 23rd day of September, 2013.

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