

Staff Response to MOPSC Questions, File No. EO-2011-0128

The Commission will direct all the parties to provide written answers to the following questions:

1. Can Missouri's Electric Utility Resource Planning Process currently defined in 4 CSR 240-20.010 through 20.080 be preserved if MISO's Resource Adequacy Enhancements Proposal is implemented? If the answer requires qualification, please state them.

Staff answer: It depends. It may be that the Resource Adequacy proposal adds another complication to the resource planning process, similar to the Renewable Energy Standard, in that additional congestions costs of an unpredictable nature could be borne by the utility based on the physical location of their resource choices.

The changing nature of the MISO proposal makes an exact answer difficult at best. MISO released version 3 of its Resource Adequacy tariff proposal on Monday June 6th, and plans to release version 4 on June 22, 2011, after receiving stakeholder input. MISO is currently planning to file the tariff at FERC on July 15th.

It is also possible that the Federal Energy Regulatory Commission (FERC) may order revisions through mandated compliance filings that could alter MISO's tariff filing significantly.

With that being said, Staff expects that MISO member utilities can continue to follow the resource planning process delineated in 4 CSR 240-22.010 through 22.080.

However, if a MISO member utility is forced to pay for resources in order to meet the MISO capacity requirement other than those resources the utility has procured (through building generation, purchase power agreements, or demand-side resources, for example), it is possible that the resource planning process analysis done by the MISO member utility would be incomplete under Chapter 22.

For example, 4 CSR 240-22.060(3)(D) requires that for each alternative resource plan developed, the utility is required to list the "type and size of each demand-side resource and supply-side resource addition". This list of demand-side and supply-side resources will be used as an input to 4 CSR 240-22.060(2)(A)1, which requires a calculation of the "present worth of utility revenue requirements" for each alternate resource plan.

The current MISO Resource Adequacy proposal (version 3) may require a charge for future resources used for capacity purposes if the resource is located in a "zone" other than the utility's, such as a generation unit in a neighboring zone or a purchased power agreement originating from a neighboring zone. This "congestion" charge would be based on transfer constraints between the zones. While a utility will be allowed to utilize current resources, including purchased power agreements, from other zones, on a going forward basis, it is possible to be charged for congestion. This could lead to a utility being charged twice for congestion – once for capacity purposes, and then again

for energy purposes, through the congestion charge component of the Locational Marginal Price (LMP).

The potential of this “congestion” charge makes it more likely that a utility will attempt to place all of its resources within its zone in order to avoid any resource adequacy congestion charges, which may limit the range of cost-effective resource options. For example, Ameren Missouri prior to entering into its purchased power agreement (PPA) for wind from Horizon Wind Energy’s Pioneer Prairie Wind farm which is located in Iowa (and thus outside of the proposed Ameren Missouri zone in the current MISO Resource Adequacy proposal), Ameren Missouri issued a request for proposals and evaluated the proposals for cost-effectiveness. If, at the time Ameren Missouri entered into the contract and assuming Ameren Missouri was to use the wind farm for capacity credit, MISO had a “congestion charge” across zones, the cost of the PPA, everything else remaining constant, would have resulted in higher rates for Ameren Missouri’s customers – either because the same PPA would have been more expensive (due to the congestion charges) or Ameren Missouri would have chosen a more expensive option instead.

It is also possible that a MISO member utility could be forced, dependent upon how and if the Independent Market Monitor (IMM) requires utilities to offer its resources into the mandatory auction (most likely related to pricing), to go through the mandatory capacity auction procedure to procure resources in order to meet the capacity requirement. This could result in the utility being unable to “buy back” its own resources (i.e., the utility could be unable to “self schedule” or “opt out”). This could cause the utility’s ratepayers to essentially pay twice for capacity – once for the resources the utility intended to utilize for capacity purposes (through building generation, purchased power agreements, etc.), and then again for the resources bought from the auction process. Although this seems less likely in the current MISO Resource Adequacy proposal, since MISO will not be submitting the current version 3 of the tariff to FERC, it is unknown what will actually be proposed. In addition, the MISO IMM has been advocating for increased authority to affect resources offers and FERC can always order changes to whatever is submitted in the compliance filing.

If the structure of the MISO Resource Adequacy construct requires a Missouri MISO member utility to make payments to either (a) procure capacity in addition to the resources the utility has already acquired and/or built (and ratepayers have already paid for) in preparation to meet the Resource Adequacy requirement or (b) with no congestion hedge available, pay congestion charges based on resources located in a different zone than the utility is in, then the utility’s revenue requirement would increase. If the utility was not able to adequately predict whether the utility would be required to make these payments or not, it would increase the uncertainty of the resource planning process, as the utility would be able to less accurately predict the utility revenue requirement under several alternate resource plans, making it more difficult to determine which plan is “preferred”.

2. Assuming MISO moves to a long-term capacity market (3 to 5 years), what qualifications or prerequisites will MISO place on Load Serving Entities (LSEs) in order for them to be able to fully “self schedule” or “opt out” of Resource Adequacy requirements in the forthcoming MISO Resource Adequacy Enhancements Proposal?

Staff answer: Staff assumes this question is directed at MISO. However, Staff assumes the qualifications or prerequisites required of the utility would be similar to those in a one-year capacity market.

3. Are MISO, Ameren Missouri and the other parties in this proceeding willing to make Ameren Missouri’s continued participation in MISO contingent on Ameren Missouri’s continued participation and compliance with the Missouri Public Service Commission’s Electricity Utility Resource Planning Process or any succeeding rules?

Staff answer: Yes, if doing so serves a purpose, as explained below.

It may be appropriate to develop a “trigger” to reexamine Ameren Missouri’s continued participation in MISO once the Resource Adequacy construct is accepted at FERC (plus motions for rehearing, etc. are considered) and implemented by MISO, in order to determine if the Commission’s resource planning process is made irrelevant by the MISO Resource Adequacy construct. Staff suggests Ameren Missouri be required to continue compliance with the Chapter 22 Electric Utility Resource Planning until the next determination of its MISO status by the Commission.

At that point the Commission could make a determination on the prudence of Ameren Missouri’s continued membership in MISO and / or Ameren Missouri continuing to comply with the resource planning process in its entirety, as the current Chapter 22, in 4 CSR 240-22.080(11)(B), does not allow for a complete waiver of Chapter 22.

4. Would it be appropriate for the Commission to make Ameren Missouri’s participation in MISO expressly contingent on MISO’s willingness to waive any exit fees as a result of the Missouri Public Service Commission making a determination in a Missouri Public Service Commission proceeding that Ameren Missouri’s or any successor’s compliance with the Electric Utility Resource Planning Process of the Missouri Public Service Commission has been abrogated, changed or made irrelevant in any way or for any reason?

Staff answer: Staff reads Question 4 as follows:

4. Would it be appropriate for the Commission to make Ameren Missouri’s participation in MISO expressly contingent on MISO’s willingness to waive any exit fees as a result of the Missouri Public Service Commission making a determination in a Missouri Public Service Commission proceeding that Ameren Missouri’s or any successor’s compliance with

the Electric Utility Resource Planning Process of the Missouri Public Service Commission has been abrogated, changed or made irrelevant in any way or for any reason?

Under this reading, Staff believes it would be appropriate in some instances, and not appropriate in other instances. Under the current version of the proposed MISO Resource Adequacy construct, it seems very likely that the current resource planning process will be “changed” in some manner, hypothetically even a beneficial one. As the proposed construct is scheduled to be revised at least once more by MISO before being filed at FERC, Staff is hesitant to recommend the contingency solely on a change to the resource planning process, unless the change is a significantly substantive change.

However, it would be appropriate to make Ameren Missouri’s continued participation contingent on MISO’s willingness to waive any exit fees in the “abrogated” and “made irrelevant” instances listed above.

5. Will Ameren Missouri and MISO guarantee that Ameren Missouri’s ratepayers and other Load Serving Entities (LSEs) located inside the Ameren Missouri transmission footprint will be held harmless if LSEs in MISO are not able to fully “self schedule” or “opt out” in order to meet their Resource Adequacy requirements in the forthcoming MISO Resource Adequacy Enhancements Proposal? See Attachment #1.

Staff answer: This question is not directed at Staff.

6. If Ameren Missouri and MISO cannot make the foregoing guarantee, would it be appropriate for the Commission to make its approval of Ameren Missouri’s continued participation in MISO contingent on MISO’s willingness to waive exit fees if Ameren Missouri loses the ability to self-schedule and opt out of the capacity market?

Staff answer: Staff sees a distinction in Questions 5 and 6 between being able to “*fully* self schedule or opt out” (Question 5) and “self-schedule and opt out” (Question 6). If Ameren Missouri loses any or all ability to fully self schedule and opt out, and the impact is significant, Staff believes the contingency regarding getting the MISO exit fees waived is appropriate for Commission approval of Ameren Missouri remaining in MISO.

7. When MISO determines that new transmission needs to be built in Ameren Missouri’s territory (such as the multi-value projects or MVPs), who has the right of first refusal to build that project? Would Ameren Transmission Company (ATC) have any right to construct transmission projects in Missouri “but for” Ameren Missouri’s membership in MISO?

Staff answer: For transmission projects in Appendix A and located in the Transmission Owner’s zone, generally, the incumbent transmission owner of a zone in MISO has the right to build such projects. MISO’s website describes Appendix A projects as those that

have “been or are expected to be approved by the MISO Board of Directors, requiring Transmission Owners to make a good-faith effort at completing them”¹.

Utilities that are Load Serving Entities (LSEs) have an obligation to serve their customers; there is also an obligation to see that necessary transmission projects be constructed for the benefit of the utility in order to serve their customers.

Staff has seen no changes to the MISO Tariff from the MVP tariff filing that would alter either the host transmission owner’s right or the LSE’s obligation to effectively serve the customer.

ATC would have to apply to be an incumbent Transmission Owner in MISO in order to have any right to construct projects. As Ameren Missouri is the incumbent Transmission Owner in the Ameren Missouri zone, Staff is aware of no right Ameren Transmission Company would have to build transmission projects in the Ameren Missouri zone absent some transfer of rights from Ameren Missouri. It is possible to argue that such a transfer of a right to build a transmission project is governed by Section 393.190.1 RSMo, and therefore Ameren Missouri needs Commission authorization to sell, assign, lease, transfer, mortgage, or otherwise dispose or encumber, or to merge or consolidate.

8. What criteria, if any, does Ameren Missouri use to determine whether or not it will build a transmission project itself or allow ATC to construct it? Please describe and provide the statutory/regulatory support for Ameren Missouri’s authority to transfer or waive its right to construct MISO transmission projects and then allow ATC construct those projects. Where Ameren Missouri either implicitly or explicitly consents to ATC constructing a transmission project in Missouri, do the Missouri Public Service Commission’s affiliate transaction rules found in 4 CSR 240-20.15 apply? How can Ameren Missouri and MISO guarantee that Missouri consumers are best served by allowing ATC to construct the projects in Missouri and not bidding the projects out?

Staff response: The first two sentences of this question appear to be directed at Ameren Missouri.

Staff is aware of previous situations regarding host Transmission Owners in MISO planning to transfer projects to their affiliates to be built, most notably the four “Great Rivers” projects in the Ameren Illinois zone of MISO, for which Ameren affiliates, including Ameren Transmission Company, have recently received transmission incentives.²

At this time, Staff is not aware of explicit statutory or other regulatory support for a potential transfer of projects from Ameren Missouri to Ameren Transmission Company.

¹ See Attachment A

² See Attachment B

Staff believes the Affiliate Transaction Rule, 4 CSR 240-20.015, would apply if ATC built a transmission project that Ameren Missouri originally had the right and/or obligation to build.

Staff would expect that Ameren Missouri would have to prove the cost effectiveness of any entity other than Ameren Missouri building a transmission project in the Ameren Missouri zone of MISO. There is a relationship between what entity constructs a transmission project and the cost of a transmission project. As Ameren Missouri ratepayers will eventually be charged for at least a portion of almost all transmission projects constructed in the Ameren Missouri zone, it would be impossible to say that any transfer of a project away from Ameren Missouri that increased the amount paid by ratepayers for a project, including direct construction costs and FERC approved rate of return, including transmission incentives, would guarantee that Missouri consumers are being best served.

The ownership of any line would also matter, as the profits from the line would flow to the owner based on FERC approved transmission rates. If Ameren Missouri owned a transmission project, revenues related to the transmission project would flow to Ameren Missouri, presumably decreasing the Ameren Missouri revenue requirement. If ATC built the line, profits from the line would flow to Ameren shareholders.

Staff does not presume that (a) a transfer of the right to build a transmission project to ATC is the best “transfer” outcome (other possible transfer recipients may need to be explored), or (b) transferring the right to build a transmission project is always preferred to Ameren Missouri constructing and owning the transmission project.

9. Please describe ATC’s right to use eminent domain in Missouri and provide both statutes and case law in support of your position. Are the parties willing to make Ameren Missouri’s MISO membership contingent on Ameren and MISO agreeing to allow the Commission to approve any transmission projects to be constructed in Ameren Missouri’s service territory prior to their being built? If the answer to the preceding question is no, why not?

Staff response: See Sections 523.010 and 523.262.2 RSMo. Staff would be willing to agree in principle to the above contingency of Commission authorization of transmission projects, with a few additional comments. It may be reasonable to limit specific cases to certain types of transmission projects by voltage and dollar amount of projects.

First, Ameren Missouri currently has “area” certificate(s) from the Commission regarding transmission projects, more or less giving Ameren Missouri the right to build transmission projects in its service territory without obtaining Commission approval. Requiring Commission approval of every transmission project to be built in the Ameren Missouri service territory may require a change in the law or Ameren Missouri’s agreement to not exercise its authority under its area certificates, but to seek Commission approval.

A blanket change in area certificate authority would likely result in a significant number of transmission project cases, based on the number of transmission projects built annually in the Ameren Missouri service territory. It may be reasonable to limit direct Commission review of transmission projects to those of a certain voltage (perhaps 345 kV or greater), dollar amount (perhaps \$50 million or greater), and / or project type (perhaps all economic projects, MVPs, and sponsored projects).

As ATC does not currently have an area certificate to construct transmission projects in Missouri, Staff would expect that the Commission would want any resolution regarding transmission projects to be built in the Ameren Missouri zone of MISO to also address ATC.

Staff is unaware of any specific right ATC would have regarding eminent domain other than assertedly under Sections 523.010 and 523.262.2 RSMo.

16. Are there any other questions the Commission should be asking, but has failed to ask?

Staff Response:

- A. For Ameren Missouri – Will profits from transmission projects constructed by Ameren Transmission Company in the Ameren Missouri service territory affect the Ameren Missouri revenue requirement? If so, how?
- B. For Ameren Missouri – Is ATC required to pay Ameren Missouri for the right to build a transmission project in the Ameren Missouri zone of MISO? If yes, how would Ameren Missouri estimate the value of the right to build a transmission project in the Ameren Missouri service territory? If no, why shouldn't it be?
- C. For Ameren Missouri – Why wouldn't any Ameren affiliate constructing transmission be a public utility under 386.020(43)?
- D. For Ameren Missouri: Does the Commission have access to the books and records of ATC pursuant to 4 CSR 240-20.015(6)(A) and (B)?
- E. For Ameren Missouri: Please explain the process that Ameren Missouri would go through if it was assigned the right and obligation to build the following projects, in terms of deciding whether Ameren Missouri or ATC would build the project: A) a RECB I Project; B) a RECB II project; C) an MVP project.
- F. For Ameren Missouri: A. Does Ameren Missouri have a Cost Allocation Manual that explains how transactions between Ameren Missouri and ATC will be structured and booked? B. Does Ameren Missouri believe that the Missouri Affiliate Transaction Rules apply to payments that Ameren Missouri makes pursuant to tariffs which inure to the benefit of ATC?

- G. For Ameren Missouri: A. Does Ameren Missouri agree that its role in MISO should be to maximize the ratio of benefits to Missouri ratepayers from Ameren Missouri's participation in MISO to the cost to Missouri ratepayers of Ameren Missouri's participation in MISO? B. If not, what is Ameren Missouri's role? C. If so, what does Ameren Missouri do to maximize that ratio? D. In what ways will ATC help maximize that ratio? E. In what ways will it hinder?
- H. What assurance does the Commission have that the operation of ATC in the Ameren Missouri zone of MISO will not lessen the benefits described in the service agreement from Case No. EO-2003-0271?