PROTEST OF THE ELECTRIC POWER SUPPLY ASSOCIATION

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the “Commission”), the Electric Power Supply Association (“EPSA”) hereby submits these comments in response to Midcontinent Independent System Operator, Inc.’s (“MISO” or “the ISO”) proposed revisions to Module D of its Open Access Transmission, Energy, and Operating Reserve Markets Tariff that would remove the Physical Withholding Exemption under Module E-1 of MISO’s Tariff. While MISO claims that its proposed revisions are not intended to create a must offer requirement, EPSA believes that, if adopted, these revisions would operationally do so, and this additional obligation is not necessary or appropriate.

2 The Electric Power Supply Association (EPSA) is the national trade association representing competitive power suppliers in the U.S. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. EPSA seeks to bring the benefits of competition to all power customers. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue. EPSA filed a doc-less intervention in this proceeding on January 7, 2020.
I. COMMENTS

A. MISO’s Proposed Changes Functionally Create A Must Offer Obligation for Energy Only Resources

EPSA and its members have long advocated for capacity market design reform in MISO. Rather than a mandatory forward capacity market which includes the elements present in the markets of other eastern Regional Transmission Organizations (RTOs) or Independent System Operators (ISOs), MISO utilizes a construct that is voluntary for load serving entities which has, from its inception, been fundamentally flawed and has failed to support deliverable resource adequacy across the region. MISO’s approach all but guarantees insufficient revenues and weak signals for resources that depend on them. Now, in the instant filing, MISO and the Independent Market Monitor (“the IMM”) seek to triage the RTO’s broken capacity construct by requiring non-Planning Resources to be prepared to run whether or not it is economically reasonable for them to do so on a practical basis. MISO and the IMM propose this change even when MISO’s own preferred procurement process has deemed these resources non-essential as they did not clear and therefore do not have a capacity supply obligation. It is in fact the capacity obligation and the capacity payment that confer a must offer obligation on a resource. Without that obligation and

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associated payment there are not grounds to subject resources to penalties, which this proposal does.

In addition, the instant filing attempts to resolve a concern – congestion on the system – which is a MISO dispatch issue, not a withholding or mitigation issue. In his affidavit, Dr. Patton points to several events that either created or exacerbated congestion on MISO’s system. However, as long as the resource in question follows dispatch – either MISO’s, if applicable, or the external Balancing Area that it is financially and operationally committed to serve – there is no withholding issue present. If MISO wishes to remedy these issues, it should examine its dispatch process.

MISO’s proposed changes also run counter to the Commission’s own precedent. The 2003 FERC Order first accepting MISO’s Module D had clear language that required MISO to exempt non-capacity resources from physical withholding penalties – “imposition of economic withholding mitigation and penalties for physical withholding constitutes a must offer obligation without a corresponding payment for capacity resources.” In an effort to circumvent this requirement, MISO and the IMM claim they are not attempting to create a must offer obligation and that the information provided in the new Section 64.1.1.h is intended to provide Market Participants with examples of the economic considerations that could excuse them from physical withholding mitigation or sanctions in situations where their resource could otherwise have market power for binding constraints. However, operationally, these changes would create a proxy for just such a requirement as non-Planning Resources would have to be

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4 Affidavit of Dr. David B. Patton at PPs. 32-34.
prepared to run at almost any time. It is simply neither reasonable nor feasible to assume that such a resource would undertake the “excused economic exemption” process with the IMM each time necessary. This subjective process to determine the sufficiency of excused economic considerations could result in uneconomic operations, unrecoverable costs (e.g., labor costs) incurred to be prepared to run, or the payment of penalties. This regime may in fact impair the overall economic viability of these resources. Non-Planning Resources often run for only a select few weeks or even few days a year. Accordingly, the owners of these resources make decisions on staffing, operations and maintenance, and other costs or obligations based on that operational profile. Placing a must offer obligation on non-Planning Resources would impose additional costs and constraints on units that may not be reasonable for them to assume.

B. MISO’s Proposed Changes Constitute an Overly Broad Interpretation of Order 861

In a further effort to circumvent the express requirement of the 2003 Order to exempt non-capacity resources from physical withholding penalties, MISO and the IMM rely on an overly broad interpretation of FERC Order No. 861 to support these tariff changes. Order No. 861 was issued by the Commission to institute a reasonable and effective process for entities to attain or retain market-based rate authority while relieving market participants of the unnecessary burden of filing indicative screens. Order No. 861 was not issued in order to strengthen RTO/ISO market monitoring and mitigation. In fact, the Commission rejected a call in that docket to initiate a formal

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review\(^7\) of the effectiveness of RTO/ISO monitoring and mitigation practices concurrent to issuance of the Order noting that the Commission had previously accepted each RTO/ISO market monitoring and mitigation provisions as just and reasonable.\(^8\) Based on this decision the Commission should not accept MISO’s invitation in the instant matter to rely on Order No. 861 to justify the mitigation revisions that MISO proposes.

An additional concern is that MISO’s broad interpretation of Order No. 861 may create a precedent for calls to modify the physical withholding or other mitigation rules and practices of other markets with Commission-approved mitigation rules governing their capacity markets. MISO’s attempt to address failings in its market should not impact more functional markets or create unnecessary uncertainty around those rules.

C. Should the Commission Accept MISO’s Proposed Tariff, MISO and the IMM Should be Directed to Create an Ex-Ante Determination Process

If the Commission rejects EPSA’s arguments and is inclined to accept MISO’s proposed tariff, the Commission should require MISO and the IMM to implement a process in which a resource can get an ex-ante determination from the IMM for use of the provisions under proposed tariff Section 64.1.1(h)(ii). This provision provides a list of costs that could be used by a market participant to show that the costs for making a resource available to operate exceed the resource’s expected net revenues, and it will not be deemed to have engaged in physical withholding. If a resource is subject to an after-the-fact debate between what costs are considered valid and what qualifies for the

\(^7\) “Comments of the Electricity Consumers Resource Council (ELCON),” Docket No. RM19-2-000, (filed Mar 18, 2019), at p. 10. See also Order No. 861 at P. 65, where the Commission held: “We disagree with ELCON that it is necessary to initiate a formal review of the effectiveness of RTO/ISO monitoring and mitigation practices concurrent with this final rule. The Commission has previously accepted each RTO/ISO’s market monitoring mitigation provisions as just and reasonable.”

\(^8\) Order No. 861 at P 66.
exception in Section 64.1.1(h)(ii), in practice resources will err on the side of offering the unit rather than potentially facing the application of a significant penalty should the IMM not agree with their cost classifications. The Commission should require MISO and the IMM to provide a written explanation of its determination to the market participant submitting a request under Section 64.1.1(h)(ii) within a specified time period.

II. Conclusion

For the foregoing reasons, EPSA respectfully requests that the Commission reject MISO’s proposed tariff revision as it creates an inappropriate must offer requirement for energy-only resources in that market. In the alternative, should the Commission approve MISO’s proposed tariff, it should require MISO and the IMM to implement a process in which a resource can get an ex-ante determination from the IMM for use of the provisions under proposed tariff Section 64.1.1(h)(ii).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the comments via email upon each person designated on the official service list compiled by the Secretary in this proceeding.


Bill Zuretti

Bill Zuretti, Director, Regulatory Affairs, and Counsel