

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

Illinois Industrial Energy Consumers	)	Docket No. EL15-82-000
	)	
Complainant,	)	
v.	)	
	)	
Midcontinent Independent	)	
System Operator, Inc.	)	
	)	
Respondent.	)	

**PROTEST OF THE ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R. § 385.211 (2014), the Electric Power Supply Association (“EPSA”)<sup>1</sup> hereby protests the Illinois Industrial Energy Consumers’ (“IIEC” or “Complainant”) Complaint and Request for Fast-Track Processing<sup>2</sup> concerning tariff provisions of the Midcontinent Independent System Operator (“MISO”) Planning Reserve Auction (“PRA” or “Auction”), filed pursuant to Section 206 of the Federal Power Act (“FPA Section 206”) and Rule 206 of the Rules of Practice and Procedure,<sup>3</sup> which alleges that the current MISO Open Access Transmission, Energy and

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<sup>1</sup> EPSA is the national trade association representing leading competitive power suppliers, including generators and marketers. Competitive suppliers, which collectively account for 40 percent of the installed generating capacity in the United States, provide reliable and competitively priced electricity from environmentally responsible facilities serving power markets. The comments contained in this filing represent the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue. EPSA has separately filed a motion to intervene in this proceeding. See (doc-less) Motion to Intervene of the Electric Power Supply Association, Docket No. EL15-82-000 (filed July 6, 2015).

<sup>2</sup> *Illinois Industrial Energy Consumers v. Midcontinent Independent System Operator, Inc.*, Complaint and Request for Fast-Track Processing, Docket No. EL15-82-000 (June 2015). [“Complaint”].

<sup>3</sup> 18 C.F.R. Sec §§ 824e, 824v, 825e (2012) [“Rule 206”].

Operating Reserves Market Tariff (“MISO Tariff” or “Tariff”) does not produce just and reasonable results with respect to the Auction. The Complainant requests that the Commission declare that calculations therein regarding the Initial Reference Level and Local Clearing Requirements for the Auction are unjust and unreasonable and direct certain modifications to the MISO Tariff. EPSA requests that the Commission summarily deny the Complaint because it is procedurally deficient for failing to satisfy its evidentiary burden under FPA Section 206. The Complainant does not provide evidence that the MISO Tariff is unjust or unreasonable nor does the Complainant identify any action or inaction that has occurred under the Tariff which “violate[s] applicable statutory standards or regulatory requirements.”<sup>4</sup>

Below, EPSA will address the Complainant’s misplaced critique of the MISO Resource Adequacy Requirement Construct (“RAC” or “Construct”). For one, EPSA will demonstrate that the Complainant seeks to challenge, in isolation, provisions of the MISO Tariff which are just and reasonable: supplier-side mitigation measures and the Local Clearing Requirement (“LCR”). As the MISO Independent Market Monitor (“MISO IMM”)

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<sup>4</sup> 18 C.F.R. Section 385.206(b)(1)(2014). *Interstate Power & Light Co. v. ITC Midwest, LLC*, 127 FERC ¶ 61,043 at P 42 (2009), *on reh’g*, 135 FERC ¶ 61,162 (2011). *See also, e.g., California Wind Energy Assoc. v. California Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,050 at P 37 (2014) (rejecting complaint where “Complainants provide no evidence to support the argument”); *Canales v. Edison Int’l*, 147 FERC ¶ 61,020 at P 29 (2014) (denying complaint that “failed to provide quantifiable evidence that [the respondent]’s rates are unjust and unreasonable”); *Tri-State Generation & Transmission Assoc., Inc. v. Public Serv. Co. of NM*, 143 FERC ¶ 61,226 at P 21 (2013) (finding that a complaint “amount[ed] to a mere allegation of disputed facts that, consistent with Commission precedent, is ‘insufficient to mandate a hearing’” (citations omitted)); *California Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,157 at P 16 (2005) (finding that “Complainants have not carried their burden of proof under section 206” where they “have not supported their allegations”). *Cf. ISO New England Inc.*, 151 FERC ¶ 61,226, at P 22 (2015) (“*ISO-NE III*”) (stating that the Commission was “not persuaded by [protestors]’ allegations that market manipulation affected [the auction results], as the record is devoid of any evidence to that effect”). *See also infra*. n.21.

recently confirmed, “[t]he PRA is subject to Commission-approved market power mitigation measures contained in the MISO Tariff. These measures were in effect for the 2015-2016 auction and were applied appropriately.”<sup>5</sup> (Likewise, the Local Clearing Requirement contested by the Complainant was established in compliance with FERC orders.)

Though this Complaint is narrower in scope than other complaints recently filed pursuant to the 2015-2016 auction, all incorrectly fault some combination of the MISO Tariff and/or market participants' conduct or the conduct of MISO itself.<sup>6</sup> The instant Complaint fails to demonstrate that the MISO Tariff is unjust merely because certain tariff rules happened to be in effect for the PRA which yielded results that included a higher Auction Clearing Price (“ACP”) in Zone 4 for 2015-2016.

Further, EPSA reiterates that the isolated, technical tariff calculation methodologies cited by the Complainant as unjust and unreasonable based on the 2015-2016 Auction Zone 4 results did not alone lead to such prices, and the fact that there were price increases alone does not meet the required burden of proof for an FPA

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<sup>5</sup> *Response of the MISO Independent Market Monitor, Public Citizen, Inc. v. MISO, People of the State of Illinois, by Illinois Att’y Gen. Lisa Madigan v. MISO, Southwestern Electric Coop., Inc. v. MISO, Dynegy, Inc., and Sellers of Capacity into Zone 4 of the 2015-2016 MISO PRA*, Docket Nos. EL15-70-000; EL15-71-000; EL15-72-000 (Consolidation Pending) (2015) [“Zone 4 Complaints”].

<sup>6</sup> *See, e.g., Answer of the Midcontinent Indep. Sys. Operator, Inc., Zone 4 Complaints*, Docket No. EL15-70-000 et seq. at 3 (July 2, 2015) (stating “[t]hat the latest Zone 4 PRA clearing price is higher than the PRA Zone 4 results in prior auctions does not establish that the price is unjust and unreasonable; or that the price was the product of any lack of oversight or administration on MISO's part; or that the price was the product of market manipulation, all as alleged by Complainants. That the price is higher also does not establish that MISO violated any rules concerning the conduct of the Auction, and none of the complaints make such an allegation.”).

Section 206 request. The Complaint relies on a flawed rationale,<sup>7</sup> merely stating that “certain terms and conditions of the MISO Tariff relating to the Auction are no longer just and reasonable in light of the MISO 2015-2016 Auction results for MISO Local Resource Zone 4.”<sup>8</sup> For these reasons, the Complainant’s challenges to the specific MISO Tariff provisions do not satisfy the required evidentiary burden and the Complaint should be denied by the Commission.

In addition to dismissing the Complaint, EPSA urges the Commission to focus on more pressing matters. EPSA remains concerned that since the Commission’s original 2012 order was issued approving the MISO Construct which established the PRAs,<sup>9</sup> pending before the Commission in an extensive proceeding (dating back to 2011) are requests for several needed reforms to the Construct, which have not yet been addressed.<sup>10</sup> As EPSA and many others have cautioned repeatedly in this proceeding and generically, continued reliance on a vertical demand curve creates volatility resulting in steep price differences given small changes in supply and/or demand, as has occurred most recently in Zone 4.<sup>11</sup> Other market reforms proposed in that proceeding are also

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<sup>7</sup> See *Public Citizen, Inc. v. MISO, People of the State of Illinois, by Illinois Att’y Gen. Lisa Madigan v. MISO, Southwestern Electric Coop., Inc. v. MISO, Dynege, Inc., and Sellers of Capacity into Zone 4 of the 2015-2016 MISO PRA*, Docket Nos. EL15-70-000; EL15-71-000; EL15-72-000 (Consolidation Pending) (2015) [“Zone 4 Complaints”].

<sup>8</sup> Complaint, at 2.

<sup>9</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,199 (2012) (the “June 2012 Order”).

<sup>10</sup> See, e.g., *Motion to Intervene Out of Time and Comments of MISO Independent Market Monitor* at 5-9, 12-15, Docket No. ER11-4081-000 (Sept. 16, 2011); *Capacity Suppliers’ Motion to Intervene and Protest*, at 16-52, Docket No. ER11-4081-000 (Sept. 15, 2011); *Motion For Leave to Intervene and Protest of the Electric Power Supply Association*, at 4-15, Docket No. ER11-4081-000 (Sept. 15, 2011).

<sup>11</sup> *Answer to Complaints*, Dynege, Inc., EL15-70-000 et seq. at 4 (July 2, 2015) (“The fact that the clearing price is higher than prior auction outcomes necessarily follows from the decision, proposed by MISO and approved by the Commission, to use a vertical demand curve and a residual capacity market construct.”)

ripe for Commission action, including: implementing buyer-side mitigation rules such as a minimum offer price rule ("MOPR"), a mandatory capacity market,<sup>12</sup> eliminating the flawed "opt-out" provision (the Fixed Resource Adequacy Plan or "FRAP") in the MISO Tariff,<sup>13</sup> effectuating a much longer forward period (at least three years) than the current two-month forward period, and addressing the potential for price separation given market design in MISO auctions run for both restructured and vertically-integrated states. These issues are comprehensively discussed in the Capacity Suppliers Group's pending request for rehearing in Docket No. ER11-4081-001 (inclusive of EPSA at this stage of the proceeding).

To improve the operation of MISO's markets, EPSA urges the Commission to turn its attention to issues raised by competitive power suppliers and other MISO participants to reform the MISO RAC. Accordingly, EPSA requests that in addition to dismissing the Complaint, the Commission expeditiously address the pending rehearing request on the

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That means, and always has meant, that consumers face volatile capacity auction prices for the relatively small portion of MISO load exposed to auction price risk.").

<sup>12</sup> See *Initial Brief*, Capacity Suppliers Group Response to Order Initiating Briefing Procedures, Midcontinent Indep. Transmission Sys. Operator, Inc., 144 FERC ¶ 61,125 (2013), Docket No. ER11-4081-001 at 3 (Oct. 11, 2013) ("A MOPR is one such remedy, but taken alone it will be of little effect if buyers are free to use the capacity market whenever they choose. The first, foundational remedy to mitigate buyer market power and ensure fair, competitive markets is a mandatory capacity market. *Buyers of course still would be able to self-supply or contract bilaterally, but the wholesale capacity market is only fair if both sides – suppliers and buyers – are required to participate.*") (emphasis added); cf. *Request for Rehearing*, Capacity Suppliers Group, Docket No. ER11-4081-001 (July 11, 2012). [Parties to the rehearing include Ameren Energy Marketing, Calpine Corporation, Dynegy Inc., EPSA, Exelon Corporation, FirstEnergy Corp., and NextEra Energy Resource, LLC.].

<sup>13</sup> *Initial Brief*, *id.* at 8 (stating "the Commission correctly rejected MISO's proposed MOPR, but also erroneously rejected *any* buyer market power mitigation in MISO.").

broader Construct and direct MISO to implement the reforms proposed by the Capacity Suppliers Group in Docket No. ER11-4081-001.<sup>14</sup>

## I. Background

The Complaint alleges that the MISO Tariff is unable to produce just and reasonable results with respect to the PRA. Specifically, the Complainant believes that certain terms and conditions including the Tariff calculations regarding the Initial Reference Level, and Local Clearing Requirement, are no longer just and reasonable in light of the MISO 2015-2016 Auction results for MISO Local Resource Zone 4 (“Zone 4”) (Illinois). This Complaint and the pending Zone 4 Complaints base their claims on the fact that the Zone 4 Auction Clearing Price (“ACP”) was \$150.00 MW/Day in 2015-2016 as compared to \$1.05 MW/Day and \$16.75 MW/Day, respectively, for prior auctions in 2013-2014 and 2014-2015. In contrast to the Zone 4 Complaints, the instant Complaint does not allege the exercise of market power or manipulation, and does not call for a retroactive change to the 2015-2016 auction result. Instead, the Complaint seeks prospective relief in the form of isolated changes to the MISO Tariff, which the Complainant believes would render the tariff just and reasonable.

In support of its view that the MISO Tariff is no longer just and reasonable, the Complainant alleges that because the 2015-2016 ACP in Zone 4 was very near the Reference Level, and in light of the fact that Dynegy offered 3,425 MWs in Zone 4 at very near or above the Reference Level, it is no longer just and reasonable for the MISO Tariff to be set at the PJM Daily Capacity Deficiency Rate (“PJM Rate”) for the same planning

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<sup>14</sup> Request for Rehearing, Capacity Suppliers’ Group, Docket No. ER11-4081-001 (July 11, 2012), *supra*. n.17.

year as the MISO Auction. In making this allegation, the Complainant concludes that in light of the ACP being higher for the 2015-2016 auction, the MISO Tariff is no longer just and reasonable with respect to (1) the Initial Reference Level and Conduct Threshold Level, and (2) the Local Clearing Requirement, and the Tariff must be changed on a prospective basis.<sup>15</sup>

Specifically, the Complaint states that the MISO IMM overstated the Reference Level and Conduct Threshold numbers, and that the PJM Rate is also not an appropriate basis to calculate reference levels as to specific facilities. The Complaint posits that as PJM participants do not actually need replacement capacity all 365 days of the year, the PJM Rate is not a legitimate opportunity cost because it does not account for how much capacity is actually needed in PJM in a planning year. The Complaint further argues that opportunity cost is overstated to the extent that lost opportunities in PJM are being accounted for without reducing the estimate to reflect short-term firm transferability to PJM. The Complaint therefore requests that the reference level be set by the Commission at zero, that opportunity costs be excluded entirely from facility-specific reference level determinations, and that generation resources should have their conduct threshold levels automatically set at 10% of the cost of new entry (“CONE”).

Second, the Complaint argues that MISO also overstates the LCR for Zone 4 because the Tariff does not appropriately reduce the LCR to reflect benefits to resources originating within the zone (a theory of "counterflow benefits") that are committed/sold on a firm basis outside MISO. Under this non-standard, theoretical use of counterflow, for which there has been no technical data or evidence provided by the Complainant, it is

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<sup>15</sup> Complaint, at 11.

posited that capacity sold into neighboring regions creates physical benefits that should be accounted for in the MISO Tariff toward meeting the MISO zone's LCR. The Complainant requests that the Commission modify MISO's Tariff prospectively to subtract from a zonal LCR all firm capacity sales made from resources within that zone to a neighboring capacity market such as PJM.

As discussed below, the arguments posed in the Complaint do not satisfy the burden of proof under FPA Section 206, as the Complainant does not demonstrate how the existing MISO Tariff provisions are unjust and unreasonable. In fact, the Complainant's proposed changes could actually render the tariff unjust and unreasonable by preventing suppliers from being paid a just and reasonable rate.

## **II. Protest/Answer**

### **A. The Complaint Fails To State A Claim That The MISO Tariff Is Unjust, Unreasonable, Or Unduly Discriminatory**

Section 206(b) of the FPA requires that the Complainant bear the "burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential..." and the Commission has summarily dismissed complaints that do not meet this burden.<sup>16</sup> Here, the Complainant has not met its burden to show that the Tariff is not just and reasonable. Rather, without any substantiation, the Complainant reverses the required showing by concluding that (a)

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<sup>16</sup> 16 U.S.C. § 824e(b) (2012). *See also, e.g., Blumenthal v. FERC*, 552 F.3d 875, 881 (D.C. Cir. 2009) (stating that the complainant "bore 'the burden of proof to show that [the] rate, charge, classification, rule, regulation, practice, or contract is unjust [or] unreasonable'" (alterations in original) (citations omitted)); *Michigan Elec. Transmission Co., LLC*, 116 FERC ¶ 61,164 at P 12 (2006) (complainant "bear[s] the burden under section 206 of the FPA to show that the existing [rate] is unjust and unreasonable").

because there were price increases in the most recent auction, then (b) the MISO Tariff itself should be dramatically revised to contain such price increases. Not only does the Complainant fail to substantiate that either the price results or the enabling MISO Tariff provisions are *no longer* just and reasonable, it provides no other evidence supporting its view that its proposed revisions to the Tariff are necessary to, or would, actually create just and reasonable prices or mitigate the broader market forces that led to steep price increases in the first place.

Additionally, the MISO IMM recently highlighted the reality of the MISO capacity market, stating “[r]ather than supporting a finding that the Zone 4 price is unreasonably high, we believe that the price increase is actually a result of the fact that the historic prices and prices in other zones are unreasonably low. The current representation of demand in the MISO capacity market (*i.e.*, the vertical demand curve) generally results in capacity prices close to zero, substantially less than the true value of the reliability value provided by the capacity.”<sup>17</sup> Therefore, the Complaint is flawed in proposing isolated “quick-fixes” to the MISO Tariff to achieve purportedly lower prices, without making any showing that the Tariff itself is not just and reasonable. In fact, the Complaint’s proposed tariff changes could actually render the Tariff unjust and unreasonable by precluding suppliers from being compensated a just and reasonable rate. For these reasons and as further discussed below, the Commission should summarily deny the Complaint.

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<sup>17</sup> *Response of the Independent Market Monitor, Zone 4 Complaints, supra*. n.5. at 7.

1. The Complainant's Argument to Set the Initial Reference Level at Zero is Meritless, and the Commission Should Affirm that Opportunity Costs of Participating in Neighboring Capacity Market Auctions are Appropriately Included in MISO Reference Level Calculations

The Complaint alleges that the PJM Rate is not a legitimate lost opportunity cost, and that it is no longer just and reasonable to calculate the Initial Reference Level for the MISO Auction based on that rate.<sup>18</sup> The Complaint asserts that unless it can be reasonably demonstrated that PJM Participants are in need of a specific amount of replacement capacity for the entire Planning Year, and there is sufficient short-term firm transmission service to PJM throughout that Planning Year to deliver that amount, the PJM Rate is not an accurate lost opportunity cost for resources that participate in the MISO auction. The Commission should reject the Complaint's misguided theory that such opportunity costs are not relevant to, or should be eliminated from, the Reference Level calculation.

Adopting the Complaint's reasoning, and its related request that FERC set the reference level in MISO at zero, would completely turn on its head important principles in the MISO Tariff that the Commission has approved and which are designed to reflect a generation resource's marginal costs in the competitive market, including its legitimate risk and opportunity costs associated with exporting capacity to neighboring areas. Revising the MISO Tariff to eliminate this calculus, as suggested in the Complaint, would strip the reference level calculation of its utility as a metric for preventing market manipulation and would obstruct MISO's ability to rationally assess various competing

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<sup>18</sup> Complaint, at 14 – 15.

opportunities for capacity, the most significant of which is its use at the time of the auction as replacement capacity in PJM.<sup>19</sup>

Opportunity pricing based on generator sales into a neighboring RTO is a core principle of RTO tariff design that should not be compromised with respect to MISO or any other capacity market's design. As discussed in the Commission's proceeding addressing ISO/RTO centralized capacity market issues dating back to Fall 2013,<sup>20</sup> opportunity costs are appropriately calculated in reference to the interaction of neighboring RTOs and the impact of their respective capacity auctions. In this case, PJM's Reliability Pricing Model ("RPM") governs its Base Residual Auctions ("BRAs") and Incremental Auctions, wherein a BRA is conducted to allow for the procurement of resource commitments three years forward in the relevant Delivery Year. By contrast, the MISO Zone 4 resource auction is a two month-ahead capacity auction that relies on both the incremental and base residual auction opportunities provided to MISO generation resources physically located in the region. While the capacity construct differences between these two markets may create or exacerbate seams concerns which EPSCA believes should be addressed, far greater concerns would be created under the Complaint's theory – which would completely deny the interaction and interdependence between the two regions. As the Commission has attested,<sup>21</sup> supported by system

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<sup>19</sup> See also Protest of the Electric Power Supply Ass'n to Complaints, Docket No. EL15-70-000 et seq. (July 2, 2015) at 8 – 9, n.11. ["Protest"].

<sup>20</sup> See Transcript, FERC Technical Conference, Centralized Capacity Markets in RTOs and ISOs. Docket No. AD13-7-000 (September 25, 2013).

<sup>21</sup> See *Midcontinent Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,054 at P 127 (2009), *order on reh'g and compliance*, 137 FERC ¶ 61,213 (2011) (directing MISO to include Section 64.1.4(e) in its Tariff to allow PRA clearing prices to be bounded based on the opportunity costs of selling capacity into other capacity markets, such as PJM).

operators and market participants, the ability to import and export capacity and power among neighboring markets is a key component of efficient, reliable markets.

The Commission has already opined in other cases that opportunity cost calculations should incorporate base residual auction prices *even when* temporal mismatches between capacity markets might incorrectly encourage overreliance on incremental auction prices. For example, when faced with a temporal mismatch between PJM and NYISO, the Commission concluded in that proceeding that because “existing and planned resources that clear in the [PJM] BRA are committed to provide capacity in the delivery year and receive the market clearing *BRA price* in the delivery year, *not the price* determined in an incremental auction” and “most capacity resources are committed in the BRA...the BRA price reasonably reflects the opportunity cost of importing capacity from PJM into NYISO.” (emphasis added).<sup>22</sup>

The MISO Tariff also contains appropriate measures for IMM review and approval of a Facility Specific Reference Level for all offers that would exceed 10% of CONE. If, as suggested by the Complainant, capacity owners were to submit offers above a Reference Level of zero or 10% of CONE (which is approximately \$25 MW/Day), then under the terms of the MISO Tariff Section 64.1.4(f) this would require establishment of a Facility Specific Reference Level for each and every offer exceeding 10% of CONE. This would create an ongoing, unduly cumbersome administrative burden for the MISO IMM, one which would have to be repeated every year because the IMM would have to address updated going-forward cost calculations on an annual basis. The imposition of

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<sup>22</sup> *Id.* at 9, n.24 (citing *Hudson Transmission Partners, LLC v. New York Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,156 at 102).

a substantial administrative burden on the IMM to evaluate cost data for a significant amount of capacity would be all the more difficult because confirming cost calculations is outside of the IMM's primary function of monitoring the MISO markets. For example, as a practical matter, according to MISO's detailed report of offers submitted in the 2015-2016 PRA, there were over 40 offers representing over 6,300 MW of capacity with prices at \$25/MW-day and higher.<sup>23</sup> If the Complainant's proposed revision had been in effect for the 2015-2016 PRA, all 6,300 MW of this capacity would have required a Facility-Specific Reference Level analysis by the IMM of their going-forward cost calculations in order to be offered at that level.

To the extent that the PJM Rate and additional factors informing the Initial Reference Level in MISO should be revisited, MISO should do so using a principled approach under which sellers' offers may be consistent with competitive offers, market prices should be reflective of competitive offer levels, and reference pricing reflective of this competition should appropriately incorporate the opportunity costs of seller participation in neighboring capacity markets. For these reasons, the Commission should reject the Complainant's arguments with respect to the Reference Level calculations.

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<sup>23</sup> See *MISO, 2015-16 PRA Detailed Report (May 14, 2015)*, at <https://www.misoenergy.org/Library/Pages/ManagedFileSet.aspx?SetId=2054>.

2. The Complainant's Arguments to Revise the Local Clearing Requirement Would Inappropriately Double-Count Capacity Commitments, and Distract from Addressing Broader Reforms to Improve the MISO Resource Adequacy Construct

The Complaint alleges that the MISO Local Clearing Requirement calculation is overstated because it does not account for a non-standard, theoretical use of counterflow benefits to resources within the MISO Zone that allegedly result from the firm sales of capacity originating in the zone which are sold outside that zone. This use of the counterflow benefits concept is outside of accepted industry practice and is presented in the Complaint without any factual or technical substantiation or study-based data to support it.

The Complainant's arguments are without merit for other practical reasons as well. On principle, it is patently incorrect to count within a zone the capacity that has already been economically and physically committed to an RTO or region external to that MISO zone. To the extent power capacity has been committed and sold to customers in a region external to MISO, those MWs should be accredited to the ultimate consumer of power outside MISO. Otherwise, the capacity would be improperly double-counted toward the zone in which it originated, even though that power capacity has no firm physical or financial commitment to serve such zone. This type of double-counting would most certainly result in reliability issues if a PJM-dedicated resource that was located in MISO was simultaneously needed in both PJM and MISO.<sup>24</sup> Further, adopting the

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<sup>24</sup> *PJM Interconnection*, 151 FERC ¶ 61,208, at P 96-97 (discussing the extensive requirements that external generation must satisfy to demonstrate that it is sufficiently dedicated to PJM before it may qualify as a PJM capacity resource).

Complainant's proposal would cause the local clearing requirement to be artificially reduced and upend the PRA provisions, which require that capacity physically located within a zone be compensated in an amount equal to or above the clearing requirement for that zone.

In addition, the Complainant's proposal to modify how the MISO Local Clearing Requirement is calculated and applied across all MISO zones is drastically premature as it is based on a recommendation that has just been offered for consideration to MISO and its stakeholders. The hasty adoption of such a proposal, which would count externally committed resources toward MISO's zonal requirement, could also have serious consequences such as artificial suppression of zonal price signals. As with any proposal, this theoretical approach to modify the LCR calculation should be discussed and vetted broadly and transparently through the MISO stakeholder process as a first step. The LCR calculation is a critical underpinning of the zonal capacity pricing model, ensuring that local capacity zones send the proper locational price signals. By no means should this critical component of price discovery in the capacity markets be addressed through the Complainant's request or any other narrowly-tailored proceeding that would preclude MISO stakeholders from fully debating and giving thoughtful consideration to the proposal, how that proposal functions within the MISO market, and how it interacts with or affects more urgent, broad reforms needed and being considered for the energy and capacity markets.

As a whole, entertaining this Complaint would undermine the core principles for accurately and competitively pricing capacity in the restructured portions of MISO. The Complaint's proposed approaches for revising the MISO Tariff would also compromise

the ability of the MISO resource adequacy market, as well as capacity markets in PJM to which resources originating in MISO have been committed, to convey appropriate and accurate price signals that are necessary to retain existing resources and encourage new entry in MISO. Accordingly, EPSA respectfully requests that the Commission dismiss the Complainant's arguments with respect to the MISO LCR.

3. FERC Should Respond to the Pending Request for Rehearing of the Capacity Suppliers Group and Implement the Recommended Reforms to the MISO Resource Adequacy Construct

EPSA reiterates that the MISO Zone 4 price result associated with the recent Auction is the natural consequence of current market fundamentals, though there are reforms that should be undertaken to allow MISO to better manage price volatility. EPSA therefore requests that the Commission address these market reforms and improvements by taking action in the extensive open proceeding addressing the overall RAC mechanism and pending rehearing request from the Capacity Suppliers Group, as discussed further below.

EPSA has explained in several proceedings related to the Commission's June 2012 Order that price volatility is a direct and foreseeable consequence of using a vertical demand curve instead of a downward-sloping demand curve as is utilized in the other capacity markets. The 2015-2016 PRA results, which the Complainant attributes without merit to isolated provisions in the MISO Tariff, were not unexpected and reflect the current market construct related to available power supply in a specific location. The extent of the price difference year-over-year in Zone 4 was in fact foreseeable, based on the current use of a vertical demand curve. This and other broad capacity market design issues are

the subject of a vast record developed before FERC with input from stakeholders of every sort. In such proceedings, EPSA, its members, MISO stakeholders, and the MISO IMM have all urged the Commission to direct MISO to implement certain necessary reforms.<sup>25</sup>

Given the price volatility experienced in the 2015-2016 auction, it is an opportune and critical time for the Commission to address the pending rehearing request and direct MISO to implement needed reforms which are detailed in numerous rounds of pleadings specifically by EPSA and also by the Capacity Suppliers Group, in Docket Nos. ER11-4081-000 and ER11-4081-001. These reforms should be implemented on a prospective basis, including those identified herein: adopting a downward-sloping demand curve, revising MISO Tariff calculations to reflect a longer forward commitment period of three or more years, setting effective buyer-side mitigation rules, addressing the lack of MOPR and the flawed provision regarding load “opt-out”, addressing the voluntary nature of the capacity market, and reviewing the price separation issues resulting from MISO’s administration of markets in vertically-integrated and restructured states. By contrast, the narrow and unsubstantiated changes proposed by the Complainant would over-mitigate the MISO capacity market, eliminate the opportunity to establish meaningful locational price signals, and only exacerbate the MISO Construct’s current problems.

In various pleadings prior to the June 2012 Order, a joint Request for Rehearing of that order, and a subsequent round of Initial and Reply Briefs by EPSA and the Capacity Suppliers Group, a substantial record is before the Commission urging the development of a mandatory, centralized capacity market in MISO and contending that

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<sup>25</sup> See, e.g., *Answer to Complaints*, Dynegy, Inc. at 4; *Protest to Complaints*, EPSA, at 6-11; *Comments of the Independent Market Monitor to Complaints*, at 7, Zone 4 Complaints, Docket Nos. EL15-70-000 et seq. (2015).

the Commission erred in its June 2012 Order by perpetuating an ineffective voluntary capacity market.<sup>26</sup> Among the recommendations made therein to improve the current RAC are the implementation of a longer forward commitment period and full mitigation of buyer-side market power by including a MOPR provision governing offers into the capacity auction.<sup>27</sup> To ensure there is an effective MOPR, the Capacity Suppliers Group further contended that the Commission should eliminate MISO's opt-out provision because it is a flawed self-supply approach which allows buyers to circumvent buyer market power mitigation, as load can designate only a portion of its capacity toward the FRAP, and further toggle in and out of the FRAP from year to year.<sup>28</sup> Along with implementing a mandatory market construct for buyers and suppliers, addressing the opt-out provision was discussed as a critical prerequisite to implementing a MOPR.<sup>29</sup>

Many of these recommendations have been extensively discussed and supported in various proceedings by the MISO IMM as well.<sup>30</sup> For example, the IMM has argued repeatedly for stronger buyer-side market power mitigation, noting that the predominance of vertically-integrated utilities in MISO does not change the fact that as buyers of

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<sup>26</sup> See, e.g. *Capacity Suppliers' Motion for Leave to Answer and Answer*, Midcontinent Indep. Transmission System Operator, Inc., Docket No. ER11-4081-000 (2011).

<sup>27</sup> See *Capacity Suppliers' Request for Rehearing*, Midcontinent Indep. Transmission System Operator, Inc., Docket No. ER11-4081-001 (2012).

<sup>28</sup> *Supra*, n. 32, at 10-11.

<sup>29</sup> *Id.* at 11 – 12 (“Just as the FRAP can be used to bypass the MOPR, so too can MISO's voluntary capacity market be used by buyers to bypass any MOPR to manipulate capacity prices. Indeed, to ensure a competitive, just and reasonable capacity market in MISO that can effectively mitigate buyer market power, it is essential for the Commission to adopt a mandatory market as in the Eastern RTOs.”).

<sup>30</sup> Request for Rehearing of the MISO Independent Market Monitor, Docket No. ER11-4081-001 (July 11, 2012).

capacity, such entities could be incentivized to exercise market power.<sup>31</sup> The IMM has also noted that the general design of the market using a vertical demand curve has raised significant volatility concerns and uncertainty for market participants.<sup>32</sup>

Most recently, EPSA expounded on the disadvantages of the vertical demand curve design in response to the pending Zone 4 Complaints, citing previous testimony of Dr. Roy Shanker on behalf of EPSA and certain suppliers.<sup>33</sup> As Dr. Shanker stated in his testimony, a vertical demand curve creates steep price fluctuations because supply offers clearing against the curve can only lead to two possible outcomes: either the market will value an additional MW of capacity at zero when the market is slightly long, or when barely short the market will set prices as high as the cap price on the CONE, or the deficiency price. EPSA also highlighted Dr. Shanker's testimony stating that the two-month forward period in MISO is inadequate, providing for an effectively fixed resource requirement and generally exacerbating the effects of the vertical demand curve by creating an undesirable level of supply inelasticity and the sort of extreme price differentials which are at issue in the instant Complaint and in the Zone 4 Complaints.<sup>34</sup> By contrast, in neighboring capacity markets such as PJM and ISO-NE, downward-sloping demand curves, forward commitment periods of three or more years, and a variable resource requirement permit the capacity markets in those regions sufficient lead

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<sup>31</sup> See, e.g. Comments of the MISO IMM, Midcontinent Indep. Transmission System Operator, Inc., Docket No. ER11-4081-000 (2011) at 14.

<sup>32</sup> *Id.* at 7.

<sup>33</sup> See *EPSA Protest*, *supra*. note 13, at 11-12.

<sup>34</sup> *Id.* at 12.

time to develop relatively price-elastic supply and demand, promoting better price stability.

EPSA further discussed in its Protest to the Zone 4 Complaints that given price-inelastic supply and demand, the vertical demand curve also serves to enable buyer-side market power, providing the environment and the ability for net buyers to artificially suppress prices by forcing the market long when in fact the baseline pricing should be higher to accurately reflect actual demand and supply conditions. A vertical demand curve inhibits transparent market-clearing outcomes, exacerbates price volatility, perpetuates artificially-suppressed pricing, and has been well-recognized in other Commission proceedings as inferior to a sloped curve, as in recent proceedings regarding the ISO-NE's adoption of a downward-sloping demand curve.<sup>35</sup> While the Commission has expressed a desire to defer to regional differences on some market design elements,<sup>36</sup> it has become clear that a downward-sloping demand curve is a fundamental and necessary element of a well-functioning capacity or resource adequacy auction. As ISO-NE has implemented this element at the Commission's urging,<sup>37</sup> MISO is now the

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<sup>35</sup> *ISO New England, Inc.*, 147 FERC ¶ 61,173 at P 29 (2014), *on reh'g*, 150 FERC ¶ 61,085 (2015). See also *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,052 at P 30 ("A downward-sloping demand curve would reduce capacity price volatility and increase the stability of the capacity revenue stream over time.")

<sup>36</sup> See *EPSA Protest*, *supra*. n.13 at 13 (stating that "while EPSA understands that the Commission has deliberately refrained from mandating any sort of standard market design, it also shares the view, expressed in a recent Commission order, that this does not mean 'that principles underlying market design in one region are not applicable to another...'" (citing *Consolidated Edison Co. of N.Y., Inc. v. New York Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,139 at P 47 (2015) (citations omitted))).

<sup>37</sup> *ISO New England Inc. and New England Power Pool Participants Committee*, 147 FERC ¶ 61,173 (2014) ["ISO-NE Demand Curve Order"]; see also *ISO New England Inc. and New England Power Pool Participants Committee*, 150 FERC ¶ 61,065 at P. 20 (2015) (stating that "small changes in quantity [using a sloped demand curve] will have a much smaller impact on price when using a downward sloping demand curve than they would using a vertical demand curve"), and *Commission Staff Report*, Centralized Capacity Market Design Elements, Docket No. AD13-7-000 (August 23, 2013) at pp. 6 (discussing that "[c]oncern over volatility in capacity market prices under a vertical demand curve was a key reason that NYISO and PJM chose to move to the downward-sloping demand curve").

only RTO subject to the FERC's authority which employs a vertical demand curve. That same compelling logic which the Commission relied upon for its direction to ISO-NE should equally apply to MISO, and supports the need for direction from FERC to MISO on the development of a downward-sloping demand curve. The Commission should direct MISO to do so in response to the pending request in Docket No. ER11-4081-001.

The Capacity Suppliers Group also emphasized in its filings that along with a vertical demand curve, the MISO RAC does not provide for specific buyer-side market power mitigation rules or protections, the most important of which is arguably the lack of a MOPR, as addressed extensively in Docket ER11-4081 et al. EPSC reiterates here that the sum total of these market design reforms would result in a better-functioning resource adequacy market and yield more efficient, stable capacity market outcomes. Therefore, the Commission should take swift action to respond to the Capacity Suppliers Group's pending request for rehearing in Docket no. ER11-4081-001.



**CERTIFICATE OF SERVICE**

I hereby certify that I have served a copy of these comments upon each person designated on the official service lists compiled by the Secretary in these proceedings.

Dated at Washington, D.C. this 20th day of July, 2015.

\_\_\_\_\_/s/  
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