

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

Coalition of MISO Transmission Customers)	Docket No. EL16-112-000
)	
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”)¹ hereby protests the Complaint and Request for Fast-Track Processing of the Coalition of MISO Transmission Customers (“CMTC”) in the above-captioned proceeding.

In its Complaint, CMTC alleges that during the most recent Midcontinent Independent System Operator, Inc. (“MISO”) Planning Resource Auction (“PRA”), MISO misapplied the provisions of its Open Access Transmission, Energy and Operating Reserves Market Tariff (“MISO Tariff” or “Tariff”), which unduly caused a constraint

¹ 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. EL16-112-000 (filed September 13, 2016).

between MISO South and MISO Midwest to bind sooner than it should have bound and produced unjust and unreasonable results.

EPSA contends that the CMTC's Complaint should be dismissed because the CMTC establishes its alleged claim based solely on the results of the MISO Planning Reserve Auction ("PRA") for 2016-17. The CMTC has not demonstrated any violation or wrongdoing as required under FERC Rule 206 that would support its request to unwind the results of the 2016-17 PRA. Specifically, CMTC has not met its burden in this Complaint to state an allegation of actual wrongdoing, or a contravention or violation of a MISO Tariff provision governing the administration of the PRA. As discussed below, the auction was conducted in compliance with the terms of the MISO Tariff.

Additionally, while CMTC has framed its pleading as members of MISO, there is no identification of the individual CMTC members who might be registered Market Participants in MISO seeking the requested relief. MISO provided several open and transparent stakeholder discussion opportunities since Fall 2015. Given no record of any apparent stakeholder objections from CMTC's individual members, nor a specific record of CMTC opposition prior to the clearing of the 2016-17 PRA, the Complaint conflicts with Commission policies and precedent against harming the settled outcomes and economic interests of the market at large. For these reasons and as discussed below, EPSA respectfully requests that the Commission dismiss this Complaint.

I. Background

CMTC alleges that MISO's failure to properly calculate the transfer capability between MISO South and MISO Midwest led to the capacity constraint from MISO South (Zones 8-10) to bind at 876 MW. The complaint contends that MISO's Sub-Regional

Export Constraint ("SREC") calculation did not reflect the full power transfer limit between those sub-regions of 2,500 MW as is stipulated under the MISO-SPP Settlement ("Settlement Agreement"), such that price separation occurred and in turn produced unjust and unreasonable outcomes (\$2.99/MW Day for Zones 8-10, \$19.72 for Zone 1, and \$72.00/MW Day for Zones 2-7). The complaint contends that the alleged miscalculation of the SREC led to higher zonal clearing prices, and that a correction of that methodology would reduce clearing prices in Zones 2-7 to \$20.00/MWd based on the supply offer information that was provided by the MISO Independent Market Monitor ("IMM"). The Complaint also argues that even if MISO applies a smaller SREC than 2,500 MW, in light of its policy to add in counter-flow benefits and deduct firm transmission service reservations from the SREC, such methodology would still have resulted in total physical transfer capability of 1,082 MW, not 876 MW, between MISO South and MISO Midwest. The Complainant seeks retroactive relief such that the Commission would reset the clearing price at \$20/MWd in Zones 2-7, refund certain capacity payments to customers in light of the revised price, and also take steps to make certain resources whole based on their reliance on higher offer prices in light of their expected compensation for performance. The Complaint further requests prospective relief in light of the allegations that MISO misapplied sub-regional constraint calculations.

The Complaint also alleges that offers comprising the supply curve for the auction show significant "step-jumps" near the end of the curve, which would appear to "exceed any reasonably calculated level of going-forward costs." The CMTC contends that the "IMM is afforded significant discretion, by virtue of vague and ambiguous provisions in the MISO Tariff, to review and calculate individual unit capacity offers" and that the FERC

should undertake its own audit of the IMM's approval of the 2016-17 PRA offers including but not limited to facility-specific reference prices, to ascertain if the IMM's discretion as exercised produced unjust, unreasonable, or unduly discriminatory outcomes. The Complaint seeks fast-track processing and remedial relief prior to the 2017-18 PRA.

II. Protest

Pursuant to Rule 206 of the Commission's regulations, 18 C.F.R. § 385.206(a)-(b), a person filing a complaint seeking Commission action must at a minimum state a claim, which must point to an alleged wrongdoing or a contravention or violation of a rule, statute, law, or other requirement within the jurisdictional purview of the FERC. Rule 206 also requires a complainant to clearly identify the action or inaction which it contends is in violation of an applicable statutory standard or regulatory requirement. EPSA takes issue with the Complaint because the CMTC alleges harm and seeks a remedy based on arguments which rely on the Complainant's policy preferences – not on an alleged violation of the auction rules or applicable protocols – and yet seeks to unwind the auction itself.

EPSA is concerned that granting any portion of the CMTC's Complaint would be tantamount to a disruption of the integrity of the MISO resource adequacy market, and would detract from economic and regulatory certainty which market participants should be able to expect when participating in the competitive markets as approved by the Commission in any region. The grounds for the Complaint and the retroactive refunds requested therein would further obstruct the Commission's well-settled doctrine that the rules of an ISO/RTO are the filed rate for purposes of Section 205, and that clearing

prices which are the result of such rules should not be reset. EPSA thus requests that the Commission dismiss the CMTC's Complaint.

A. Granting the Complaint Would Contravene Commission Policy Supporting Reliable and Stable Capacity Markets and Obstruct Enforcement of the Filed Rate.

The CMTC's requests for retroactive refunds and a re-settlement of market outcomes contravenes sound public policy and Commission precedent protecting the market, its participants, and consumers, from disruptions and economic harm. EPSA contends that economic harm would result to the market at large if the CMTC's Complaint were granted. EPSA requests that the Commission dismiss the Complaint because it attempts to second-guess the results of an auction which was conducted transparently and in accordance with MISO's applicable rules and protocols.

In addition to obstructing enforcement of the filed rate, the retroactive refunds sought by the Complainant are based on the results of the auction and on the exercise of a discretionary policy judgment by MISO, rather than on the basis of a claim alleging an actual violation or event of misconduct that would necessitate an inquiry into the validity of the auction. The absence of a claim in this regard demonstrates that the Complainant has not met its burden to state an allegation as required under Section 206 of the Commission's regulations.

Further, the Commission has established that it is against the interest of the markets, market participants, and the ultimate ratepayer, for individual complainants to seek a pecuniary gain through market-wide re-settlement merely on the premise that it disagrees with the settled results of the auction. The Commission has long made clear that an RTO's rules are the filed rate for purposes of Section 205, and that clearing prices

that are the result of such rules should not be reset. In this case, CMTC does not plead an actual alleged violation of MISO market rules which govern the clearing of the PRA. Therefore, there is no basis for the CMTC to seek a re-settling of zonal clearing prices which were in fact determined in accordance with the filed rate—EPSA contends therefore that these prices must be allowed to stand.

EPSA reiterates that it would be unlawful to reset auction clearing prices where, as here, participants in the auction had no notice that prices determined in accordance with Commission-approved auction rules could be subject to change based on the claims of a singular group of unidentified entities in the CMTC. Moreover, as a matter of policy, the Commission has consistently and properly recognized that it is inappropriate to disturb capacity auction results because “[c]hanging a rate and quantity already determined in accordance with existing tariff provisions on which parties have relied would defeat the purpose of the forward binding commitment, and undo the incentives for new capacity resources.”²

² Maryland PSC, 124 FERC ¶ 61,276, at P 26. See also, e.g., Public Utils. Comm’n of Ca. v. FERC, 894 F.2d 1372, 1383 (D.C. Cir. 1990) (“The [FPA]’s limited provision for refunds reflects a congressional determination that parties in the industry need to be able to rely on the finality of approved rates, and that this interest outweighs the value of being able to correct for decisions that in hindsight may appear unsound.”); Astoria Generating Co. L.P. v. New York Indep. Sys. Operator, Inc., 140 FERC ¶ 61,189 at P 141 (2012) (“Rerunning past auctions would create market uncertainty for market participants and require resolving complex questions We conclude that it is preferable not to re-run these past auctions, in order to provide greater certainty for market participants, and to avoid the need to resolve these complex issues.”), on reh’g, 151 FERC ¶ 61,044 (2015); PJM Interconnection, L.L.C., 128 FERC ¶ 61,157 at P 63 (2009) (rejecting intervenor’s proposal that “would require re-running the capacity market to arrive at what [the party] considers an equitable price” because “[a] fundamental element of RPM is that it is intended to provide significant forward certainty on capacity procurement and capacity pricing” (footnote omitted)); Astoria Generating Co. v. New York Indep. Sys. Operator, Inc., 139 FERC ¶ 61,244 at P 132 (2012) (“we will not require NYISO to re-run the auctions occurring in the past based on such improperly-determined offer floors. Re-running past auctions would create market uncertainty for market participants and require resolving complex questions”); DC Energy, LLC v. PJM Interconnection, L.L.C., 138

For these reasons, EPSA requests that the Commission reject CMTC's request to re-settle the auction, which was cleared in accordance with the filed rate. Entertaining the Complainant's request would substantially undermine confidence in the finality of the MISO auction results and thereby impair the ability of MISO's resource adequacy market to convey the price signals necessary for needed new entry and the retention of needed existing resources.

B. MISO's Stakeholder Process Raised its Constraint Calculation Methodology and Posted Such Methodology Prior to the Auction in Accordance with its Tariff.

EPSA notes that MISO carried out an open stakeholder process as instructed per its Tariff, to engage interested participants in a discussion of its methodology as to calculating Sub-Regional Export Constraint ("SREC") and Sub-Regional Import Constraint ("SRIC") values for MISO South to MISO Midwest. Specifically, the subject of the SRIC and SREC calculations and application of the Sub-Regional Power Balance Constraint ("SRPBC") was discussed in MISO's stakeholder process in the Supply Adequacy Work Group on October 29, 2015. MISO further posted values for Sub-Regional Resource Zones ("SRRZ"), sub-regional export constraints (SREC), and SRIC, as required under its Tariff at Section 68A.3.1. and MISO Tariff Module E-1, Section 68A.3, which require MISO to establish and publish, on their public website, SRRZs,

FERC ¶ 61,165 at P 101 (2012) (discussing cases in which resettlement was denied because it "was thought to potentially create substantial uncertainty and undermine faith in the markets, in light of protestors' concerns regarding the complexity of resettling and being unable to depend on the finality of prices"), on reh'g, 144 FERC ¶ 61,024 (2013); Borough of Chambersburg v. PJM Interconnection, L.L.C., 117 FERC ¶ 61,219 (2006) (declining to retroactively change the allocation of Auction Revenue Rights already determined in auction), reh'g denied, 119 FERC ¶ 61,166 (2007); New York Indep. Sys. Operator, Inc., 92 FERC ¶ 61,073 at 61,307 (2000) (denying retroactive relief where parties "cannot effectively revisit their economic decisions in these circumstances" or "retroactively alter their conduct"), on reh'g, 97 FERC ¶ 61,154 (2001).

SRECs, and SRICs as soon as practical but no later than the first business day of March for the following Planning Year. MISO publicly discussed its intentions regarding calculation of SRECs and SRICs regions for the PRA in a slide presentation of the joint meeting of the Loss of Load Expectation (“LOLE”) Working Group and SAWG on February 3, 2016 (with meeting materials posted on Jan. 29, 2016).³ Thereafter on March 2, 2016, MISO posted SRRZ, SREC, and SRIC values in accordance with the terms of Section 68A.3.1 and Module A,⁴ in conjunction with the Resource Adequacy Subcommittee (“RASC”) meeting.⁵

Even in the instance where the CMTC has potentially actionable concerns about MISO’s methodology as to sub-regional power balance constraints, CMTC has not provided any indication as to whom its individual participants are, or how those participants weighed in during the stakeholder process. Absent some indication that CMTC members took any opportunity to engage in a legitimate feedback process with MISO, it is concerning that the CMTC could now bring a Complaint nearly a year after they had the first opportunity to discuss MISO’s policy reasoning in the context of a

³ *Presentation, MISO Sub-Regional Power Balance Constraint 16/17 PY* (February 4, 2016), <https://www.misoenergy.org/Library/Repository/Meeting%20Material/Stakeholder/LOLEWG/2016/20160203/20160203%20LOLEWG-SAWG%20Joint%20Meeting%20Item%2013%20SRPBC%20Discussion.pdf> (discussing on Slides 4 and 6 (Note that slides 4 and 6 show MISO’s intention to Subtract Firm Export Reservations from each adjusted Regional Directional Transfer Limit to set the final transfer limit between MISO Regions for the PRA resulting in the South to Midwest calculation of 876 MWs for the SREC used in the 2016-17 PRA.).

⁴ Module A defines the SREC as the amount of Planning Resources in megawatts modeled in the PRA within an applicable SRRZ that can be cleared in excess of the total individual Local Resource Zone’s (“LRZ”) PRMR comprising the SRRZ in accordance with applicable seams agreements, coordination agreements, or transmission service agreements.

⁵ *Presentation, PRA Preliminary Data, 2016/17 Planning Year* (March 2, 2016), at <https://www.misoenergy.org/Library/Repository/Meeting%20Material/Stakeholder/RASC/2016/20160302/20160302%20RASC%20Item%2004a%20PRA%20Preliminary%20Data.pdf>.

feedback cycle where MISO specifically set forth an ample opportunity to hear from stakeholders.

III. CONCLUSION

WHEREFORE, EPSA respectfully requests that the Commission summarily dismiss the Complaint as it fails to show as per requirements of FPA Section 206 and Rule 206 that MISO acted inconsistent with the terms of its Tariff or any rules or protocols applicable to the administration of the 2016-17 Planning Reserve Auction.

/s/

Nancy Bagot
Senior Vice President
Arushi Sharma Frank
Director of Regulatory Affairs and Counsel
Electric Power Supply Association
1401 New York Ave., NW, Suite 1230
Washington, DC 20005
202.628.8200 | nancyb@epsa.org

On behalf of the **Electric Power Supply Association.**

September 28, 2016

