UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

	)	
Midcontinent Independent	)	Docket No. ER18-462-000
System Operator, Inc.	)	
	)	

PROTEST OF THE ELECTRIC POWER SUPPLY ASSOCIATION

Pursuant to Rule 211 of the Federal Energy Regulatory Commission's ("FERC" or the "Commission") Rules of Practice and Procedure, 18 C.F.R. § 385.211 (2017), the Electric Power Supply Association ("EPSA")[1] respectfully files this protest in the above-captioned proceeding. On December 15, 2017, the Midcontinent Independent System Operator, Inc. ("MISO" or the "ISO") filed in its entirety the currently effective Resource Adequacy Construct ("RAC") of its Open Access Transmission, Energy, and Operating Reserve Markets Tariff ("Tariff), pursuant to Section 205 of the Federal Power Act ("FPA").[2] Specifically, Module E-1 and related provisions govern Resource Adequacy in MISO, and MISO states the Filing is submitted to provide certainty regarding the rules and requirements related to Resource Adequacy in the region prior to the upcoming 2018/2019 Planning Resource Auction ("PRA") in April of 2018. MISO does not propose changes to any of the current Tariff provisions regarding Resource Adequacy

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[1] Launched over 20 years ago, EPSA is the national trade association representing leading independent power producers and marketers. EPSA members provide reliable and competitively priced electricity from environmentally responsible facilities using a diverse mix of fuels and technologies. Power supplied on a competitive basis collectively accounts for 40 percent of the U.S. installed generating capacity. EPSA seeks to bring the benefits of competition to all power customers. EPSA filed a doc-less Motion to Intervene in this proceeding on January 5, 2018. This pleading represents the position of EPSA as an organization, but not necessarily the views of any particular member with respect to any issue.

[2] Midcontinent Independent System Operator, Inc., *Refiling of MISO's Resource Adequacy Construct,* (Docket No. ER18-462-000 (December 15, 2017) ("the Filing").

requirements; rather, MISO requests that the Commission reaffirm that its existing Resource Adequacy related Tariff provisions are just and reasonable. MISO requests an effective date for its Filing of March 1, 2018.

For the reasons discussed herein, EPSA urges the Commission to determine that the Resource Adequacy provisions of the MISO Tariff are *not* just and reasonable as required under Section 205 of the FPA and the Filing should be rejected. The Commission should direct MISO to correct the Resource Adequacy market design flaws consistent with this protest or, in the alternative, suspend the Filing and establish appropriate hearing and/or settlement judge procedures to resolve these matters. MISO's RAC has, from its inception, been fundamentally flawed and has failed to support resource adequacy in the region because it lacks critical capacity market elements the Commission has approved (or required) for other ISOs/RTOs. In particular, MISO's Module E-1 is not just and reasonable because it lacks the following key elements: (1) mandatory auction participation of all supply and demand resources, with the corresponding commitment to participate for a sustained period of time (i.e., no toggling in or out of the auction year to year); (2) a downward sloping demand curve with auctions held three years forward at a minimum; and, (3) buyer-side market mitigation rules (i.e., a minimum offer price rule, "MOPR"). MISO should therefore be required to develop and implement a sustainable forward capacity market that is properly designed and includes the necessary elements to produce the price signals that are required to maintain reliability in the region.

I. BACKGROUND

In June 2012, the Commission issued an order in Docket No. ER11-4081 conditionally accepting Module E-1 to the MISO Tariff, which set forth the rules governing MISO's Resource Adequacy construct.[3] Review of the RA Orders was sought before the United States Court of Appeals for the District of Columbia Circuit.[4] On October 2, 2017, the Commission requested that the Court voluntarily remand the case in order to allow the Commission to consider the implications of *NRG Power Marketing, LLC v. FERC*.[5] The Court granted the request on October 30, 2017, and further directed the parties to file motions to govern further proceedings within 30 days of the completion of the remand proceedings.[6]

The Commission has not yet issued an order on remand. Nonetheless, on December 15, 2017, MISO submitted its Filing, stating that "[w]hile the remand has no immediate impact to MISO's Resource Adequacy construct or related Tariff provisions, MISO's Resource Adequacy construct could be affected depending on how the Commission acts on remand."[7] MISO further states "MISO is making this filing out of an abundance of caution to give certainty to all impacted parties regarding the rules governing participation in the upcoming Planning Resource Auction and MISO's resource adequacy processes."[8]

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3 *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199 (2012), *on reh'g*, 153 FERC ¶ 61,229 (2015) (together, the "RA Orders").

4 *See Madison Gas & Elec. Co. v. FERC*, Nos. 16-1019 (D.C. Cir.).

5 862 F.3d 108 (D.C. Cir. 2017) ("*NRG*").

6 *NRG Power Mktg. v. FERC*, No. 16-1027 (D.C. Cir. Oct. 30, 2017).

7 Filing at 2.

8 *Id.*

MISO asks the Commission to "reaffirm that its existing Resource Adequacy related Tariff provisions are just and reasonable."[9] MISO further states that it "incorporates by reference all of the filing documents and pleadings, especially those statements supporting the justness and reasonableness of MISO's Tariff, submitted by MISO in the dockets listed in Tab D, in addition to the documents and justification provided in the instant filing, to demonstrate that MISO's existing Resource Adequacy construct is just and reasonable."[10] Nonetheless, MISO also states it will continue to support stakeholder discussions about potential improvements to the Resource Adequacy construct, but does not address possible changes here given the upcoming auction.

II. COMMENTS

MISO has an obligation to ensure that any capacity market or resource adequacy construct enhances efficient price formation while procuring sufficient long-term resource adequacy in the region, particularly in the states with competitive retail structures where providing effective price signals is crucial for those structures to function properly. With certain critical capacity market features entirely absent, MISO's RAC fails to accomplish those goals, is not just and reasonable, and must be modified. The flaws in MISO's existing resource adequacy construct (and in the Commission's RA Orders approving that construct) have been thoroughly discussed in Docket No. ER11-4081, and in briefs before the D.C. Circuit. Accordingly, EPSA hereby incorporates by reference its filings in Docket No. ER11-4081.[11]

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9 *Id.* at 1.

10 *Id.* at 4.

11 *See* Motion for Leave to Intervene and Protest of the Electric Power Supply Association, Docket Nos. ER11-4081-000, et al. (filed Sept. 15, 2011) ("EPSA ER11-4081 Protest"); Capacity Suppliers'

The Commission should therefore reject the Filing, find that MISO's existing rules are not just and reasonable, and direct MISO to file changes to its Resource Adequacy market design, properly modeled after the forward capacity markets in PJM and New England, to ensure both resource adequacy in the long term and efficient price formation for the MISO market. As an entity that has been an active voice in MISO's years-long effort to develop its RAC[12] and that advocates for well-functioning forward capacity markets more generally, EPSA urges the Commission to require these essential market reforms.

A. The Current Resource Adequacy Construct Is Not Just And Reasonable; The Commission Should Reject The Filing And Direct MISO To Correct Market Design Flaws, Or In The Alternative, Establish Hearing Or Settlement Judge Proceedings

As the Commission has acknowledged in numerous proceedings, "in a competitive market, [it] is responsible . . . for assuring that [generators are] provided the *opportunity* to recover [their] costs."[13] While each element, or missing element, of MISO's Resource Adequacy construct is troubling on its own, together they all but guarantee that independent generators will not receive just and reasonable rates in the MISO-administered auctions. As has been made clear by experience, MISO's auctions are characterized by clearing prices that are, with the exception of brief spikes, almost

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Request for Rehearing, Docket No. ER11-4081-001 (filed July 11, 2012); Capacity Suppliers' Initial Brief, Docket No. ER11-4081-001 (filed Oct. 11, 2013); Capacity Suppliers' Reply Brief, Docket No. ER11-4081-001 (filed Nov. 25, 2013).

[12] *Id.*

[13] *Bridgeport Energy, LLC*, 113 FERC ¶ 61,311 at P 29 (2005); *see also, e.g.*, *Price Formation in Energy and Ancillary Servs. Mkts. Operated by Reg'l Transmission Orgs. & Indep. Sys. Operators*, 153 FERC ¶ 61,221 at P 2 (2015) (the "goals of proper price formation" include "ensur[ing] that all suppliers have an opportunity to recover their costs"); *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,196 at P 49 (2003) ("[W]e believe that competitive prices over the long run should recover both the fixed and variable costs of efficient generating units[,] and we fear investors may decline to invest in needed generation... if they do not see a reasonable expectation of recovering their costs.").

always at or near a price of $0, meaning that independent generators will have little prospect of recovering even their fixed costs, let alone a reasonable return on their investments. That will ultimately hurt consumers, as the failure to compensate independent generators will discourage new entry and lead to higher prices and more energy shortages. Indeed, even MISO has expressly recognized that its capacity construct has not addressed imminent capacity shortfalls in areas of the ISO where generation investment is dependent on the competitive markets.[14] Furthermore, MISO has described this capacity construct – the same one it is re-proposing in the Filing – as being "unlikely to attract and retain sufficient merchant capacity to meet MISO's 1-in-10 reliability standard in the long term."[15]

B. Key Market Design Elements Must Be Incorporated For MISO's Resource Adequacy Construct To Be Just And Reasonable

The regional organized wholesale electricity markets have extensive experience with capacity markets that has led to lessons learned regarding the design elements necessary for a well-functioning centralized capacity market structure. At a minimum, the following elements are necessary:

(1) A transparent means of forecasting expected electricity consumption at a future period of time, plus establishment of an appropriate reserve margin;

(2) Establishment of an auction process whereby potential suppliers of capacity offer to provide the same capacity product at a given location in the forward period, typically three years ahead of time*;*

(3) Appropriate mitigation of both buyer-side and seller-side market power;

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14 *See generally* Proposed Competitive Retail Solution in New Module E-3 and Corresponding Revisions to Existing Tariff Sections in Modules A, D, and E-1, Docket No. ER17-284-000 (filed Nov. 1, 2016) ("ER17-284 Filing"). The Commission rejected MISO's proposed revisions in Docket No. ER17-284-000, finding it improperly bifurcated the MISO market. *See Midcontinent Independent System Operator, Inc.* 158 FERC ¶ 61,128 (2017).

15 ER17-284 Filing, Transmittal Letter at 2 and fn 4. (Based on analysis prepared by The Brattle Group and accompanying the ER17-284 Filing.)

(4) A market clearing mechanism, such as a sloped demand curve, that establishes the lowest cost suite of resources necessary to reliably operate the transmission system; and,

(5) Procurement of capacity sufficient to operate the transmission system, considering the physical constraints of the system.

With these elements in place, the market fosters competition among potential capacity resources so that consumers benefit from robust competition and the lowest cost for long-term resource adequacy.[16] EPSA outlined these principles to the Commission over six years ago in its comments on MISO's initial capacity market proposal.[17] At that time, EPSA urged the Commission to direct MISO to develop a market structure that would meet the principles of a well-functioning centralized capacity market. However, the resource adequacy plan implemented by MISO in 2012 retains flaws which EPSA (and other parties) have urged the ISO and the Commission to correct. Specifically:

(1) Participation in capacity auctions should be mandatory and the ability for buyers to "opt-out" based on self-scheduling allowances under the guise of a Fixed Resource Adequacy Plan ("FRAP") should be eliminated, or, if retained, should be much more restrictive;

(2) A downward sloping demand curve should be incorporated along with auctions held three-years forward; and,

(3) The buyer-side mitigation rules should be significantly bolstered to address artificial price suppression, especially given the recent concerns with buyer-side market power in other regions such as the New York ISO and PJM.

First, MISO's resource adequacy construct requires suppliers to participate in the MISO auctions, but permits buyers (load-serving entities ("LSEs")) to "toggle" in and

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16 *See generally* Comments of the Electric Power Supply Association, *Centralized Capacity Markets in Regional Transmission Organizations and Independent System Operators*, Docket No. AD13-7-000 (filed January 8, 2014). For a discussion of essential market elements, see pp 24-35 responding to post-technical conference questions on market design elements. *See also* "EPSA's Principles to Power America – Competitive Market Evolution: The next decade of progress," pp.10-12, (October 19, 2011), *available at* https://epsa.org/resource/studies-and-reports/page/2/.

17 *See generally* EPSA ER11-4081 Protest.

out of the auctions on a year to year basis. This lack of a longer commitment by buyers distorts the effectiveness of the resource adequacy mechanism and could encourage gaming. To the extent that an "opt-out" provision is allowed for buyers, MISO should implement restrictions similar to those used by PJM for those resources that elected the Fixed Resource Requirement ("FRR") as an option to opt-out of PJM's Base Residual Auction. While buyer participation should be mandatory as is the case for suppliers, in the event a Planning Resource choses to "opt-out," the Commission should also require full self-supply for all capacity requirements; no partial participation should be allowed. Additionally, buyers should be required to demonstrate resource adequacy for a minimum of five years. Once an LSE elects to opt-out, there should not be an open opportunity to opt back in based solely on economic opportunity. Accordingly, a buyer that has opted out should be prohibited from selling excess capacity into MISO auctions, which would result in price suppression by ratepayer-supported resources. Like the FRR in PJM, resources should not have the opportunity to opt-in to, or toggle in and out of, the PRA, unless they are willing to remain out of the auction for five years.

Second, the Commission has issued numerous orders for other ISOs/RTOs determining that sloped demand curves provide more accurate and stable pricing than a vertical demand curve, while also recognizing that vertical demand curves lead to price volatility and could encourage the exercise of market power.[18] In fact, the Commission found that ISO-NE's continued use of vertical demand curves was unjust and

[18] *See N.Y. Indep. Sys. Operator, Inc.*, 103 FERC ¶ 61,201 at PP 13–17, *reh'g denied*, 105 FERC ¶ 61,108 (2003), *aff'd, Elec. Consumers Res. Council v. FERC*, 407 F.3d 1232 (D.C. Cir. 2005); *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331 at PP 75–78 (2006) ("*PJM I*"), on reh'g, 119 FERC ¶ 61,318, *aff'd, Pub. Serv. Elec. & Gas Co. v. FERC*, 324 F. App'x 1 (2009); *ISO New England* Inc., 146 FERC ¶ 61,038 at P 30 & n.41 (2014); *ISO New England Inc.*, 147 FERC ¶ 61,173 at P 29 (2014).

unreasonable, explaining that "[w]hen vertical demand curves are used, even small increases or decreases in supply can result in large changes in price," whereas a sloped demand curve would "ensure that the market produces accurate price signals."[19] The Commission therefore concluded that, in light of "the general benefits of implementing zonal sloped demand curves," ISO-NE's continued use of a vertical demand curve rendered its tariff unjust and unreasonable.[20] Therefore, the Commission should direct MISO to implement a sloped demand curve. In conjunction with this, MISO should further be required to include a three-year forward commitment similar to that in PJM and ISO New England which provides forward looking, more transparent price signals that can account for ongoing resource changes. For a number of years, MISO's Independent Market Monitor ("IMM"), Dr. David Patton, has pleaded with MISO staff, stakeholders, and state regulators to incorporate a downward sloping demand curve, to no avail. State regulator representatives decry such a move continually, even though their traditionally-regulated LSEs would not be exposed to the sloping demand curve as long as they meet the criteria for a FRAP.

Third, the MISO construct must include buyer-side mitigation rules (e.g., a minimum offer price rule or "MOPR") at least comparable to those in other organized capacity markets. As the Commission has long affirmed, centralized capacity markets "will not be able to produce the needed investment to serve load and reliability if a subset of suppliers is allowed to bid noncompetitively to suppress market clearing prices."[21] Indeed, every other organized capacity market (*i.e.*, those in PJM, NYISO,

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19 *ISO New England Inc.*, 153 FERC ¶ 61,338 at P 12 (2015).

20 *Id.* at PP 14-15.

21 *PJM Interconnection, L.L.C.*, 128 FERC ¶ 61,157 at P 90 (2008). *See also, e.g., New York Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,211 at P 103 ("*NYISO*") ("Markets require appropriate price signals to

and ISO-NE) has rules to prevent buyers from artificially suppressing capacity prices. There is no valid basis for MISO to omit such rules. To the contrary, the MISO IMM and MISO itself have agreed that such rules are warranted.[22] In fact, artificial price suppression is a particular concern in MISO given the large amount of generation in MISO that is supported via bundled retail rates or other out-of-market payments and can therefore be offered into MISO's auctions at artificially low levels. Therefore, it is imperative that MISO establish buyer-side market mitigation as has been approved for other markets.[23]

III. CONCLUSION

For the stated reasons, EPSA urges the Commission to determine that the Resource Adequacy provisions of the MISO Tariff are not just and reasonable as required under Section 205 of the FPA and therefore the Filing should be rejected. The Commission should direct MISO to correct its Resource Adequacy market design consistent with this protest or, in the alternative, suspend the Filing and establish appropriate hearing and/or settlement judge procedures to resolve these matters. MISO's RAC remains flawed and lacks fundamental capacity market elements the Commission has approved (or required) for other ISOs/RTOs. Such a construct should include these key elements (1) mandatory auction participation; (2) a downward sloping

alert investors when increased entry is needed. By allowing net buyers to artificially suppress prices, these necessary price signals may never be seen."), *on reh'g*, 124 FERC ¶ 61,301 (2008), *on reh'g*, 131 FERC ¶ 61,170 (2010), *on reh'g*, 150 FERC ¶ 61,208 (2015).

[22] *See* MISO's underlying ER11-4081 RAC Filing at 15-17 discussing proposed Minimum Offer Price Rule ("MOPR") provisions (filed July 20, 2011); *also see* Request for Rehearing of the Midwest ISO Independent Market Monitor, Docket No. ER11-4081-001 (filed July 11, 2012); Initial Brief by the MISO Independent Market Monitor on MISO's Proposed Minimum Offer Pricing Rule, Docket No. ER11-4081-000 (filed October 11, 2013).

[23] *See PJM I*, 117 FERC ¶ 61,331 at PP 106-07; *ISO New England Inc.*, 135 FERC ¶ 61,029 at PP 165-66 (2011), *on reh'g*, 138 FERC ¶ 61,027 (2012); *NYISO*, 122 FERC ¶ 61,211 at PP 100-06.

demand curve with auctions held three-years forward; and (3) buyer-side mitigation rules (*i.e.*, a minimum offer price rule, “MOPR”). These design reforms are necessary so that MISO can develop an effective forward capacity market structure that allows generators a reasonable opportunity to recover their costs and a fair return on their investments, while ensuring customers are reliably and cost-effectively served.

/s/ Nancy Bagot

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

Date: January 12, 2018

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 12th Day of January, 2018.

/s/ Nancy Bagot

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