

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

Coalition of MISO Transmission Customers)	
)	
v.)	Docket No. EL22-60-000
)	
Midcontinent Independent)	
System Operator, Inc.)	

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,” the “Commission”),¹ the Electric Power Supply Association (“EPSA”)² hereby submits this protest in response to the complaint of the Coalition of MISO Transmission Customers (“the Coalition” or “CMTC”) against the Midcontinent Independent System Operator, Inc (“MISO”).³ EPSA requests that the Commission reject this complaint in its entirety.

In its complaint, the Coalition asks the Commission to direct MISO to allow load – which participated in the 2022/2023 Planning Resource Auction (“PRA”) held in April – the ex-post ability to exit the MISO system without being charged for its PRA capacity obligation. The Coalition claims that this ostensible one year “exit” would provide “meaningful operational benefits to MISO as it addresses the capacity shortage during

¹ 18 C.F.R. §§ 385.211.

² 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 intervened in this matter via doc-less intervention on June 1, 2022.

³ Coalition of MISO Transmission Customers v. Midcontinent System Operator, Inc., *Complaint of the MISO Transmission Customers*, Docket EL22-60-000 (filed May 27, 2022) (“the Complaint”).

the 2022/2023 Planning Year and prepares for potential load shedding.”⁴ The CMTC claims that if a customer that reduces or ceases operations in order turn back capacity to MISO is allowed to shed its PRA capacity obligation as incurred in the April 2022 auction, it is more likely that the customer will resume operations in subsequent years. As outlined below, this claim is not supported by data, facts, or customer commitments related to the requested capacity market change. Rather, the Coalition seeks to institute a mechanism to allow load to re-run or re-settle the capacity market after the fact – without once acknowledging the motivating factor here. Simply put, after years of near zero capacity prices, MISO’s PRA prices rose to their cap value of \$236.66 MW/Day. While the PRA did experience a 1230 MW capacity shortfall, more importantly the market functioned. Many MISO load-side market participants supported the use of a vertical Demand Curve because it did not require MISO to purchase excess capacity when the system was long. Now that the system is short and the vertical Demand Curve worked exactly as contemplated, the first sign of shortage caused prices to value capacity at its maximum value. This complaint is certainly largely motivated by buyers’ remorse from customers who did not prudently hedge their capacity obligations through bilateral contracts – as many LSEs do to protect their customers.

The Commission must therefore reject the complaint or (1) risk creating sufficient market uncertainty to undermine investment and harm reliability in MISO in future Planning Years, and (2) set a damaging precedent which indicates to customers that if they are unhappy with the results of an auction and did not hedge their exposure, not to worry – exit the market and someone else will step in to support system reliability.

⁴ *Id.* p. 13

Customers cannot be permitted to look to FERC to provide an after-the-fact hedge against their obligations.

I. COMMENTS

A. The Complaint is a Veiled Request to Resettle the Market

The Coalition has couched its filing as solely motivated to address reliability concerns in MISO, asking that the Commission direct the ISO to institute a way for customers who are willing and able – like large industrial entities – to leave the MISO system and turn back their capacity in order to decrease any system shortfall in a particular Planning Year. However, the timing of this filing betrays this single-mindedness. Given that this filing comes after a MISO auction cleared at non-trivial prices *for the first time in years*, it's difficult not to be cynical about the Coalition's true motive: avoiding higher prices. MISO's flawed capacity construct has long produced suppressed prices which have starved the region's generators while benefitting customers – particularly those which chose to rely on the PRA to fulfill their capacity obligations rather than contracting at prices that better reflect the value of capacity. In fact, MISO Independent Market Monitor ("IMM") David Patton has estimated that MISO's use of a vertical demand curve has caused its auction to clear over the last several Planning Years between \$107-\$167 less per MW/day in some regions⁵ than it

⁵ Potomac Economics, *2020 State of the Market Report for the MISO Electricity Markets*, p. 83, (May 7, 2021). The IMM found that sloped demand curve would have yielded a price of \$28.31 (vs \$0.01 with a vertical curve) in MISO South and \$172.86 (vs. \$5.00 with a vertical curve) in MISO Midwest;

Potomac Economics, *2019 State of the Market Report for the MISO Electricity Markets*, p. 85, (June 2020). The IMM found that sloped demand curve would have yielded a price of \$148.23 (vs \$4.75 with a vertical curve) in unconstrained MISO South, a price of \$155.10 (vs. \$6.88 with a vertical curve) in Zone 9, and a price of \$148.23 (vs. \$5.00 with a vertical curve) in unconstrained MISO North;

Potomac Economics, *2018 State of the Market Report for the MISO Electricity Markets*, p. 73, (June 2019). The IMM found that sloped demand curve would have yielded an unconstrained price of \$110.38 (vs \$2.99 with a vertical curve).

would have had MISO used a sloped demand curve, as the IMM and EPSA have urged over the years.⁶ Simply, the vertical demand curve leads the ISO to impute virtually no value to additional capacity in the region.

MISO's market, like other RTOs but to a much greater extent, offers end-users the opportunity to contract bilaterally to secure capacity at a negotiated, predictable, and stable price – allowing them to hedge their risk of high or unexpected auction prices. In MISO, only roughly 8% of the region's capacity is procured through its annual capacity auction⁷ which to date has resulted in very low values for nearly all of MISO's zones – usually close to zero. Hence, for large customers that have chosen to bypass the opportunity to fulfill their capacity needs through bilateral contracts and instead rely largely (or solely) on MISO's auction, that gamble did not pay off for the first time for the 2022/2023 Planning Year.

MISO Market Participants who utilized this capacity purchase approach did so knowing full well that reliability constraints – and concomitant impacts to auction prices – were on the horizon in MISO.⁸ Since 2018, NERC has identified reliability concerns

⁶ Public Citizen, Inc. et al v. Midcontinent Independent System Operator, Inc., *Comments of the Electric Power Supply Association in Response to Notice of Technical Conference*, Docket Nos. EL15-70-000 et al, (Filed on November 4, 2015);

Midcontinent System Operator, Inc., *Comments of the Electric Power Supply Association*, Docket No. ER17-284-000, (Filed on December 14, 2016);

Midcontinent System Operator, Inc., *Protest of the Electric Power Supply Association*, Docket No. ER18-462-000, (Filed on January 12, 2018).

⁷ Gupta, Vinay et al, *Making sense of MISO's recent capacity auction*, (April 27, 2022), Available at: <https://www.icf.com/insights/energy/miso-capacity-auction-2022-23>.

⁸ North American Electric Reliability Corporation, *2018 Long-Term Reliability Assessment*, p. 7, (December 2018), "MISO and NPCC-Ontario are projected to have Anticipated Reserve Margin shortfalls beginning in 2023;"

North American Electric Reliability Corporation, *2019 Long-Term Reliability Assessment*, p. 14, (December 2019), "As the resource mix continues to change, the increase in energy-limited resources

which may arise in MISO, though often those concerns were predicted to begin by 2023 – perhaps offering the illusion of comfort that PRA prices would remain below \$5 MW/Day in this year’s auction.

Additionally, over that same timeframe MISO’s IMM has repeatedly expressed grave concerns with the major “flaw” in MISO’s capacity auction design: the market’s inability to set just and reasonable capacity prices which sufficiently compensate generators for their provision of capacity to maintain the region’s reliability.⁹ Hence, the increased value reflected in the 2022/2023 PRA was sufficiently predictable, flawed as the process to getting there may be. Regardless of the stated desire to turnback capacity to cover any shortfall, this complaint cannot be allowed to further damage this imperfect capacity market by establishing an open ex-post mechanism which is in fact

and other factors influence resource adequacy. The MISO and WECC-CAMX assessment areas are beginning to see signs of potential energy deficits in the next five years;”

North American Electric Reliability Corporation, *2020 Long-Term Reliability Assessment*, p. 7, (December 2020), “In the [MISO] area, most risk remains concentrated during summer peak periods. Reserve margin projections of on-peak capacity are falling and are projected to be below Reference Margin Level targets beginning in 2025.”

⁹ Midcontinent System Operator, Inc., *Motion to Intervene out of Time and Protest of the MISO Independent Market Monitor*, Docket No. ER18-462-000, (February 7, 2018). See p. 5, “The flaw in this design is that the reliability value of the capacity being purchased should determine the shape of the demand curve... Every other ISO/RTO capacity market in the Eastern Interconnection has recognized this problem and implemented sloped demand curves in their capacity markets. To show how significant this flaw is, we estimated results for MISO’s 2017-2018 PRA with the actual capacity offers and a representative sloped demand curve based on reasonable parameters. For comparison purposes, the actual PRA (with the vertical demand curve) cleared throughout MISO at \$1.50 per MW-day. This would provide suppliers with less than one percent of the revenues needed to break-even on an investment in a new peaking resource in MISO...With a representative sloped demand curve, the clearing price throughout MISO would have been roughly \$115 per MW-day. The \$115 per MW-day clearing price would provide revenues still less than half of net CONE for a new peaking resource, but it would cover the going forward costs of a large number of generators that will likely otherwise retire or export to other markets. It does not seem possible for \$115 per MW-day and \$1.50 per MW-day to both be just and reasonable prices under identical supply conditions, except if no appropriate economic criteria are applied to determine whether capacity prices are just and reasonable.”

simply a market resettlement for those customers who are able to “exit” the system or find alternative means to operate outside of MISO’s system, leaving captive ratepayers with the result.

Allowing this resettlement would create a perverse incentive that will further harm an already flawed market. Currently, LSEs engage in bilateral capacity negotiations knowing they can rely on the PRA if the bilateral price is not acceptable. The recent PRA results will encourage LSEs to carefully consider bilateral offerings, including from needed new resources. Allowing LSEs to exit the market after-the-fact will greatly diminish the incentive to negotiate bilateral arrangements in good faith, especially with a vertical demand curve. Granting CMTC’s complaint would allow an LSE to abandon bilateral negotiations and take its chances with the PRA results in the hope that enough new capacity will enter the market and the PRA price will settle near zero. If the LSE is wrong and the PRA price settles closer to the cap, it can then decide to exit the market after-the-fact. This “heads I win, tails you lose” scenario will further harm the MISO capacity construct.

The limited nature of the proposed exit mechanism is another critical flaw in the complaint. The suggestion that MISO create a process to allow load to nominate to exit the MISO system for the remainder of the Planning Year – in exchange for avoiding PRA charges and on a first-come, first-served basis – up to the amount of the PRMR shortfall (1230 MW for 2022/2023) comes with no obligations or demonstrations from those exiting customers. The stated reason to excuse PRA capacity payments is to encourage a return to service in subsequent Planning Years. When is that decision made? Will customers again seek to see PRA prices *before* committing to future PRA

obligations? Will exiting customers simply find alternate ways to power continued or even intermittent operations during the 2022/2023 Planning Year? How can all customers be assured an equal and fair opportunity to exit the market and release their capacity for a year? Does the proposal transfer costs or reliability responsibilities to other MISO customers? If so, can those customers carry any added costs or obligations? A cynic may look at these open-ended questions regarding real impacts to the MISO system and declare this is why MISO has retained a largely bilateral construct for procuring capacity.

With the aforementioned facts in hand and questions unanswered, the instant filing represents little more than a backhanded attempt to resettle the market after prices are known. As such, granting this complaint directly runs afoul of longstanding Commission precedent against rerunning auctions or redoing market outcomes that have been settled.¹⁰ To discount that precedent here would pave the way for load interests to hold MISO (and other ISOs/RTOs) hostage and pick and choose when they accept the prices that the markets set and pay to those resources that provide energy, capacity, and services to the system and by extension every MISO customer. Furthermore, if certain able and willing load-side Market Participants are allowed to leave MISO and their existing capacity commitments this year, this subset of MISO customers will have been able to avoid PRA prices that actually (finally) value capacity and investment, and look ahead to bilateral contracts in order to hedge their future capacity needs “now that they know.” While bilateral contracts are always an option,

¹⁰ See *e.g.*, *Consolidated Edison Co. of N.Y., Inc. v. FERC*, 510 F.3d 333 (D.C. Cir. 2007).

they cannot serve as a soft-landing fallback after the fact especially when the existence of an after-the-fact exit discourages bilateral contracting at just and reasonable rates.

B. Granting this Complaint Could in Fact Harm Reliability in MISO

It is worth noting that even though MISO's capacity construct is poorly designed, MISO has continued to hold its annual capacity auction as an adjunct to the hedging that LSE bilateral contracting offers in order to support reliability and investment. While MISO's process and methodology has served to historically suppress capacity prices – and thus investment – this year's auction has clearly demonstrated that investment is needed both to retain existing resources and for new development. As stated by EPSA, generators, MISO's IMM, and others for years,¹¹ the capacity market construct and its sloped demand curve would have sent that investment signal far earlier, perhaps in time to avoid the capacity shortfall experienced for the 2022/2023 Planning Year. Were MISO to make necessary reforms to its capacity construct going forward (such as instituting a sloped demand curve), this year's pricing across much of the RTO might generate the certainty and price signals to incent necessary capital investment to build new generation and retain what is needed.

The Coalition's proposal, styled as an instrument to restore resource adequacy for this year, could actually make MISO *less* reliable going forward by creating an

¹¹ The Brattle Group, *Enhancing the Efficiency of Resource Adequacy Planning and Procurements in the Midcontinent ISO Footprint: Options for MISO, Utilities, and States*, (November 2015), by Samuel Newell, Kathleen Spees, Roger Lueken. See Executive Summary, p. ii, "The MISO centralized resource adequacy construct is not likely to support sufficient market-based investment to meet the capacity needs of retail choice states, due to the mechanism's reliance on a non-forward auction with a vertical demand "curve" and a relatively low price cap. We anticipate that this design will not produce prices high enough to attract merchant generation investments until reliability is unacceptably low. Further, the lack of forward visibility means that the shortage might not be identified until it is too late to address through administrative intervention."

uneven playing field between bilateral sellers and buyers and thus creating unacceptable uncertainty for investors, shifting costs to captive customers, obfuscating load forecasts or assumptions for future PRAs, and incenting the retirement of resources when investment to keep them running is in fact needed. Should load be allowed to walk away after the auction results, generation operators and developers would not only lack the investment signals and price certainty that MISO's construct has *finally* delivered to some extent, but also would have no confidence that load will negotiate in good faith. This will likely lead to a lack of investment needed for new development and, equally damaging if not more so, a lack of investment to keep existing resources online.

Additionally, the removal of load from the ISO's capacity equation may address a shortfall this year but will certainly complicate the establishment of load assumptions for future auction models. MISO will not only be vexed by how to treat the up to 1230 MWs of load which offered in and obtained PRA obligations this year but was allowed to leave the system but will be faced with a constantly moving target if load is allowed to offer, obtain, and turnback a capacity obligation auction by auction. MISO is already saddled with a flawed capacity auction design – to upend the assumptions setting the capacity procurement parameters could render the auction nigh near useless and endanger the region's reliability even further.

While clearly putting MISO in a precarious position, this Complaint could have a chilling effect in other markets by jeopardizing competition and investment should it be granted to any extent. At this critical point in our energy transition, the Commission must ensure that reliability mechanisms procure and retain the products and services needed

and that market obligations – particularly those directly linked to the resource adequacy and reliability requirements of a region – are honored.

II. CONCLUSION

EPSA respectfully requests that the Commission reject the Coalition’s complaint. Failure to do so would upend Commission precedent, chill investment, and potentially harm reliability in MISO as well as other regional markets.

Respectfully submitted,

ELECTRIC POWER SUPPLY ASSOCIATION

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Dated: June 15, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on each person designated on the official service list compiled by the Secretary of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington DC, this 15th day of June, 2022.

/s/ Bill Zuretti

Bill Zuretti