

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

Midcontinent Independent System
Operator, Inc.

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Docket No. EL23-46-000

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 the “Commission”)¹ and the Commission’s March 17, 2023 Order Establishing a Show Cause Proceeding,² the Electric Power Supply Association (“EPSA”)³ respectfully submits this Protest to the Commission’s Show Cause Order and the Midcontinent Independent System Operator, Inc.’s (“MISO”) March 24, 2023 Answer⁴ in the above-captioned proceeding.

MISO’s proposal to update its system-wide Unforced Capacity (“UCAP”) / Intermediate Seasonal Accredited Capacity (“ISAC”) ratio (the “Ratio”) just days before the 2023/24 Planning Resource Auction (“PRA”) must be rejected. If accepted, MISO’s proposal will create uncertainty by undermining bilateral agreements for the sale of capacity that have been entered into in advance of the PRA and upset the settled

¹ 18 C.F.R. § 385.212.

² *Midcontinent Indep. Sys. Operator, Inc.*, 182 FERC ¶ 61,176, P 11 (2023) (“Show Cause Order”) (noting that interested parties may respond to MISO’s filing within five days).

³ 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 has separately moved to intervene in this proceeding. See (doc-less) Motion to Intervene of Electric Power Supply Association, Docket No. EL23-46-000 (filed Mar. 22, 2023).

⁴ *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. EL23-46-000, Answer of the Midcontinent Independent System Operator, Inc. (filed March 24, 2023) (“Answer”).

expectations of market participants that justifiably relied upon the Ratio and Seasonal Accredited Capacity (“SAC”) values calculated by MISO.

While the waiver granted by the Commission in Docket No. ER23-1465⁵ will provide MISO additional time to recalculate the Ratio and delay the PRA that was scheduled to occur on March 28, 2023, it will not unwind the bilateral resource adequacy agreements that were entered into based on published SAC values or restore market participants’ confidence that they can rely on MISO’s resource adequacy construct going forward. Given the destabilizing effect that updating the Ratio will have on the MISO market and the absence of clear countervailing benefits to such update, EPSCA respectfully requests the Commission act immediately to reject MISO’s proposal to update the Ratio prior to the 2023/24 PRA and terminate this proceeding.

I. BACKGROUND

The MISO PRA operates as a residual market in which participants may buy and sell Zonal Resource Credits (“ZRC”) in order to meet their seasonal Planning Reserve Margin Requirement (“Reserve Requirement”) established pursuant to the MISO Tariff.⁶ Although market participants may procure ZRCs through the PRA at the clearing price, the overwhelming majority of Load Serving Entities (“LSE”) meet their Reserve Requirements outside of the auction through self-supply or bilateral agreements with suppliers.⁷ As a result most ZRC calculations and supply arrangements are finalized well

⁵ *Midcontinent Indep. Sys. Operator, Inc.*, 182 FERC ¶ 61,203 (2023).

⁶ MISO Tariff, Module E, §§ 68A.7 and 69A.

⁷ *Midcontinent Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,142, P 110 (2022) (“[T]he vast majority of LSEs procure most of their capacity outside of the Auction.”); MISO 2022/2023 Planning Resource Auction (PRA) Results, at 19, <https://cdn.misoenergy.org/2022%20PRA%20Results624053.pdf> (showing that between

in advance of the date the PRA window opens.

ZRCs—which individually represent one MW of accredited capacity—were historically calculated based on a given resource’s annual UCAP. However, on November 30, 2021, MISO filed with FERC to revise its approach to accrediting resources identified on a new Schedule 53 of its Tariff from an annual UCAP construct to a seasonal SAC construct.⁸ As part of the revisions to its resource adequacy construct, MISO also proposed a ratio (*i.e.*, the Ratio) to convert SAC values (*i.e.*, supply) to UCAP values (*i.e.*, demand) for purposes of running the PRA. The Commission accepted MISO’s proposal on August 31, 2022.⁹

On December 15, 2022, MISO published the SAC values for the upcoming 2023/24 Planning Year. However, following the publication of the SAC values, MISO determined that it had inadvertently failed to provide exemptions for certain resources that had Generator Planned Outages when calculating these resources’ SAC values. While MISO worked with the individual resource owners to address the issue and provide them with new SAC values, MISO notified market participants on February 9, 2023 that it would not update the Ratio given the “need for market certainty.”¹⁰ MISO reaffirmed its

the 2020/21 and 2022/23 Planning Years, between 60.5% and 64.7% of resource adequacy in MISO was procured through self-scheduling with between 27.1% and 34.9% procured through Fixed Resource Adequacy Plans (“FRAP”).

⁸ *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER22-495-000, Filing to Include Seasonal and Accreditation Requirements for the MISO Resource Adequacy Construct (filed Nov. 30, 2021), *amended by*, Response to Deficiency Letter – Filing to Include Seasonal and Accreditation Requirements for MISO Resource Adequacy Construct (filed April 8, 2022).

⁹ *Midcontinent Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,141 (2022).

¹⁰ *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER23-1223-000, System-wide UCAP / ISAC Ratio Enhancement MISO Resource Adequacy Construct at 4 (filed Mar. 2, 2023).

intent not to update the Ratio in a March 2, 2023 filing with the Commission.¹¹

On March 17, 2023, the Commission issued the Show Cause Order and directed MISO to make a filing showing cause as to why it was consistent with its Tariff not to update the Ratio for the 2023/2024 PRA or to explain how it would revise the Ratio prior to the 2023/24 PRA.¹² In its Show Cause Order, the Commission found that “MISO appears to be violating Schedule 53 of the Tariff by failing to update its Ratio for the 2023/24 [PRA] despite having updated ISAC values for certain resources.”¹³

MISO responded to the Show Cause Order on March 24, 2023, maintaining that it had not violated its Tariff but nonetheless stating that it would update the Ratio prior to the 2023/24 PRA.¹⁴ On the same day, MISO filed a request for waiver of three Tariff provisions—including the requirement that it conduct the PRA within 20 business days following the last business day of March—in order to allow time for it to update the Ratio.¹⁵ On March 28, 2023, the Commission granted the waiver request.¹⁶

II. Protest

MISO’s proposal to update its Ratio at this late stage should be rejected, and the Commission should terminate this EL23-46-000 docket. EPSA shares the Commission’s concern about whether MISO is properly following the terms of its Tariff in implementing

¹¹ *Id.*

¹² Show Cause Order, at P 10.

¹³ *Id.*, at P 9.

¹⁴ *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. EL23-46-000, Answer of the Midcontinent Independent System Operator, Inc. (filed March 24, 2023) (“Answer”).

¹⁵ *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER23-1465-000, Midcontinent Independent System Operator, Inc. Request for Prospective Waiver of Tariff Provisions and Request for Expedited Treatment (filed Mar. 24, 2023).

¹⁶ *Midcontinent Indep. Sys. Operator, Inc.*, 182 FERC ¶ 61,203.

the PRA and believes that it is essential for the PRA to accurately reflect generation resources' actual accredited capacity. At the same time, however, market participants, both buyers and sellers, reasonably relied on the current SAC values to enter into agreements for the sale of the capacity necessary to meet resource adequacy requirements.¹⁷ Such a late breaking and fundamental change to the market will create uncertainty for both suppliers and LSEs, and will erode confidence in the PRA and the MISO markets as a whole.

As the Commission has recognized, MISO's resource adequacy construct is a residual market in a region where the overwhelming majority of capacity is procured outside of the PRA through bilateral contracts with generation resources.¹⁸ Consequently, most market participants selling or buying capacity enter into agreements to sell their ZRCs well in advance of the date the PRA window opens.¹⁹ In fact, in the last three Planning Years, no more than 8.1% of resource adequacy was actually procured through the PRA.²⁰

When entering into transactions, resource owners and other market participants will naturally rely on the SAC values published by MISO in mid-December to inform their decisions about bilateral ZRC transactions. Resources owners work with MISO to verify

¹⁷ MISO 2022/2023 Planning Resource Auction (PRA) Results, at 19, <https://cdn.misoenergy.org/2022%20PRA%20Results624053.pdf>; *Midcontinent Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,142, P 110 (2022)

¹⁸ *Midcontinent Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,142, P 110 (2022); *Midcontinent Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,141 (2022), Christie, Comm'r, concurring at P 4 ("No one disputes that the MISO capacity market has always been a purely *residual* option.").

¹⁹ Tariff, Module E, § 69.A.7.

²⁰ MISO 2022/2023 Planning Resource Auction (PRA) Results, at 19, <https://cdn.misoenergy.org/2022%20PRA%20Results624053.pdf>.

and correct the values for their individual resources.²¹ Given that neither MISO's Tariff nor MISO's business practice manuals explicitly contemplate that the Ratio will be revised after initial SAC values are posted, market participants would, at least until the issuance of the Show Cause Order and MISO's March 24, 2023 Answer, have had every reason to believe that the SAC values of their resources were not subject to revision to reflect adjustments to the capacity values of third parties.

To the extent that there was any reasonable doubt as to the finality of the Ratio, such doubt was, or ought to have been, removed by MISO's repeated statements that the Ratio would not be updated for the 2023/24 PRA. For example, on February 9, 2023, MISO notified market participants that it would not recalculate the Ratio for the 2023/24 PRA despite the Planned Generator Outage issue.²² MISO then reaffirmed this position in a filing with the Commission on March 2, 2023, stating that it would not be updating its Ratio given the "expectation that the Ratio would be an annual calculation posted well in advance of each PRA in order to provide Market Participants certainty as they plan to meet [Reserve Requirements]."²³

Yet, with less than a week before the 2023/24 PRA was scheduled to open and after many (if not most) bilateral resource adequacy agreements have been executed, MISO has done an about-face, albeit with a push, and is proposing to alter the fundamental values that MISO market participants relied on for the past three and a half

²¹ MISO Planning Resource Auction (PRA) Timeline for Planning Year 2023-2024 at 2 (Nov. 2022), <https://cdn.misoenergy.org/2023-2024%20PRA%20Timeline626264.pdf>.

²² *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER23-1223-000, System-wide UCAP / ISAC Ratio Enhancement MISO Resource Adequacy Construct at 4 (filed Mar. 2, 2023).

²³ *Id.*, at 2.

months. To say that MISO's proposal will disrupt the MISO market is an understatement; it will fundamentally reshape market participants' resource adequacy obligations and competitive suppliers' ability to meet them.

Regardless of whether the Commission believes that MISO violated its Tariff, the Commission should reject MISO's proposal to recalculate the Ratio. Whether bilateral or centralized, a market cannot function if market participants do not have reasonable confidence that the transactions that they enter into will not be undermined by last minute changes to market rules.²⁴ Further, as EPSA has emphasized given increasing reliability concerns across organized markets, reliability requires investment in resources and the confidence of market participants to make those investment decisions.²⁵ There is a critical need for certainty around these decisions and EPSA is very concerned with this latest, troubling example of the FERC changing auction parameters late in the process resulting in damaging market impacts to the auction and related contractual arrangements.

In other instances where the Commission has concluded that a transmission provider violated its tariff, the Commission has declined to order refunds or otherwise require compliance with the filed rate when doing so would upset the settled expectations

²⁴ In response to a recent PJM proceeding where the Commission approved changes to capacity market auction rules after PJM's most recent auction, EPSA addressed the significant legal and policy flaws raised by the FERC's Order and PJM's underlying filing, including with respect to market uncertainty created and the impact to the signal for necessary investment to ensure reliability. See EPSA [Protest, Answer](#), and [joint Request for Rehearing](#) in PJM's Locational Deliverability Area Reliability Requirements (LDA RR) revisions proceeding, Docket Nos. ER23-729 and EL23-19.

²⁵ *Id.*

of market participants.²⁶ Even if the Commission ultimately concludes that MISO's actions did not comply with the terms of its Tariff, the Commission should exercise its remedial discretion to maintain the status quo and avoid the significant uncertainty and harm associated with recalculating the Ratio.

III. CONCLUSION

Wherefore, EPISA respectfully requests that the Commission reject MISO's proposal to update its Ratio in advance of the 2023/24 PRA and immediately terminate the EL23-46-000 docket in order to restore certainty to the MISO market.

Respectfully submitted,

/s/Nancy Bagot

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*On behalf of the
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Dated: March 29, 2023

²⁶ See, e.g., *N.Y. Indep. Sys. Operator, Inc.*, 92 FERC ¶ 61,073 at 61,307 (2000), *order on reh'g*, 97 FERC ¶ 61,154 (2001).

CERTIFICATE OF SERVICE

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

Dated at Washington, D.C., this 29th day of March, 2023.

/s/Sharon Theodore

Sharon Theodore, VP, Regulatory
Affairs