

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

**Compensation for Reactive Power Within)
the Standard Power Factor Range)**

Docket No. RM22-2-000

**MOTION FOR EXTENSION OF COMMENT DATE AND
REQUEST FOR SHORTENED COMMENT PERIOD AND EXPEDITED ACTION**

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”),¹ the Electric Power Supply Association (“EPSA”),² The PJM Power Providers Group (“P3”),³ the New England Power Generators Association, Inc. (“NEPGA”),⁴ and Independent Power Producers of New York, Inc. (“IPPNY,” and collectively with EPSA, P3, and NEPGA, the “Indicated Energy

¹ 18 C.F.R. § 385.212 (2023).

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.

³ P3 is a non-profit organization dedicated to advancing federal, state and regional policies that promote properly designed and well-functioning electricity markets in the PJM Interconnection, L.L.C. (“PJM”) region. Combined, P3 members own over 83,000 MWs of generation assets and produce enough power to supply over 63 million homes in the PJM region covering 13 states and the District of Columbia. For more information on P3, visit www.p3powergroup.com. This filing represents the position of P3 as an organization, but not necessarily the views of any particular member with respect to any issue.

⁴ NEPGA is the trade association representing competitive power generators in New England. NEPGA’s member companies represent over 90 percent of the installed capacity in New England. NEPGA’s mission is to support competitive wholesale electricity markets in New England. NEPGA believes that open markets guided by stable public policies are the best means to provide reliable and competitively-priced electricity for consumers. A sensible, market-based approach furthers economic development, jobs and balanced environmental policy for the region. NEPGA’s member companies are responsible for generating and supplying electric power for sale within the New England bulk power system. This filing represents the position of NEPGA as an organization, but not necessarily that of any particular member.

Trade Associations”)⁵ hereby respectfully submit this motion (this “Motion”) requesting an extension of the date for comments on the Notice of Proposed Rulemaking (the “NOPR”) in the above-captioned proceeding⁶ until 45 days after the United States Court of Appeals for the District of Columbia Circuit (the “D.C. Circuit”) issues its decision on the pending petitions for review⁷ raising many of the same issues as the NOPR. This requested extension is necessary to ensure that interested entities are not required to spend substantial time and resources responding to the NOPR, only to have to modify or supplement their comments—potentially substantially—when the D.C. Circuit acts on the pending petitions for review. As discussed below, the petitioners in the D.C. Circuit Proceeding (the “Petitioners”) have raised fundamental questions regarding the Commission’s obligations under the Federal Power Act (the “FPA”) to compensate generators for providing reactive power; thus, the D.C. Circuit’s decision in that case is likely to have a substantial impact on the Commission’s decision on the NOPR. Accordingly, deferral of the comment period until after the D.C. Circuit issues its decision on the *MISO* Orders is necessary for administrative efficiency and to ensure an

⁵ IPPNY is a not-for-profit trade association representing companies involved in the development of electric generating facilities, the generation, sale, and marketing of electric power, and the development of natural gas facilities in the State of New York. IPPNY member companies produce a majority of New York’s electricity, utilizing almost every generation technology available today, such as wind, solar, natural gas, oil, hydro, biomass, energy storage, waste-to-energy, and nuclear. This pleading represents the position of IPPNY as an organization, but not necessarily the views of any particular member with respect to any issue.

⁶ *Compensation for Reactive Power Within the Standard Power Factor Range*, 186 FERC ¶ 61,203 (2024).

⁷ *Capital Power Corp. v. FERC*, Case Nos. 23-1134, *et al.* (D.C. Cir.) (the “D.C. Circuit Proceeding”). The D.C. Circuit Proceeding involves petitions for review of the Commission’s orders in Docket No. ER23-523-000. See *Midcontinent Indep. Sys. Operator, Inc.*, 182 FERC ¶ 61,033 (“*MISO I*”), *reh’g denied by operation of law*, 182 FERC ¶ 62,180, *on reh’g*, 184 FERC ¶ 61,022 (2023) (“*MISO II*,” and together with *MISO I*, the “*MISO* Orders”).

appropriate record for Commission action in this proceeding.

Comments on the NOPR are currently due on May 28, 2024. In light of this rapidly approaching deadline, the Indicated Energy Trade Associations respectfully request that the Commission issue a notice **on or before May 10, 2024** deferring the due date for comments on the NOPR until a date to be specified after the issuance of a decision in the D.C. Circuit Proceeding. The Indicated Energy Trade Associations further request a shortened comment period of **five (5) days** to allow the issuance of such a notice by that date.

I. REQUEST FOR EXTENSION OF COMMENT DATE

The Indicated Energy Trade Associations respectfully request that, in order to avoid wasting the Commission's and interested entities' time and resources, and to ensure that the Commission's record for action in this proceeding can reflect the determinations the D.C. Circuit may make with respect to the *MISO* Orders, the Commission defer the due date for comments on the NOPR until 45 days after a decision is issued in the D.C. Circuit Proceeding.

In the *MISO* Orders, the Commission accepted a filing by Midcontinent Independent System Operator, Inc. ("MISO"), on behalf of the MISO Transmission Owners (the "MISO TOs"), to eliminate all charges under Schedule 2 to MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (the "MISO Tariff") for the provision of reactive power within the standard power factor range (referred to as "the deadband"). The petitions for review of the *MISO* Orders that are currently pending before the D.C. Circuit raise various questions regarding the Commission's ability to

eliminate compensation for reactive power within the deadband, which is precisely the same action that the Commission proposes to take in the NOPR.⁸

Issues under consideration before the D.C. Circuit and before the Commission in the NOPR directly overlap. Most critically, the D.C. Circuit has been asked to consider the question that lies at the heart of the NOPR: whether elimination of reactive power compensation is consistent with “FERC’s statutory responsibilities to ensure ‘just and reasonable’ rates for utilities and the constitutional principles that lie at the heart of that statutory mandate,”⁹ and whether such elimination of reactive power compensation results in “an uncompensated taking of property in violation of the Takings Clause.”¹⁰ Petitioners also have argued, among other things, that the Commission erred in claiming that “generators need not be compensated for providing reactive power where they are ‘only meeting [their] obligation’ for interconnection,”¹¹ and that “reactive service requires

⁸ The *MISO* Orders involved a filing under Section 205 of the FPA affecting the MISO region, while the NOPR proposes a rule under Section 206 of the FPA that would apply to all jurisdictional entities. Nonetheless, there is substantial overlap in the issues raised in the two cases because the impact of the *MISO* Orders and the NOPR is the same: elimination of reactive power compensation for generators because transmission owners will not pay for reactive power that is provided within the deadband. See *MISO II*, 184 FERC ¶ 61,022 at P 1 (explaining that the MISO TOs proposed “eliminat[ing] all charges under Schedule 2 for the provision of reactive power within the standard power factor range . . . from MISO TOs’ own and affiliated generation resources” and “also proposed to terminate the obligation under Schedule 2 to pay unaffiliated generation resources in MISO for Reactive Service”); NOPR, 186 FERC ¶ 61,203 at P 41 (“we propose, pursuant to FPA section 206, that a just and reasonable replacement rate is to prohibit transmission providers from including in their transmission rates any charges associated with the supply of reactive power within the standard power factor range from a generating facility”).

⁹ *Capital Power Corp. v. FERC*, Joint Brief of Petitioners at 45, Case Nos. 23-1134, *et al.* (D.C. Cir. filed Dec. 22, 2023) (the “Petitioners Brief”).

¹⁰ *Id.* at 68.

¹¹ *Id.* at 45 (citation omitted) (alterations in original).

‘little to no incremental investment’”¹² The NOPR relies on the exact same factors in preliminarily finding that reactive power compensation within the deadband is not necessary because “the generating facility already provides reactive power within the standard power factor range at no cost or *de minimis* cost,” and “because providing reactive power within the standard power factor range is an obligation of the generating facility as an interconnection customer and consistent with good utility practice.”¹³ Similarly, the Petitioners Brief argues that the Commission improperly found that there are “alternative ‘mechanisms’ for the recovery of reactive power costs,”¹⁴ but the NOPR makes the same claim in proposing to eliminate reactive power compensation.¹⁵

In light of the substantial overlap of issues under consideration in the D.C. Circuit Proceeding and the NOPR, and the likely impact of a decision in the D.C. Circuit Proceeding on the NOPR, good governance and administrative efficiency require the tailored procedural extension requested herein. The D.C. Circuit could directly address Petitioners’ arguments that the Commission is obligated under the FPA to provide compensation to generators that provide reactive service, and is likely to make other findings that directly bear on the Commission’s actions on the NOPR, including but not

¹² *Id.* at 56. See also *Capital Power Corp. v. FERC*, Initial Brief of Intervenor-Petitioners American Clean Power Association; Solar Energy Industries Association; Wolverine Power Supply Cooperative, Inc.; Sugar Creek Wind One LLC; Deerfield Wind Energy, LLC, Deerfield Wind Energy 2, LLC; and Odell Wind Farm, LLC, Case Nos. 23-1134, *et al.* (D.C. Cir. filed Jan. 5, 2024) (the “Intervenor-Petitioners Brief”) (“FERC acted arbitrarily and capriciously by failing to provide substantial evidence to support its conclusion that ‘Reactive Service requires little or no incremental investment,’ and therefore that additional compensation is not appropriate for generators producing reactive power within the Standard Range.” (citations omitted)).

¹³ NOPR, 186 FERC ¶ 61,203 at P 28.

¹⁴ Petitioners Brief at 58.

¹⁵ See, e.g., NOPR, 186 FERC ¶ 61,203 at P 6 (“any purported costs associated with such provision of reactive power can be recovered in other ways—such as through energy or capacity sales” (footnote omitted)).

limited to findings with respect to the burden that the Commission must satisfy and the evidence that is needed for the Commission to modify existing agreements and rate schedules providing for reactive power compensation.¹⁶ As a result, absent deferral of the existing comment date, commentors would have to spend considerable time and resources preparing their comments on the NOPR, only to have to modify or supplement those comments to address the D.C. Circuit's decision. The Indicated Energy Trade Associations emphasize that they anticipate filing extensive comments on the NOPR that include supporting testimony; it would be wasteful to require them and other commenters to subsequently overhaul or supplement their comments to account for the D.C. Circuit's findings.¹⁷ The requested extension would ensure that the limited resources of interested entities and staff are not needlessly squandered, and ensure the Commission has a record for action that takes into account directly relevant court precedent.

The Indicated Energy Trade Associations therefore request that the Commission defer the deadline for comments on the NOPR until 45 days after the issuance of the D.C. Circuit's decision on the pending petitions for review of the *MISO* orders.

II. REQUEST FOR SHORTENED COMMENT PERIOD AND EXPEDITED ACTION

Comments on the NOPR are currently due on May 28, 2024. In light of the substantial amount of time that will be required for interested entities to prepare their responses to the NOPR, the Indicated Energy Trade Associations respectfully request

¹⁶ See, e.g., Petitioners Brief at 37-41, 55-61; Intervenor-Petitioners Brief at 22-29, 36-38.

¹⁷ In fact, certain of the Indicated Energy Trade Associations already submitted extensive filings in response to the Notice of Inquiry preceding the NOPR. See Comments of the Electric Power Supply Association, Docket No. RM22-2-000 (filed Feb. 22, 2022); Comments of the PJM Power Providers Group on Reactive Power Capability Compensation, Docket No. RM22-2-000 (filed Feb. 22, 2022); Reply Comments of the Electric Power Supply Association, Docket No. RM22-2-000 (filed Mar. 23, 2022).

that the Commission act on this Motion and issue a notice on or before **May 10, 2024**, deferring the comment date on the NOPR as requested herein. In addition, the Indicated Energy Trade Associations request that the Commission establish a shortened comment period of **five (5) days** for this Motion in order to allow it to act by the requested date.

III. CONCLUSION

Wherefore, the Indicated Energy Trade Associations respectfully request that the Commission defer the date for comments on the NOPR as requested herein, establish a shortened comment period of five days with respect to this Motion, and act on this Motion by May 10, 2024.

Respectfully submitted,

ELECTRIC POWER SUPPLY ASSOCIATION

By: /s/ Neil L. Levy
Neil L. Levy
Stephanie S. Lim
McDERMOTT WILL & EMERY LLP
The McDermott Building
500 North Capitol Street, NW
Washington, DC 20001

Nancy Bagot
Senior Vice President
Sharon Royka Theodore
Vice President, Regulatory Affairs
Electric Power Supply Association
1401 New York Ave, NW, Suite 950
Washington, DC 20005

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

THE PJM POWER PROVIDERS GROUP

By: /s/ Glen Thomas
Glen Thomas
President
Laura Chappelle
Diane Slifer
GT Power Group
101 Lindenwood Drive, Suite 225
Malvern, PA 19355

On behalf of **The PJM Power
Providers Group**

**NEW ENGLAND POWER GENERATORS
ASSOCIATION, INC.**

By: /s/ Bruce Anderson
Bruce Anderson
Senior Vice President & General
Counsel
New England Power Generators
Association, Inc.
110 Turnpike Road, Suite 212
Westborough, MA 01581

On behalf of **New England Power
Generators Association, Inc.**

**INDEPENDENT POWER PRODUCERS
OF NEW YORK, INC.**

By: /s/ Gavin J. Donohue
Gavin J. Donohue
President and CEO of IPPNY
Richard Bratton
Director of Market Policy and
Regulatory Affairs
Independent Power Producers of
New York
111 Washington Ave, Suite 700
Albany, NY 12210

On behalf of **Independent Power
Producers of New York, Inc.**

Dated: April 25, 2024