

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

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Public Citizen, Inc.	)	Docket No. EL 15-70-000
	)	
v.	)	
	)	
Midcontinent Independent System Operator, Inc.	)	

The People of the State of Illinois By Illinois Attorney General Lisa Madigan	)	Docket No. EL15-71-000
	)	
v.	)	
	)	
Midcontinent Independent System Operator, Inc.	)	

Southwestern Electric Cooperative, Inc.	)	Docket No. EL15-72-000
	)	
v.	)	
	)	
Midcontinent Independent System Operator, Inc., Dynegy, Inc., and Sellers of Capacity into Zone 4 of the 2015-2016 MISO Planning Resource Auction	)	

(Not Consolidated)

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**COMMENTS OF THE ILLINOIS COMMERCE COMMISSION**

Pursuant to Rule 211 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”) 18 C.F.R. § 385.211, the Illinois Commerce Commission (“ICC”) respectfully submits the following comments in the above-captioned

dockets regarding the formal complaints against the Midcontinent Independent System Operator, Inc. (“MISO”) submitted to the Commission by the Illinois Attorney General (“IL AG”) and Public Citizen, Inc. (“Public Citizen”) on May 28, 2015, and the Southwestern Electric Cooperative (“SWEC”) on May 29, 2015 (collectively, “Complainants”) regarding MISO’s 2015-2016 Planning Resource Auction (“PRA”).

On May 29, 2015, the Deputy Secretary of the Commission issued a *Notice of Complaint* for both the Public Citizen and IL AG Complaints. On June 2, 2015, the Secretary of the Commission issued a *Notice of Complaint* for the SWEC Complaint. On June 10, 2015, the Commission issued a notice extending the deadline for comments and protests in these proceedings to July 2, 2015.

On June 2, 2015, the ICC submitted its Notice of Intervention in Docket No. EL15-71-000. On June 3, 2015, the ICC submitted its Notice of Intervention in Docket Nos. EL15-70-000 and EL15-72-000. As such, the ICC is a party to these proceedings.

## **I. THE ICC’S POSITION AND RECOMMENDATION**

The ICC supports the request for expedited or “Fast Track” resolution of the complaints as this matter does require expeditious resolution pursuant to the Commission’s rules of practice and procedure.<sup>1</sup>

If the PRA results are found to result in rates that are unjust and unreasonable, the Commission should order appropriate refunds. Regardless, the Commission should direct MISO to work with its stakeholders, in an expeditious manner, to reexamine certain design elements of the MISO PRA and to submit tariff changes prior to the 2016 PRA to ensure that the 2016 PRA, and future PRAs, produce just and reasonable capacity prices.

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<sup>1</sup> 18 C.F.R. § 385.206(h).

The design elements at issue include: (1) reference levels; (2) local clearing requirements (“LCR”); and (3) local resource zone (“LRZ”) configuration. Specifically, the Commission should reexamine the effectiveness of MISO’s current method for calculating the reference level as a means to mitigate market power and whether the “safe harbor” reference level concept should be abandoned in favor of unit-specific cost offers, particularly in the presence of a pivotal supplier.

The ICC acknowledges the role that LRZs play with respect to reliability. However, LRZ 4 bound on the LCR rather than the capacity import limit (“CIL”), which directly impacted the clearing price by limiting the volume of lower cost generation that could be imported into LRZ 4 to meet its reliability requirement. Such an occurrence suggests that there is an inconsistency in the relationship between the LCR, the CIL and the role these parameters play in achieving MISO’s stated reliability goals within each LRZ. Accordingly, the Commission should reexamine how MISO develops these zonal auction parameters, how MISO implements them in the PRA, how they impact the PRA clearing prices for each LRZ and order MISO to correct any existing design flaws.

Finally, given the results of the 2015-2016 PRA, and the increasing strength of the interconnection between LRZs 4 and 5, the Commission should direct MISO to consolidate LRZs 4 and 5. Consolidating the two LRZs would dilute the ability of a pivotal supplier to exercise market power.

## **II. SUMMARY OF THE COMPLAINTS**

### **A. IL AG Complaint**

The IL AG Complaint takes issue with the results of MISO’s 2015-2016 PRA. This Complaint alleges that the clearing price for LRZ number 4 (the Ameren Illinois zone) increased

from \$16.75 per MW-day in the 2014-2015 PRA to \$150 per MW-day, while no other zone in MISO cleared at a rate above \$3.48 per MW-day.<sup>2</sup> The IL AG Complaint also notes that in both of MISO's prior PRAs, the clearing price in Zone 4 was consistent with the clearing prices in the other MISO zones.<sup>3</sup> The IL AG Complaint contends that the \$150 per MW-day result does not represent the rate that would be produced in a fully competitive market that lacks a pivotal supplier.<sup>4</sup>

The IL AG Complaint requests that the Commission suspend the capacity charges being charged by MISO to load-serving entities ("LSEs") in LRZ 4 for the 2015-2016 planning year and open a proceeding to determine whether those rates are just and reasonable, as required by the Federal Power Act ("FPA").<sup>5</sup> The IL AG Complaint also requests that the Commission order refunds of any amounts not suspended but collected from consumers that are not found to be just and reasonable pursuant to the FPA.<sup>6</sup> The IL AG Complaint further requests that, if necessary, the Commission assign the issues to a settlement judge for a settlement process with a deadline for resolution of 60 days, and if settlement is not successful, set the matter for discovery and evidentiary hearing.<sup>7</sup> Finally, the IL AG Complaint requests that the Commission investigate evidence of market manipulation in LRZ 4 during the 2015-2016 PRA.<sup>8</sup>

## **B. SWEC Complaint**

The SWEC Complaint alleges that the 2015-2016 PRA failed to produce just and reasonable rates in LRZ 4 as a result of a non-competitive auction.<sup>9</sup> In particular, SWEC notes

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<sup>2</sup> IL AG Complaint, at P 9.

<sup>3</sup> IL AG Complaint, at P 11.

<sup>4</sup> IL AG Complaint, at P 10.

<sup>5</sup> IL AG Complaint, at P 12.

<sup>6</sup> IL AG Complaint, at P 12.

<sup>7</sup> IL AG Complaint, at P 12.

<sup>8</sup> IL AG Complaint, at P 12.

<sup>9</sup> SWEC Complaint, at 1-2.

(1) the increase in the PRA clearing price for LRZ 4 from the 2014-2015 price of \$16.75/MW-Day to the 2015-2016 price of \$150.00/MW-Day; and (2) the disparity between the clearing price of \$150.00/MW-Day for LRZ 4 and the other MISO LRZs that all had clearing prices under \$3.48/MW-Day.<sup>10</sup>

SWEC seeks a Commission order that: (1) finds the results of the MISO 2015-2016 PRA for LRZ 4 to be unjust, unreasonable, and unduly discriminatory; (2) sets a just, reasonable, and non-discriminatory price for capacity in LRZ 4; (3) directs MISO to submit for Commission approval tariff revisions that will prevent a single market participant from exercising market power in future PRAs; and (4) initiates an investigation.<sup>11</sup>

### **C. Public Citizen Complaint**

Public Citizen's Complaint alleges that the outcome for LRZ 4 during the 2015-2016 PRA is the result of capacity withholding.<sup>12</sup> Public Citizen pieces together public information from various sources to conclude that, among other illegal actions, Dynegy may have economically withheld capacity to drive auction prices from \$16.75 to \$150.00 per MW-Day.<sup>13</sup> Public Citizen argues that the Commission should set the PRA outcome for LRZ 4 for emergency hearing under Section 206 of the FPA, order refunds in the event that the Commission finds that the rates are unjust and unreasonable or unduly discriminatory as the result of illegal market manipulation of the auction through withholding or any other illegal market actions, and set the just, reasonable, and not unduly discriminatory rates to be charged prospectively.<sup>14</sup>

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<sup>10</sup> SWEC Complaint, at 2.

<sup>11</sup> SWEC Complaint, at 2-3.

<sup>12</sup> Public Citizen Complaint, at 1.

<sup>13</sup> Public Citizen Complaint, at 3.

<sup>14</sup> Public Citizen Complaint, at 9-10.

### III. COMMENTS

The Commission has long recognized the importance of preventing both potential market power abuses and market design flaws that may pose a significant threat to the markets.<sup>15</sup> If the Commission determines that market rules permit the possibility of such activity, it should take steps to return confidence to the markets and change the rules to provide efficient energy services at reasonable cost. Because any lingering design flaws would compound the financial harm ultimately borne by consumers, the Commission should take steps in such cases to mitigate such financial harm.<sup>16</sup> The Commission must ensure that MISO constructs the market design elements correctly to ensure transparency and proper outcomes and to protect consumers against the potential for market power abuse.

These comments focus on three design elements of MISO's PRA and urge the Commission to expeditiously direct and oversee review and reexamination of these auction design elements to ensure that auction outcomes are just and reasonable. As noted by both the IL AG and SWEC, such a process will likely require an order by the Commission directing MISO to amend its tariff governing the PRA.<sup>17</sup> If the PRA results are found to result in rates that are unjust and unreasonable, the Commission should order appropriate refunds.

As mentioned above, the ICC supports the request for expedited or "Fast Track" resolution of the complaints as this matter does require expeditious resolution pursuant to the Commission's rules of practice and procedure.<sup>18</sup>

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<sup>15</sup> Order No. 719, *Wholesale Competition in Regions with Organized Electric Markets*, 125 FERC ¶ 61,071 (2008).

<sup>16</sup> *Id.*, at P 392.

<sup>17</sup> IL AG Complaint, at P 56; SWEC Complaint, at 2.

<sup>18</sup> 18 C.F.R. § 385.206(h).

## **A. Reference Levels**

MISO relies heavily on threshold benchmarks, such as reference levels, to protect against the exercise of market power by participants in the PRA.<sup>19</sup> The MISO tariff requires the MISO Independent Market Monitor (“IMM”) to set the initial reference level in each LRZ based on the PJM weighted average resource clearing price.<sup>20</sup> While the IMM has general authority to investigate market participants’ behavior during the PRA,<sup>21</sup> the IMM does not review bids below the reference level for each LRZ.<sup>22</sup> Notwithstanding this policy, a capacity bid price that is below the reference level does not necessarily ensure that a capacity supplier is not exercising market power. If the reference level is set above what would be set by a competitive market, a bidder is able to exercise market power. An excessive reference level allows a pivotal supplier to use its market power and extract monopoly rents.

The existence of a pivotal supplier in LRZ 4<sup>23</sup> and the results of the 2015-2016 PRA demonstrate that certain design elements of MISO’s PRA need to be reexamined. In particular, the Commission should reexamine the effectiveness of MISO’s current reference level as a means to mitigate market power and whether the concept of a “safe harbor” reference level should be replaced with a requirement for unit-specific cost offers when there is a pivotal supplier.

## **B. Local Clearing Requirement**

MISO’s LCR also played a critical role in the clearing price for LRZ 4. The LCR is effectively the local reliability requirement (“LRR”), less the LRZ’s CIL.<sup>24</sup> The LCR represents

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<sup>19</sup> MISO Tariff, Module D.

<sup>20</sup> MISO Tariff, Module D, Subsection 64.1.4(e)(ii).

<sup>21</sup> MISO Tariff, Module D, Subsection 53.1.

<sup>22</sup> MISO Tariff, Module D, Subsections 63.3(a)(ii), 64.1.2(c) and 64.1.2(f).

<sup>23</sup> SWEC Complaint, at P 29 and 59; IL AG Complaint, at P 33; and Public Citizen Complaint, at 3.

<sup>24</sup> MISO Tariff, Module E-1, Subsection 68A.5-6.

the amount of capacity that must be supplied by generators located within each LRZ.<sup>25</sup> The LRR represents the amount of resources required to yield a one-day in ten year loss-of-load expectation without assistance from external ties.<sup>26</sup> The CIL represents how much capacity can be imported from outside of the LRZ.<sup>27</sup> For the 2015-2016 PRA, LRZ 4 had a LRR of 11,982 MWs, a CIL of 3,130 MWs and a LCR of 8,852 MWs.<sup>28</sup>

While the CIL for LRZ 4 was 3,130 MWs, the actual amount of imports into LRZ 4 during the PRA was limited to 1,568 MWs.<sup>29</sup> The ICC acknowledges the purpose and importance of having an LCR. It is unclear, however, why LRZ 4 bound on the LCR without first binding on the CIL. Here, 1,562 MWs of import capability – almost 50 percent of the CIL – was not utilized to allow lower cost capacity to meet LRZ 4’s LRR. Allowing 1,562 MWs of import capacity to sit unutilized likely directly contributed to the \$150 clearing price for LRZ 4. Given that the PRA clearing prices for the other MISO LRZs were all below \$3.50, it is reasonable to assume that allowing lower-priced imports to be cleared before higher-priced capacity within LRZ 4 would have resulted in a PRA clearing price for LRZ 4 significantly less than \$150.00.

Allowing 1,562 MWs of import capacity to sit unutilized also raises questions regarding how MISO determines the order in which resources internal or external to a LRZ are accepted. If the intent of the LRR is to ensure reliability in the LRZ, it should not make any difference if the capacity used to achieve that standard is located internally or externally to the LRZ unless there is a physical constraint limiting the opportunity to import the capacity. Moreover, because

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<sup>25</sup> MISO Tariff, Module E-1, Subsection 68A.5-6.

<sup>26</sup> MISO Tariff, Module E-1, Subsection 68A.5.

<sup>27</sup> MISO Tariff, Module E-1, Subsection 68A.4.

<sup>28</sup> *2015/2016 Planning Resource Auction Results (Extended)*, May 14, 2015. (“PRA Summary Report”), at 6-7. <https://www.misoenergy.org/Library/Pages/ManagedFileSet.aspx?SetId=2054>

<sup>29</sup> PRA Summary Report, at 6.

LRZ 4 was allowed to first bind on the LCR, it is unclear what the CIL is expected to represent. Accordingly, the Commission should reexamine how MISO develops these auction parameters, how MISO implements them in the PRA, and how they impact the PRA clearing prices for each LRZ.

### **C. Local Resource Zone Configuration**

MISO's LRZ configuration is intended to reflect the need for an adequate amount of planning resources in the right physical locations to reliably meet demand and loss-of-load requirements.<sup>30</sup> The configuration of MISO's LRZs is critical to the ability of the PRA to produce just and reasonable rates in that, as noted above, MISO conducts a transfer analysis of each LRZ that directly impacts the PRA clearing process.<sup>31</sup> The LCR, capacity export limits and CIL all impact the PRA clearing price for a LRZ.

In that context, LRZs that are too small can augment the ability of pivotal suppliers to exercise market power. Accordingly, it is critical that MISO properly configure the LRZs within its footprint. In particular, given the outcome of the 2015-2016 PRA, the Commission should direct MISO to consolidate LRZs 4 and 5. Such a consolidation would increase the number of auction participants and improve the ability to import capacity into the combined LRZ, which would serve to dilute the ability of a pivotal supplier to exercise its market power. Moreover, given the increasing strength of the interconnection between LRZs 4 and 5, it makes sense for MISO to consolidate the two zones.<sup>32</sup>

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<sup>30</sup> MISO BPM-011-r14, Subsection 5.2.

<sup>31</sup> MISO BPM-011-r14, Subsection 5.2.2.1.

<sup>32</sup> *LRZ 4 & 5 Combination Study Update*, MISO LOLE Working Group, May 7, 2014.  
<https://www.misoenergy.org/Library/Repository/Meeting%20Material/Stakeholder/LOLEWG/2014/20140507/20140507%20LOLEWG%20Item%2006%20LRZ%204%20and%205%20Combination%20Update.pdf>

#### IV. CONCLUSION

WHEREFORE, for the reasons set forth above, the ICC respectfully requests that the Commission direct MISO to work with its stakeholders, in an expeditious manner, to reexamine certain design elements of the MISO PRA construct and to submit tariff changes prior to the 2016 PRA to ensure that the 2016 PRA, and future PRAs, produce just and reasonable capacity prices, consistent with the comments and recommendations set forth herein. In addition, the ICC requests that the Commission direct MISO to consolidate LRZs 4 and 5 in order to dilute the ability of a pivotal supplier to exercise its market power. If the PRA results are found to result in rates that are unjust and unreasonable, the Commission should order appropriate refunds. In addition, the Commission should expedite consideration of these proceedings. The ICC further requests any and all other appropriate relief.

Respectfully submitted,

*/s/Christine F. Ericson*

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ILLINOIS COMMERCE COMMISSION

Dated: June 29, 2015

CERTIFICATE OF SERVICE

I hereby certify that I caused copies of the foregoing document of the Illinois Commerce Commission to be served this day upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Chicago, Illinois, this 29<sup>th</sup> day of June, 2015.

Respectfully submitted,

*/s/Christine F. Ericson*

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On behalf of the  
ILLINOIS COMMERCE COMMISSION