

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

Midcontinent Independent System Operator, Inc.)

Docket No. ER15-918-000

**MOTION TO FILE COMMENTS OUT OF TIME AND
COMMENTS OF THE ILLINOIS COMMERCE COMMISSION**

Pursuant to Rules 211 and 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §385.211 and §385.212, the Illinois Commerce Commission (“ICC”) respectfully submits this motion to file comments out of time and comments regarding the January 28, 2015, filing submitted by the Midcontinent Independent System Operator, Inc., (“MISO”) in the above-captioned docket (“January 28 Filing”). On January 29, 2015, the Deputy Secretary of the Commission issued a *Combined Notice of Filings* setting February 18, 2015, as the deadline for comments and protests in this case. The ICC submitted a Notice of Intervention in Docket No. ER15-918-000 on February 18, 2015, and is, therefore, a party to this proceeding.

I. MOTION TO FILE COMMENTS OUT OF TIME

Pursuant to Rule 212 of the Rules of Practice and Procedure of the Commission, 18 C.F.R. §385.212, the ICC hereby submits this motion to file comments out of time in the above-captioned docket regarding MISO’s January 28 Filing. The ICC filed its Notice of Intervention in this proceeding on February 18, 2015 and, therefore, is a party to this case. Given the ICC’s administrative process, it was unable to meet the February 18, 2015 deadline for substantive

comments in this case. With these comments, however, the ICC does not wish to disrupt or delay the proceeding.

The ICC is the state utility regulatory commission in Illinois. Given that the outcome of this proceeding could have an impact in Illinois, the ICC's comments are in the public interest. Moreover, no other party can adequately represent the ICC's interests in this matter. Therefore, good cause exists to grant this motion.¹ As such, the ICC respectfully requests that the Commission grant this motion to file comments out of time and consider the comments submitted herein.

II. SUMMARY OF THE JANUARY 28 FILING

MISO states that the January 28 Filing contains proposed revisions to Module D of the MISO tariff regarding the application of physical withholding mitigation to generation resources retiring or suspending operations during the period of time between the close of the 2015-2016 planning resource auction ("PRA") and the end of the 2015-2016 planning year.² In particular, MISO notes that several generating units plan to retire or suspend just before or during the 2015-2016 planning year to meet environmental compliance requirements and that such resources do not have the option to continue to operate after the compliance deadline.³ MISO states that the current tariff provisions may subject the owners of such units to physical withholding mitigation because these resources are operational at the time of the PRA offer window, even if those resources will suspend or retire prior to, or during, the planning year.⁴

MISO states that these circumstances create risk for generating unit owners concerning their obligations to participate in the PRA and performance requirements should the retiring or

¹ See, *Trans Alaska Pipeline System, et al.*, 104 FERC ¶ 61,201, at 61,706 (2003) and *Natural Gas Pipeline Company of America*, 66 FERC ¶ 61,310 (1994) (motion granted for good cause shown).

² January 28 Filing, at 1.

³ January 28 Filing, at 3.

⁴ January 28 Filing, at 3.

suspending resource clear in the PRA.⁵ Accordingly, the January 28 Filing proposes to clarify that under a defined set of circumstances, owners of generation resources that will retire or suspend during the period of time between the end of the upcoming PRA offer window (March 31, 2015) and the end of the 2015-2016 planning year (May 31, 2016) will be relieved of the physical withholding mitigation provisions in Module D if they decide not to offer those resources into the PRA.⁶ MISO states that the proposed tariff change will ensure that a market participant in this situation will not involuntarily face physical withholding mitigation.⁷

MISO requests an effective date of March 30, 2015.⁸

IV. COMMENTS

A. MISO's January 28 Filing Should Be Rejected Because the Commission Can Address the Retiring Generator Issue Through Action on Individual Waiver Requests.

The ICC recommends that the Commission dismiss MISO's January 28 Filing because the Commission can, and should, address the retiring generator issue by acting on individual waiver request filings from throughout the MISO region, either granting or denying such requests. These waiver requests typically seek waiver of certain provisions of the MISO tariff's resource adequacy requirements to relieve the generator of the energy market must offer obligation and resource replacement requirements which would otherwise apply. The Commission has acted on the waiver requests filed by Indianapolis Power and Light⁹, DTE Electric Company¹⁰, MidAmerican Energy Company¹¹, Consumers Energy Company¹² and

⁵ January 28 Filing, at 3.

⁶ January 28 Filing, at 3.

⁷ January 28 Filing, at 3.

⁸ January 28 Filing, at 1.

⁹ *Indianapolis Power and Light Company v. MISO*, Docket No. EL14-70 (Jun. 20, 2014).

¹⁰ *DTE Electric Company*, 150 FERC ¶ 61,127 (2015)

¹¹ *MidAmerican Energy Company*, 150 FERC ¶ 61,124 (2015)

¹² *Consumers Energy Company*, 150 FERC ¶ 61,125 (2015)

Duke Energy Indiana, Inc.¹³ The waiver request for Wisconsin Power and Light Company is still pending.¹⁴ As such, procedurally, MISO's January 28 Filing is an unnecessary step which does not address the issue of the gap between generator retiring dates and the end of MISO's 2015-2016 delivery year. Furthermore, as explained below, if it is approved, MISO's proposal would result in wasting valuable capacity resources and could have negative consequences on the market resulting in higher rates to consumers.

B. MISO's January 28 Filing Should Be Rejected Because It Would Permit the Exercise of Market Power and it Would Allow Valuable Capacity Resources to Be Wasted.

The ICC is concerned that MISO's proposal will permit thousands of MW-months of capacity value to be wasted simply because certain generators propose to retire or suspend their units for a part of the 2015-2016 delivery year. Excusing those MWs from participating in the capacity auction would result in driving the auction clearing price higher under the simple economic principle of a lower supply facing the same demand, and may drive the price dramatically higher. Worse yet, MISO's proposal would exempt retiring generators from physical withholding challenges by the independent market monitor ("IMM"), regardless of how brief the generator's period of unavailability during the 2015-2016 delivery year might be. Physical withholding is a classic mechanism for exercising market power and MISO's proposal invites and incents generators to exercise it. For example, under MISO's proposal, a generator that plans to retire on May 30, 2016 would be exempt from all IMM withholding challenges if it chose not to offer into the PRA even though it could be available for 365 out of the 366¹⁵ days in the 2015-2016 delivery year. A company's decision to withhold such a generator from the

¹³ *Duke Energy Indiana, Inc.*, 150 FERC ¶ 61,126 (February 20, 2015)

¹⁴ *Wisconsin Power and Light Company*, Docket No. ER15-872 (Jan 16, 2015).

¹⁵ 2016 is a leap year.

capacity auction could substantially raise the auction clearing price, and that higher auction clearing price would be paid to all the other generators in that company's portfolio that clear the auction, as well as to all other companies' generators that clear the auction.

MISO's position on how to treat these retiring generators in a resource adequacy perspective has been inconsistent and is not well reasoned. Several of these generators have made filings asking the Commission to waive the must offer obligation and resource replacement requirements provisions of MISO's tariff generally for a six week period but longer in some cases.¹⁶ MISO has generally opposed the retiring generators' waiver requests, citing reliability concerns.¹⁷ For example, MISO states:

By 2016, the MISO North and Central Regions may face a capacity deficit below the Planning Reserve Margin. Such a shortfall would increase the risk of a loss of load.¹⁸

On that basis, in the waiver cases, MISO is opposing the generators' efforts to be excused from being unavailable for a generally short period of time at the end of the 2015-2016 delivery year (which is normally off-peak). In the instant case, however, MISO appears to be inviting the owners of the retiring units to make their units unavailable for the entirety of the 2015-2016 delivery year. It is not clear why MISO's reliability concerns in the waiver cases regarding generator unavailability as capacity resources for a short period at the end of the 2015-2016 delivery year would not also apply in the instant case where MISO's proposal could result in the

¹⁶ See, e.g., Motion to Intervene and Comments of the Midcontinent Independent System Operator, Inc. to Wisconsin Power and Light Company's Request for Waiver, Docket No. ER15-872-000, at 3 (February 6, 2015).

¹⁷ See, e.g., Motion to Intervene and Comments of the Midcontinent Independent System Operator, Inc. to Wisconsin Power and Light Company's Request for Waiver, Docket No. ER15-872-000, at 1 (February 6, 2015).

¹⁸ Motion to Intervene and Comments of the Midcontinent Independent System Operator, Inc. to Wisconsin Power and Light Company's Request for Waiver, Docket No. ER15-872-000, at 4-5 (February 6, 2015).

retiring generators being unavailable as a capacity resource for the entirety of the 2015-2016 delivery year.

In any event, it is the load serving entities, and, ultimately, retail electricity consumers, who will bear the higher auction costs that will result from MISO's proposal, as well as the potential for reliability impacts. Because of this, it is critical for MISO to take all reasonable steps to encourage competition in the capacity auction and to prevent the exercise of market power. Rather than simply sidelining retiring generators for the entire planning year, MISO should adopt a policy that enables the market to make use of the existing capacity on the system and permit the owners of those resources the opportunity to earn reasonable profits during the period they are available. Valuable resources should not be wasted. MISO's January 28 Filing proposal does not meet these standards, and the ICC recommends that the Commission reject it for that reason.

C. MISO's Proposal Unduly Discriminates Between Generators.

MISO proposes that, in order for a generating unit to be exempt from the IMM's withholding review upon exercising an option not to offer its capacity into the 2015 capacity auction, the generator must,

have submitted an Attachment Y Notice with the date to Retire or Suspend beginning on or after March 31, 2015 and by May 31, 2016, and for which the Transmission Provider [MISO] has determined that a SSR Agreement is not necessary, in accordance with Section 38.2.7, prior to the deadline for submitting ZRC Offers.¹⁹

Under MISO's existing tariff rules, a generating unit owner must submit an Attachment Y Notice to MISO at least 26 weeks in advance of any plan to retire or suspend operation of a

¹⁹ Proposed Section 64.1.1.g(ix).

generation unit.²⁰ As provided in the tariff, MISO “shall use reasonable efforts to respond to the Market Participant within 75 Calendar Days after receipt of the Attachment Y Notice, regarding whether the subject of an Attachment Y Notice appears to be required for transmission system reliability.”²¹

Although MISO’s January 28 Filing proposal does not specifically identify a cut-off date, presumably, MISO and the generator owner must complete the preconditions for the generating unit to be granted the proposed exemption from physical withholding review prior to the date that the PRA offer window closes. For the upcoming auction, the offer window is scheduled to close on March 31, 2015.²² So, even though retiring generators are required under MISO’s current tariff only to give 26 weeks (182 days) notice of intent to retire, any generator planning to retire between March 31, 2015 and May 31, 2016, and seeking to receive the exemption proposed in MISO’s January 28 Filing, will have had to submit its Attachment Y Notice to MISO on or before January 15, 2015 in order to be reasonably sure that MISO would be able to complete its system reliability analysis for that generator (75 days prior to March 31, 2015 is January 15, 2015) before the auction window closes.

Since that January 15, 2015 deadline precedes the date of MISO’s January 28 Filing which provided notice of the proposal, this shows that MISO’s January 28 Filing proposal unduly discriminates against generators planning to retire later in the 2015-2016 delivery year and gives undue preference to generators planning to retire earlier in the 2015-2016 delivery year. It is more likely that generators planning to retire earlier in the 2015-2016 delivery year would be able to meet the pre-conditions for exemption proposed in MISO’s January 28 Filing

²⁰ MISO Tariff, Section 38.2.7 (“System Support Resources”)

²¹ MISO Tariff, Section 38.2.7 (“System Support Resources”)

²² January 28 Filing, at 3.

simply by following the longstanding schedule for Attachment Y submissions set forth in MISO's tariff. On the other hand, generators planning to retire later in the 2015-2016 delivery year will not have learned until January 28, 2015 that they needed to submit their Attachment Y Notice to MISO by January 15, 2015 in order to qualify for MISO's newly proposed withholding exemption. This timing element constitutes undue discrimination among like generators (those planning to retire during the 2015-2016 delivery year) and MISO's January 28 Filing proposal must be rejected on that basis.

D. If the Commission Does Not Reject MISO's January 28 Filing Altogether, Then ICC Recommends That Generators that are Suspending Operations (Rather Than Retiring Outright) Should Not be Exempt from the Current Physical Withholding Mitigation Rules.

The January 28 Filing proposes to exempt from physical withholding mitigation rules generation resources that are either retiring or suspending operations between the close of the PRA offer window and the end of the 2015-2016 planning year and do not offer in the upcoming PRA. MISO states that its proposal will address certain risks faced by retiring or suspended resources by eliminating the possibility that such resources would be penalized for withholding if they choose not to offer into the capacity auction.²³ While the ICC opposes MISO's proposed exemption proposal in its entirety as explained above, it would be particularly inappropriate to grant such a withholding penalty exemption to the owners of units that are merely suspending operations for a part of the 2015-2016 delivery year, rather than retiring altogether. As explained above, MISO's proposal opens the door for the exercise of un-reviewed withholding strategies (market power manipulation) by both retiring and suspending generators. While generators using a retirement strategy to exercise market power will actually have to retire after implementing their withholding strategy, thus becoming unavailable for use in future

²³ January 28 Filing, at 3.

withholding strategies, suspending units will have the opportunity to exercise the physical withholding strategy for the 2015-2016 delivery year, and potentially, future delivery years.

Under the MISO tariff, the length of a suspension can be as short as two months:

Suspend: The temporary cessation of operation of a Generation Resource or an SCU for more than two (2) months commencing on a specified date that is provided to the Transmission Provider consistent with the requirements in Section 38.2.7 and Attachment X.²⁴

This ability to resume operations relatively quickly is a distinct difference from retiring resources. It permits generation units using a suspension strategy to withhold from the capacity market to still have the opportunity to reap profits in the energy market, and also the future potential to re-exercise a withholding strategy in future capacity auctions.

Unlike a suspended resource, a retiring resource forfeits its interconnection rights on the first date of retirement – effectively permanently removing itself from the energy/capacity market.²⁵ The forfeiture of interconnection rights effectively ensures that the retiring resource will not be used at a later date as part of a plan to manipulate the MISO energy or capacity markets. For this reason, the consequences for a unit owner using a retirement strategy to withhold from the capacity market are much more significant than the consequences faced by a unit owner using a suspension strategy for withholding. Therefore MISO's proposal to exempt suspending resources from the IMM's physical withholding review (and the consequences of that review) is even less appropriate than MISO's proposal to exempt retiring resources.

For this reason, the ICC recommends that, if the Commission does not reject MISO's January 28 Filing altogether, it should at least be rejected as it would apply to generating units merely proposing to suspend operations for a period of time, rather than retiring outright.

²⁴ MISO Tariff, Module A FERC Electric Tariff Common Tariff Provisions

²⁵ MISO Tariff, Section 38.2.7.

V. CONCLUSION

WHEREFORE, the ICC recommends that the Commission reject MISO's January 28 Filing proposal to exempt certain generators from the withholding provisions of MISO's tariff. The retiring generator issue can be best addressed through Commission action on individual waiver filings. MISO should adopt policies that encourage competition and preservation of the market value in existing resources which will soon retire. Instead, MISO's January 28 Filing would permit the exercise of market power through physical withholding strategies which would harm electricity consumers through unjust and unreasonable rates.

MISO's January 28 Filing proposal should also be rejected because it unduly discriminates against generators planning to retire late in the 2015-2016 delivery year and unduly preferences generators planning to retire earlier in the 2015-2016 delivery year. Finally, if the Commission does not reject MISO's January 28 Filing proposal in its entirety, it should at least reject it as it applies to generators that are merely temporarily suspending operations, rather than retiring altogether. Physical withholding market manipulation can be more easily accomplished

and with less risk and cost for the generator owner through use of a suspension strategy than for outright retirement. The ICC further requests any and all other appropriate relief.

Respectfully submitted,

/s/

Nora A. Naughton
Interim General Counsel
Christine F. Ericson
Deputy Solicitor General
John L. Sagone
Special Assistant Attorneys General
Illinois Commerce Commission
160 N. LaSalle St., Suite C-800
Chicago, IL 60601
(312) 793-2877
(312) 793-1556 (fax)
nnaughto@icc.illinois.gov
cericson@icc.illinois.gov
jsagone@icc.illinois.gov
ILLINOIS COMMERCE COMMISSION

Dated: February 25, 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 25th day of February, 2015.

Respectfully submitted,

/s/Nora A. Naughton

Nora A. Naughton
Interim General Counsel
Supervisory Counsel, Federal & External Issues
and Special Assistant Attorney General
Illinois Commerce Commission
160 N. LaSalle St., Suite C-800
Chicago, IL 60601
(312) 793-4344
(312) 793-1556 (fax)
nnaughto@icc.illinois.gov

Christine F. Ericson
Deputy Solicitor General and
Special Assistant Attorney General
Illinois Commerce Commission
160 N. LaSalle St., Suite C-800
Chicago, IL 60601
(312) 814-3706
(312) 793-1556 (fax)
cericson@icc.illinois.gov

On behalf of the
ILLINOIS COMMERCE COMMISSION