UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System Operator, Inc.	**)** **)**	**Docket No. ER23-1195-000**

MOTION FOR LEAVE TO REPLY AND REPLY OF THE CLEAN ENERGY COALITION

Pursuant to Rule 213 of the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedures,[1] the Solar Energy Industries Association ("SEIA"),[2] American Clean Power Association ("ACP"),[3] Clean Grid Alliance ("CGA"),[4] Natural Resources Defense Council, Fresh Energy, and Union of Concerned Scientists (collectively, the "Clean Energy Coalition") submit this Motion for leave to Reply and Reply to the Midcontinent Independent System Operator, Inc.'s ("MISO") April 14, 2023 Answer regarding MISO's request to consider

[1] 18 C.F.R. § 385.213 (2022).
[2] The comments contained in this filing represent the position of SEIA as a trade organization on behalf of the solar industry, but do not necessarily reflect the views of any particular member with respect to any issue.
[3] ACP is a national trade association representing a broad range of entities with a common interest in encouraging the expansion and facilitation of wind, solar, energy storage, and electric transmission in the United States. The views and opinions expressed in this filing do not necessarily reflect the official position of each individual member of ACP.
[4] Clean Grid Alliance is a non-profit organization whose 50+ members include wind, solar and energy storage developers and manufacturers, non-profit environmental, public interest and clean energy advocacy organizations, farmer organizations, and other businesses that support renewable energy.

Dispatchable Intermittent Resources ("DIRs") ineligible to provide Up Ramp Capability and Down Ramp Capability.[5]

As noted in our Protest, the Clean Energy Coalition recognizes that non-deliverability of ramp capabilities is both a reliability and market problem, and we do not advocate for consumers to pay for a product that is not deliverable.[6] However, such concerns do not change MISO's burden under Section 205 of the Federal Power Act to meet the requirements of that section and maintain rates that are not unduly discriminatory. As explained below, MISO's Answer does little to save its initial filing from failing to meet the standards set under Section 205.

DISCUSSION

I. *Indianapolis Power & Light Co.* does not Support MISO's Proposed Ban.

MISO relies on a series of dockets related to *Indianapolis Power & Light Co. v. Midcontinent Indep. Sys. Operator, Inc.*, for the proposition that "present system limitations" are an appropriate reason to allow for the discriminatory treatment of resources with no plan or date certain to end the discrimination.[7] However, MISO's reliance on these matters is entirely misplaced, as they instead support Clean Energy Coalition's opposition to MISO's proposed ban.

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[5] *See generally Midcontinent Independent System Operator, Inc. Dispatchable Intermittent Resources vis-à-vis Ramp Capability Products*, Docket No. ER23-1195 (filed February 28, 2023) (hereinafter "MISO Filing").

[6] *See* Clean Energy Coalition Protest, Docket No. ER23-1195 (filed March 21, 2023) at 19.

[7] MISO Answer at 5.

In the *Indianapolis Power & Light* proceeding MISO's tariff was found to be unjust, unreasonable, and unduly discriminatory or preferential because, among other things, it failed to "properly account for currently available grid-scale battery storage devices, in particular Indianapolis Power's grid-scale lithium ion Harding Street Station Battery Energy Storage System (Battery Facility)."[8] MISO now contends that because "storage Resources were required to wait until MISO's system was configured to enable their fuller market participation as Electric Storage Resources," that therefore, the same "consideration" should be provided here.[9] However, MISO's overly simplified and misleading citation to that case does not bear scrutiny.

At the time of the *Indianapolis Power & Light* order, the Commission had commenced a rulemaking which would culminate in Order No. 841. In the Proposed Rule, the Commission proposed to require an RTO/ISO to revise its tariff to establish market rules that, recognizing the physical and operational characteristics of electric storage resources, facilitate their participation in the RTO/ISO markets—a requirement which formed the central basis of the final rule.[10] In this context, the Commission expected MISO to address the "tariff deficiencies in its Order No. 841 compliance filing," and "resolve[] the Commission's outstanding concerns in the

[8] *Indianapolis Power & Light Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,107 (2017).
[9] MISO Answer at 5.
[10] *Indianapolis Power & Light at* P6; *see also* Order No. 841, FERC Stats. & Regs. ¶ 31,398 at P 1.

instant dockets."[11] Specifically, with both MISO's compliance with the Commission's direction in the 2017 *Indianapolis Power & Light* order, and with Order No. 841, the Commission allowed some amount of discrimination to exist because there was a defined process to alleviate that discrimination.

Unlike in *Indianapolis Power & Light*, the Commission has no ongoing proceeding in the form of either the proposed rule or compliance filing that includes a set deadline that will necessarily result in a remedy to MISO's proposed discriminatory treatment of DIR resources. Therefore, if anything, these dockets support Clean Energy Coalition's position that without certain specific conditions, including a plan and timeline for developing a non-discriminatory solution, MISO's prohibition of DIRs from providing resources they are technically capable of providing is unduly discriminatory.[12]

Additionally, these dockets make clear that while MISO was working on the Order No. 841 compliance filing that would allow for full participation of battery storage resources, there were other alternative ways in which these resources could participate in providing ancillary services in MISO's market. For example, battery resources could register as SER – Type II resources – and while registering in such a way would be ill-suited for battery resource participation, it still at least provided a potential temporary participation pathway.[13] Here, MISO proposes no such

[11] *Indianapolis Power & Light Co.*, 162 FERC ¶ 61,266 at P 48, 60 (2018).
[12] *See* Protest of Clean Energy Coalition at 18-21.
[13] *Indianapolis Power & Light Co.*, 162 FERC ¶ 61,266 (2018).

alternative solutions, and instead proposes to entirely exclude all resources registered as DIRs from providing any ramp up services.

II. MISO's "Additional Analysis" is Unsupported, Unverifiable, and does not Justify its Proposed Ban.

Next, MISO contends that in response to the concerns raised in the protests that it "performed additional analysis on DIRs and the Ramp Capability Products."[14] MISO then summarizes a number of "observations" based on this additional analysis.[15] However, while MISO's additional analysis and justification for why it is incapable of providing another solution at this time may seem reasonable on its face, it suffers from many of the same shortcomings as identified in MISO's initial filing.

First, with regard to the facts asserted in the Answer, there isn't a single citation to any sworn testimony, affidavit, declaration, or expert analysis for all the data provided in this section.[16] Nor is there any citation to a source for any of that material. As such, it is impossible for any party—including the Commissioners or their staff—to verify or contest (1) the accuracy of the data, or (2) what assumptions were made in deriving that information. We cannot know if the data is accurately

[14] MISO Answer at 7.
[15] *Id*.
[16] *See* MISO Answer at 7-8. MISO also goes as far as to state "all DIRs behave the same way in the current MISO market design – i.e., they clear Energy whenever there is no congestion, and clear undeliverable UP Ramp Capability when there is congestion." MISO Answer at 12. However, MISO cites to no authority after that sentence, a problem compounded by the fact that MISO also cites to no authority with regard to the underlying data it appears to be relying upon on pages 7 and 8 of its Answer.

representative. As such, it is entirely inappropriate for the Commission to rely on this type of wholly unsupported information in a Section 205 proceeding where the applicant has the statutory burden to prove that its proposed tariff revisions are just and reasonable. To the extent that the Commission accepts and relies on this information at face value it is textbook arbitrary and capricious decision-making,[17] and reflects serious due process problems.[18] The Administrative Procedure Act requires the Commission to "identify and make available technical studies and data that it has employed" in reaching its decisions.[19] An "agency commits serious procedural error when it fails to reveal portions of the technical basis" for its decision.[20] Here, the underlying data has been shielded from scrutiny.

With the limited information available to Clean Energy Coalition, it is difficult to speculate on specific responses; however, even without access to the necessary sources and information we can still identify other shortcomings in MISO's analysis.

For example, MISO contends that the problems presented by the geographic concentration of DIRs pertains to solar farms as well as wind farms. However,

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[17] *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (an action by the Commission may be set aside "if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise").
[18] *Gerber v. Norton*, 294 F.3d 173 (D.C. Cir. 2002) (holding that the denial of access to data violates parties' due process rights to meaningful comment).
[19] *Conn. Light and Power Co. v. Nuclear Reg. Com'n*, 673 F. 2d 525, 530 (D.C. Cir 1982).
[20] *Id.*

MISO's statements here are littered with qualifiers that undermine its assertions. For example, MISO states, "there are solar farms that *can* experience similar levels of congestion," and cites to a single solar DIR in the North region.[21] MISO then speculates that "solar congestion levels *will likely* increase as the number of such DIRs increase."[22] Again, not only does MISO fail to cite a single source for this proposition, but MISO also fails to explain why this would be the case, and under what conditions or circumstances.

While MISO contends that "DIRs are not similarly situated as non-DIRs with regard to scope of non-deliverability problem,"[23] MISO does not even cite the legal standard, let alone specifically attempt to apply their unsupported facts to that standard.

III. MISO Continues to Fail to Explain Why Manual Screening is Insufficient.

MISO contends that flagging 200 wind DIRs in the North Region would be "cumbersome, and not conducive to reliability, efficiency and Good Utility Practice."[24] However, MISO fails to explain *why* it is "cumbersome" to perform manual screening, what their process is for screening, what the time commitment is for MISO staff to perform the screening, or what the potential options are for making the process less cumbersome. MISO also does not describe the delta

[21] MISO Answer at 9.
[22] *Id*. at 10.
[23] *Id*. at 4.
[24] *Id*. at 15.

between the cost and reliability effects of manually screening operations as compared to an outright ban on those resources from participating.

If the process is not explained, there is no way for parties to comment on how it could be improved. For example, MISO does not make clear whether it is the identification of constrained resources that is the problem, or whether it is the communication to those resources that is the problem. Notably, MISO does not specifically explain in this context why manually flagging resources that are all behind a single constraint is more labor intensive compared to identifying widely geographically dispersed non-DIRs.[25] This is important because before embarking on the deployment of a discriminatory ban, the Commission must ensure that all other non-discriminatory options are fully exhausted.

Additionally, MISO fails to identify or propose any alternatives as to how this process could be streamlined or otherwise improved, which ought to be a bright red flag for the Commission. MISO fails to explain why automating the screening process, or at least partially automating this process, is not currently feasible. Similar to the other deficiencies in MISO's filing and Answer, there is no declaration, affidavit, or sworn testimony meaningfully describing this process; instead, once again, we are left to take MISO's word as truth.

IV. MISO Fails to Examine and Disclose the Full Impact on Costs of its Proposed Ban.

[25] *See* Clean Energy Coalition Protest at 6, 8. For example, does manual screening require individual phone calls to, or manually disqualifying in the software of 200 different wind farms in a five-minute dispatch window? This issue is not explained in the record.

As noted by MISO, "it is elementary economics that reduced supply can, and in fact should, legitimately increase the price of a product that remains in demand."[26] MISO has not explained in the record the full scope and scale of a potential increase in both the prices of Ramp Capability Up and real-time Energy that this ban will cause.

Consistent with the Commission's mandate to protect consumers from increased energy costs, the Commission ought to require MISO to do everything possible to enable cheaper resources to provide all the services they are capable of. MISO has not done so here. Beyond the example of the price effects over a single day,[27] MISO fails to quantify or identify the totality of the impact of its proposed price increase on consumer costs and how those costs might change in the future if DIRs continue to be ineligible to provide ramp service.

V. MISO Concedes there are Alternative Solutions that it has not Investigated

As a sophisticated grid operator, MISO is fully capable of both identifying a potential problem and simultaneously offering a non-discriminatory solution. MISO has not done so here. As noted by MISO, there are other potential non-discriminatory alternative solutions to the problem identified by MISO that have not been fully examined. Since MISO has failed to review these examples prior to proposing a discriminatory solution, the Commission must – if it accepts MISO's proposal – require a transparent plan and timeline for evaluating these options and

[26] MISO Answer at 16.
[27] *Id*. at 17.

developing a non-discriminatory solution. The Commission should also require MISO to offer a meaningful participation pathway for all stakeholders.

As noted by MISO, one "possible solution[]" is using "the Reserve Procurement Enhancement process on the Ramp Capability Products, similar to what has been done with the Short-Term Reserve ("STR") product."[28] MISO also describes several other solutions, including "heuristic methods, such as an automated process to disqualify stranded Resources from clearing Ancillary Services (e.g., disqualifying Resources when Marginal Congestion Component is less than a particular price for a certain number of consecutive intervals), and creating a similar process to re-enable resources. MISO is also considering looking into nodal-level Market Clearing Prices, similar to energy LMPs."[29]

MISO fails to provide record evidence as to why these solutions are only "potential long-term solutions," and what specifically prevented MISO from fully vetting them before offering its discriminatory solution.[30] Likewise, MISO does not reasonably explain why it cannot perform an upgrade to its system to automate this process in parallel with its ongoing efforts, or why it cannot at least partially adopt some of these solutions such that DIRs could still participate, even if in a limited

[28] MISO Transmittal Letter at 11.
[29] *Id.*
[30] MISO also does not describe what specific other priorities they are engaged with that is preventing it from adopting an automated solution. For example, to the extent MISO believes that this problem is resulting in unjust and unreasonable rates, and its other software upgrades that it proposes to complete before addressing this problem are not resulting in unjust and unreasonable rates, MISO has its priorities wrong.

capacity. The Commission should not accept any assertion by MISO that parallel development is infeasible without compelling record evidence. And even if parallel development were determined to be infeasible, MISO's proposal should not be accepted given the lack of a clear timeline and commitment for evaluating and implementing a non-discriminatory solution.

VI. The Conditions Proposed by Clean Energy Coalition are Reasonable.

The Clean Energy Coalition proposed several conditions that potentially elevates MISO's proposal from being unduly discriminatory to merely discriminatory.[31] However, MISO rejects even these modest suggestions.

Nothing of what the Clean Energy Coalition proposes is novel or unduly burdensome on MISO. The Commission regularly insists upon sunset dates, and specific implementation deadlines that RTO/ISO's must meet. Unless these conditions are required, it is unlikely MISO will make non-discriminatory changes in a reasonable timeframe, if at all. MISO has a well-established history of unnecessarily drawing out deadlines, and requesting extensions to implement changes required by the Commission.

For example, in March 2021 MISO requested a third delay of implementation of its Electric Storage Resource ("ESR") initiative to 2025 to make way for a faster implementation of MSE.[32] On May 17, 2021, the Commission denied a request by

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[31] *See* Clean Energy Coalition Protest at 18-21.
[32] *Midcontinent Independent System Operator, Inc.'s Request to Defer Effective Date of Compliance with Order No. 841,* Docket Nos. ER19-465-000 and 465-001, 1-2 (March 4, 2021).

MISO for delay of its implementation of Order No. 841.[33] MISO argued that delay of the ESR product by three years would allow it to finish its MSE upgrades in late 2024 rather than 2025. Despite the Commission's denial of this extension on Order No. 841 compliance, MISO appears to have weathered the storm of parallel development of MSE and ESR, now claiming that it will complete development of MSE in late 2024 even without its proposed delay of ESR. Claims of the difficulty of parallel development, added complexity, and risk of delay of MSE were all present in its requested delay of ESR, and rightly rejected by the Commission.

Similarly, with regard to the implementation of Order 2222, MISO has proposed an outrageous October 1, 2029 effective date for its tariff changes, which would push back distributed energy resource participation in MISO's Energy and Operating Reserve Markets to March 1, 2030, nearly ten years after the Commission issued Order No. 2222 and nearly fourteen years from the Commission's publication of the Notice of Proposed Rulemaking that led to Order No. 2222.[34] It is the latest implementation date proposed by any of the RTO/ISOs.

By way of further example, in 2010, MISO submitted proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff to create a new category of resources called Dispatchable Intermittent Resources.[35] As part of

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[33] *Order Denying Request to Defer Effective Date*, Docket Nos. ER19-465-000, 465-001, 465-003, 465-004 (March 4, 2021).
[34] *See, Electric Storage Participation in Markets Operated by Regional Transmission Organizations & Independent System Operators, Notice of Proposed Rulemaking*, 81 FR 86522, 157 FERC ¶ 61,121 (2016).
[35] *Order Conditionally Accepting in Part and Rejecting in Part Tariff Filing and Requiring Compliance Filing*, 134 FERC ¶ 61,141 at P 1 (Feb. 28, 2011).

that effort MISO proposed a "temporary" prohibition of this new class of resources from providing ancillary services. In that docket, several stakeholders opposed this ban and asserted that "[m]odern wind generators are . . . capable of supplying operating reserves."[36] In response, MISO stated that it "does not intend to preclude DIRs from supplying Operating Reserves in the future."[37] MISO proposed the prohibition not because these resources were incapable of supplying them; instead, MISO proposed a temporary prohibition "to gain experience with this new method of modeling and dispatching [DIRs]" before "extending to DIRs the capability of providing Operating Reserves."[38] MISO's "temporary" ban has now transmogrified into a permanent ban that has been in place for thirteen years, with no end in sight. Indeed, even now MISO opposes lifting its previously categorized temporary prohibition in a pending proceeding before the Commission.[39]

Considering this history, it is unreasonable to believe that MISO would voluntarily meet any sort of expedited timeline, especially when MISO has a track record of extending the definition of "temporary" beyond any credible interpretation of that concept. MISO must provide a reasoned and record-based explanation for why this is the best they can do, and a commitment to a process that ensures that any so-called "temporary" nature of this ban is indeed firmly temporary.

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[36] *See, e.g.*, *Motion to Intervene and Limited Protest of the American Wind Energy Association And Wind on the Wires,* ER111-1991 at 9 (Nov. 22, 2010).
[37] *Motion for Leave to Answer and Answer of the Midwest Independent Transmission System Operator, Inc.*, ER11-1991 at 12 (Dec. 8, 2010).
[38] *Id.*
[39] *See generally Solar Industries Association v. Midcontinent Independent System Operator, Inc.*, Docket No. EL23-28-000 (filed January 31, 2023).

Simply put, the Commission should not afford MISO unfettered latitude in developing a non-discriminatory solution. If the Commission were to accept MISO's proposal regarding developing an unclear and uncertain future replacement of its proposed discriminatory ban, we can expect the same undue delays with regard to the implementation of a non-discriminatory solution. Without clear guardrails that ensure that this temporary ban is indeed firmly temporary, MISO's discriminatory proposal is unduly so. FERC should not acquiesce to MISO's request for an unbounded timeframe for developing better participation pathways for DIRs.

CONCLUSION

MISO's consideration of this issue must be forward looking and supported by record evidence. Instead, what MISO proposes here is a form of backsliding that should be rejected by the Commission.

The Clean Energy Coalition respectfully reiterates its request that the Commission approve MISO's proposed tariff *only* if MISO is able to: (1) provide an evidentiary basis supporting its proposed ramp product solution as not unduly discriminatory (which it has failed to fully substantiate in its Answer); (2) require MISO to submit a compliance filing with tariff language that includes a sunset date on the prohibition on DIRs from selling ramp products; (3) require MISO to submit annual informational filings documenting MISO's progress in developing a replacement, non-discriminatory ramp product; and (4) grant such additional and further relief as may be lawful and proper.

Dated: April 28, 2023

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CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused a copy of the foregoing document to be served upon Midcontinent Independent System Operator, L.L.C., and upon all parties listed on the official service list as compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated: April 28, 2023

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