

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

Midcontinent Independent) Docket No. ER23-1195-001
System Operator, Inc.)

PROTEST OF THE CLEAN ENERGY COALITION

Pursuant to Rule 211 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, Union of Concerned Scientists, and Sierra Club (collectively, the “Clean Energy Coalition”), submit this protest of the Midcontinent Independent System Operator, Inc.’s

¹ 18 C.F.R. § 385.211 (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.

(“MISO”) June 5, 2023 Deficiency Response Letter (“Deficiency Response”)⁵ to the Federal Energy Regulatory Commission’s May 5, 2023 Deficiency Letter.⁶

As discussed in the Clean Energy Coalition’s March 21, 2023 Protest and April 28, 2023 Reply, we do not advocate for consumers to pay for a product that is not deliverable.⁷ However, as further discussed below, MISO’s initial Section 205 filing and its Deficiency Response fail to meet the standards set under Section 205 of the Federal Power Act (“FPA”).

I. MISO’s Proposal to Disqualify all DIRs from Providing Up and Down Ramp Remains Unduly Discriminatory

MISO’s argument that its proposal is not unduly discriminatory relies upon two arguments, each of which are flawed. First, MISO argues that the Commission should rely on deliverability as a determinant factor when considering whether two resources that can provide the same services are “similarly situated” for the purposes of an undue discrimination inquiry.⁸ Second, MISO relies on a resource’s identity as a Dispatchable Intermittent Resource (“DIR”) to be a reasonable proxy for determining deliverability.⁹ Both arguments fail.

⁵ Letter informing Midcontinent Independent System Operator, Inc. that the February 28, 2023 filing is deficient and requesting additional information within 30 days under ER23-1195, Docket No. ER23-1195 (filed May 5, 2023) (hereinafter “FERC Deficiency Letter”).

⁶ Midcontinent Independent System Operator, Inc. submits tariff filing per 35.17(b): Deficiency Response to Ramp Capability Products Filing to be effective 9/1/2023 under ER23-1195, Docket No. ER23-1195 (filed June 5, 2023) (hereinafter “MISO Deficiency Response”).

⁷ See Clean Energy Coalition Protest, Docket No. ER23-1195 (filed March 21, 2023) at 19.

⁸ MISO Deficiency Response at 11-13.

⁹ *Id.* at 7-10.

A. The Authorities Cited by MISO do not Support Its Newly Proposed Undue Discrimination Standard.

In its deficiency letter Commission Staff asked for MISO to describe how “geographic concentration” and “proneness of a significant number of DIRs to be trapped or stranded behind a single transmission constraint” are “factor[s]” in “determining whether a facility (i.e., DIR) is similarly situated to another facility (i.e., non-DIR).”¹⁰ In response, MISO seeks for the Commission to adopt a new standard, whereby discrimination is just and reasonable between two resources that can provide the same services if there is a difference in the “degree and manner” of their deliverability.¹¹ MISO has failed to identify an analogous case supporting its newly derived standard, and instead, relies on four cases discussing the general concept of deliverability in different contexts from an undue discrimination examination.¹² Specifically, none of these cases support MISO in the way in which it offers the new standard, and if anything, cut against MISO’s proposal.

In *Nw. Power Pool*, 182 FERC ¶ 61,063 (2023), the Commission was not comparing two generating resources that could provide the same services and making an undue discrimination determination based on deliverability; rather, the Commission there found—in the paragraph preceding the one cited by MISO—that the proposal struck a “reasonable balance between demonstrating deliverability and providing flexibility” because there was an “ability to request exceptions under

¹⁰ FERC Deficiency Letter at 3.

¹¹ MISO Deficiency Response at 11.

¹² *Id.* at 11.

certain circumstances.”¹³ Therefore, if anything, this matter shows that MISO’s rigid revisions are unreasonable because there is no possibility for DIR resources to request an exception to its blanket ban.

MISO’s citation to *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,311 (2007), is similarly misplaced, as it did not involve an undue discrimination determination between generators. In that matter, the Commission found that “in its new role as Balancing Authority for the entire region, the Midwest ISO must determine which resources are capable of delivering reserve products in the time period required to maintain system reliability.”¹⁴ Here, we now know that MISO’s Market Clearing Engine is incapable of performing this task, and that MISO’s proposed solution is a static ban on all DIRs from participating, rather than continuing with MISO’s dynamic manual screening process, or developing a more equitable long-term solution. Furthermore, in this case, the Commission found it reasonable to have MISO manually “conduct the reserve zone studies daily” and to “change configurations of the reserve zones as system conditions warrant has inherent reliability and economic benefits.”¹⁵ This practice is consistent with MISO’s current practice of manually screening for deliverability. MISO has made no showing that the manual screening process is overly time consuming, costly to implement, or results in unjust and unreasonable rates paid by consumers. While MISO has provided a single example of a price spike in Appendix B, MISO has not

¹³ *Nw. Power Pool*, 182 FERC ¶ 61,063 at P 78.

¹⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 119 FERC ¶ 61,311 at P 88.

¹⁵ *Id.*

contextualized that event in the market as a whole, or described how frequently such events occur. Indeed, there has been no effort by MISO to quantify the impact of its manual screening process whatsoever beyond several conclusory statements.¹⁶

In *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,283 (2008), the discussion of deliverability was specifically limited to a conflict over what “details belong in the tariff,” and was not examined in the context of determining whether resources are “similarly situated.”¹⁷ Lastly, in *Midwest Indep. Transmission Sys. Operator, Inc.*, 153 FERC ¶ 61,229 (2015), the discussion of deliverability is again severed from a serious consideration of undue discrimination.¹⁸ There, the Commission was considering the approval of a Zonal Deliverability Charge, and at no time discusses the concept of deliverability as being relevant to an undue discrimination claim.¹⁹

Furthermore, MISO’s deliverability argument relies entirely on a facially implausible counterfactual, which is a continuous static fleet of DIR resources. In other words, as new DIRs come online, they may *or may not* be sited behind the same type of transmission constraints MISO discusses in its Deficiency Response.

¹⁶ For example, MISO states that its after-the-fact manual screening process is “cumbersome,” “ad hoc,” “far less effective,” MISO Deficiency Response at 10, as well as “not prudent,” *id.* at 14, but never specifically describes what the net cost on the market is for manual screening, what quantifiable net benefit of the change will provide, what labor at MISO is required to perform manual screening, why it is unsustainable to keep manual screening until a nondiscriminatory solution is adopted, or what changed recently for MISO to ask for this change now.

¹⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,283 at P 170.

¹⁸ *See Midwest Indep. Transmission Sys. Operator, Inc.*, 153 FERC ¶ 61,229 at P 206.

¹⁹ *Id.*

MISO's proposed revisions assume that any new DIRs will also be behind such constraints but provides no evidence that this is likely to be the case. In fact, based on the sheer volume of DIRs proposed in the interconnection queue in MISO, it is more likely that an increasing number of DIRs will be more widely dispersed than existing DIR resources, especially when one considers the anticipated growth of solar.²⁰ MISO's own generator interconnection interactive mapping tool shows that solar resources in the interconnection queue are widely dispersed through MISO's service territory.²¹

MISO's revisions would therefore pre-judge the deliverability of those new resources and preclude them from participating in a market they would otherwise participate. Such backwards looking rules only commit MISO and the Commission to future litigation and further delay in allowing new DIR resources to provide their more efficient and faster acting ramping capabilities to the grid.

Under MISO's new theory of "similarly situated" resources, any software market modeling limitation can excuse discriminatory treatment of any resource, even where there is no difference in the technical capabilities of the resources at issue. This is a novel interpretation of the undue discrimination standard, and taken to its logical conclusion could have serious unintended consequences and result in numerous absurd and unworkable outcomes.

²⁰ Slide 10 shows an increasing share of interconnection requests by solar:
[https://cdn.misoenergy.org/20230620%20IPWG%20Item%2004%20GI%20Queue%20Improvements%20\(PAC-2023-1\)629350.pdf](https://cdn.misoenergy.org/20230620%20IPWG%20Item%2004%20GI%20Queue%20Improvements%20(PAC-2023-1)629350.pdf).

²¹ See https://www.misoenergy.org/planning/generator-interconnection/GI_Queue/ (select Interactive Queue Map, select filter option for solar resources).

B. DIRs are not an Accurate or Reasonable Proxy for Deliverability.

Even assuming that deliverability is an overriding factor when assessing whether generating resources are similarly situated, MISO's arguments are flawed for yet another reason. MISO's entire filing is predicated on the Commission's acceptance of the position that a generator's identity as a DIR is a reasonable proxy for whether its ramp services are deliverable. However, the record shows that assuming DIRs are a proxy for deliverability is both over- and under- inclusive. In MISO's Deficiency Response MISO admits, for the first time, that a significant percentage of non-DIRs are subject to the same exact deliverability constraints as DIRs.

Specifically, MISO notes that 31% of non-DIRs are subject to the same congestion limitations as DIRs and are "economically undeliverable."²² MISO's proposal therefore excludes some resources that could offer into the market, while allowing a third of the non-DIR resources to remain eligible despite being "economically undeliverable." Moreover, MISO also concedes that a single DIR and a single non-DIR are "similarly situated" when "behind the same congestion constraint."²³ These key facts fundamentally undercut the premise that to the extent deliverability is a relevant factor in determining whether resources are similarly situated—which we dispute—that MISO's proposed solution is not facially unduly discriminatory.

²² MISO Deficiency Response at 2.

²³ *Id.* at 7.

II. MISO Fails to Address the Primary Cause of its Problem.

The irrationality of MISO's band-aid revisions is further exposed by its admissions regarding the fundamental limitations of its existing Market Clearing Engine. The root cause of MISO's problem here has nothing to do with the inherent characteristics of DIR resources or their technical capabilities—indeed, as admitted by MISO, DIR ramp capabilities are more efficient and faster than non-DIRs²⁴—rather, the core problem is “the inability of the market engines to differentiate between stranded and non-stranded capacity when clearing Up Ramp capacity.”²⁵ This problem runs across DIR and non-DIR resources, as MISO notes that “[t]his system limitation applies to both DIR and non-DIR capacity.”²⁶ Instead of proposing a solution to the problem of MISO's clearing engine, MISO instead proposes a rigid blanket ban with no exceptions.

MISO concedes it is “investigating heuristic methods that would automatically disable resources from providing reserves,” but does not explain why it has not proposed those changes here, or why they cannot be done in parallel to the existing proposal.²⁷ As noted in Clean Energy Coalition's April 28, 2023 Reply, “[a]s a sophisticated grid operator, MISO is fully capable of both identifying a potential problem and simultaneously offering a non-discriminatory solution. MISO

²⁴ See, e.g., MISO Deficiency Response at 12 (noting that “DIRs often have very high ramp rates, so a few of them can appear to satisfy much of the Up Ramp Requirement”).

²⁵ MISO Deficiency Response at Appendix B.

²⁶ *Id.*

²⁷ *Id.* at 10.

has not done so here . . . there are other potential non-discriminatory alternative solutions to the problem identified by MISO that have not been fully examined.”²⁸

At bare minimum the Commission should require MISO to perform an upgrade to its system to automate this process in parallel with its proposed band aid solution or provide flexibility such that generators who are not regularly behind transmission constraints can participate in the market upon a case specific request. We should not lose sight of the absurdity of what MISO is asking the Commission to do, which is to ban resources that are faster acting and more efficient so that primarily slower acting, less efficient, more expensive, and higher polluting resources can provide a reliability service.²⁹ This is anathema to what MISO markets are designed to accomplish.

III. MISO does not Explain What Would Happen to DIRs who are not Constrained if the Units that are Constrained are not Allowed to Offer into the Market and Prices Rise.

One of the primary objectives of MISO’s proposed revisions is to rectify the problem that ramp prices are allegedly being suppressed by the participation of non-deliverable DIR capacity. MISO contends that DIRs would rarely provide lower-value up ramp when they could be instead providing higher-value energy.

²⁸ Clean Energy Coalition Reply at 9-11.

²⁹ MISO’s proposal is ultimately a windfall to inefficient marginal resources, who, under the current compensation model are the primary resources to provide ramp services. *See, e.g.*, MISO Deficiency Response at 12 (noting that “non-DIRs, especially those operating near the marginal cost of Energy, will still clear for Up Ramp Capability and generally be able to deliver it”).

However, MISO's proposal does not appear to eliminate the suppressive price effects caused by the 31% of non-DIRs that cannot deliver their ramp capacity. Indeed, while MISO contests that it can more easily manually screen these resources, it is unclear whether this process prevents them from clearing the market and causing the very problems that MISO asserts that DIRs cause.³⁰ To the extent MISO contends that rates are not just and reasonable now because of the non-deliverability of ramp that has cleared the market, that problem may still fundamentally exist under the current proposal, and potentially increases as more thermal resources attempt to fill the gap previously cleared by DIRs. In other words, the 31% of non-DIRs that are undeliverable will continue to exist and could indeed grow under MISO's proposal. To the extent that the non-DIRs can be manually screened such that they will not clear, and will not cause suppressive price effects, MISO has failed to explain why that type of process cannot be applied to DIRs.

Additionally, assuming that prices rise by eliminating DIRs in the market, at what point would that elevate prices such that ramp services prices exceed energy prices more often? MISO has admitted that there are times *now* when providing

³⁰ MISO has stated that "MISO Operations can manually disable the clearing of reserves (Regulation, Spin, Non-Spin, Up Ramp, STR) on resources they deem to be undeliverable. For non-DIRs, the disabling of Up Ramp Capability is a small incremental step that is consistent with the ineligibility of DIRs to provide other types of reserve." See MISO Deficiency Response at 10. However, MISO has not stated that it actually manually disables non-DIRs. To the extent that non-DIRs are behind constraints that are as consistent and predictable as those experienced by DIRs, they must be banned from participation as well for the proposed revision to be non-discriminatory.

ramp capability would be “more profitable than providing energy” for some DIRs.³¹ We also now know that there are solar resources (and likely hybrid resources when they come online) that are not behind transmission constraints.³² Therefore, there are already times when solar (and soon battery hybrids) can economically deliver ramp capability services. If MISO’s true rationale for treating DIRs differently relates to the pricing values of energy vs. ramp, then there must be some kind of plan to provide exceptions to allow economic resources to participate, and a plan to reinstitute eligibility in the future for other resources when this price difference changes.

CONCLUSION

The Clean Energy Coalition respectfully renews 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 Initial Filing, Answer, and Deficiency Response Letter); (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.

³¹ MISO Deficiency Response at 8.

³² *Id.* at 13-14.

Dated: June 26, 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: June 26, 2023

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