

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

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

REQUEST FOR REHEARING OF THE CLEAN ENERGY COALITION

Pursuant to section 313(a) of the Federal Power Act¹ and Rule 713 of the Federal Energy Regulatory Commission’s (the “Commission”) Rules of Practice and Procedure,² the Solar Energy Industries Association (“SEIA”),³ American Clean Power Association (“ACP”),⁴ Clean Grid Alliance (“CGA”),⁵ Natural Resources Defense Council, Fresh Energy, and Sierra Club (collectively, the “Clean Energy Coalition”), hereby submits this Request for Rehearing of the Commission’s August 31, 2023 Order Accepting Tariff Revisions: 184 FERC ¶ 61,134 (Aug. 31, 2023) (“August 31 Order”). As further detailed below, Clean Energy Coalition seeks rehearing on one key aspect of the Commission’s August 31 Order.

¹ 16 U.S.C. § 8251.

² 18 C.F.R. § 385.713 (“Rule 713”).

³ 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.

⁴ 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.

⁵ 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.

I. Summary of Position

The Clean Energy Coalition seeks a targeted rehearing with respect to one component of the Commission's August 31 Order. Specifically, the decision to include hybrid Dispatchable Intermittent Resources ("DIRs") in the prohibition on providing Ramp-Up services is not supported by the record or the rationale in the Order. Hybrids are fundamentally different resources than stand-alone renewables, from an economic and operational perspective. As noted by the Clean Energy Coalition, these resources have distinct behavioral and operational characteristics, and are subject to varying market and economic incentives that are not applicable to stand-alone wind and solar resources. Furthermore, storage paired with renewable resources can relieve congestion and have flexibility that renewables alone do not possess. Because of these differences, the rationale and evidence that Midcontinent Independent System Operator, Inc. ("MISO") provided in support of its prohibition do not apply to hybrids.

Rather than imposing a blanket prohibition on these resources from providing the services at issue, MISO should, at least, allow hybrids to participate and reevaluate after a year of experience. This was the open-ended approach that MISO originally took with regard to DIRs generally, and is appropriate to deploy here specifically to hybrids.

II. Statement of Issues

Pursuant to Rule 713(c)(2), the issues presented for consideration on rehearing and the principal authorities supporting the Commission's and the Coalition's position on those issues, are as follows:

- 1) *Whether the Commission erred by failing to meaningfully respond to the Coalition's argument regarding hybrid resources.*⁶
- 2) *Whether the Commission erred because it relied on evidence inapplicable to hybrid resources in its decision to prohibit hybrids from Ramp-Up services.*⁷

III. Argument

The Commission's approval of MISO's prohibition on hybrid resources providing Ramp-Up services violated fundamental requirements of reasoned decision making.

First, the Commission improperly ignored the Coalition's argument that MISO's filing relied on a "simplified view of DIR offer economics" that did not account for hybrid DIRs.⁸ As the Coalition explained, hybrid DIRs "could be injecting power on the grid at less than their full capability, not because they are

⁶ August 31 Order at PP 64–69; *New England Power Generators Ass'n, Inc. v. FERC*, 881 F.3d 202 (D.C. Cir. 2018); *Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289 (D.C. Cir. 2001).

⁷ August 31 Order at PP 64–69; *New England Power Generators Ass'n*, 881 F.3d at 211–13; *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1912 (2020).

⁸ *Clean Energy Coal. Limited Protest* ("CEC March 21 Protest") at 7, Docket No. ER23-1195 (Mar. 21, 2023).

transmission constrained, but because they are charging paired storage.”⁹ Whether those resources “choose to stop charging the battery and provide ramp service” depends on economics that differ from the choices faced by stand-alone wind or solar resources.¹⁰ The Coalition further observed that MISO’s own deficiency response demonstrated that hybrid resources slated to come online would not necessarily be subject to the same transmission constraints and would be able to “economically deliver ramp capability services.”¹¹

The Commission failed to provide a meaningful response to these arguments. While the August 31 Order mentioned these arguments in its background summary of the Coalition’s protests,¹² the Commission did not address the issue in its reasoning or provide any other substantive response regarding hybrids. Instead, the Commission simply recited MISO’s theories and unsupported data regarding the behavior of DIRs as a whole.¹³ The Commission’s silence on this key issue renders the August 31 Order arbitrary and capricious.¹⁴

Second, the Commission’s failure to engage with this issue resulted in a decision that lacked substantial evidence or a reasoned explanation for accepting MISO’s prohibition as it applied to hybrid resources. The August 31 Order did not

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Clean Energy Coal Protest* at 11, Docket No. ER23-1195 (June 26, 2023) (citing *MISO Response to Deficiency Letter* (“MISO Deficiency Response”) at 13–14, Docket No. ER23-1195 (June 5, 2023)).

¹² August 31 Order at PP 20, 54.

¹³ *See id.* at PP 64–69.

¹⁴ *See, e.g., New England Power Generators Ass’n*, 881 F.3d at 210, 213; *Canadian Ass’n of Petroleum Producers*, 254 F.3d at 299.

identify any basis for finding that MISO carried its burden to demonstrate that prohibiting hybrid resources from providing Ramp-Up services was just, reasonable, and not unduly discriminatory.¹⁵ The August 31 Order did not cite any evidence or provide any reasoning that would justify—with respect to hybrids—either of the Commission’s blanket conclusions regarding DIRs’ non-deliverability and the infeasibility of manual screening. Rather, the Commission relied on MISO’s discussion of data regarding the 2022 real-time market and two days in 2023, which did not treat hybrid resources separately.¹⁶ Neither MISO nor the Commission asserted that this data was representative of hybrid performance. Moreover, any such assertion would have to account for (1) hybrids’ different performance capabilities and economic incentives, which the Commission failed to address; and (2) the disparity between limited hybrid participation during that time period and hybrids’ growing role in MISO’s rapidly changing resource mix.¹⁷

Similarly, neither MISO nor the Commission addressed the feasibility of manual screening for hybrid resources. The August 31 Order accepted MISO’s unsupported contention that “manual mitigation is infeasible and unworkable

¹⁵ See, e.g., *Belmont Mun. Light Dep’t v. FERC*, 38 F.4th 173, 184 (D.C. Cir. 2022) (citing 16 U.S.C. § 824d(e)).

¹⁶ August 31 Order at PP 65–66 (citing MISO Deficiency Response at 2–6, app. B); see also *id.* at P 64 (relying on same analysis to conclude that “DIRs cleared to provide Up Ramp will nearly always not be deliverable”).

¹⁷ See generally CEC March 21 Protest at 10–16. For example, MISO’s most recent monthly operations report shows 43.5 GW of hybrids pending in the interconnection queue, comprising 18 percent of the total queue. MISO, *MISO Monthly Operations Report*, July 2023, at 57, available at <https://cdn.misoenergy.org/202307%20Market%20and%20Operations%20Report630036.pdf>.

because DIRs are larger in number and more geographically concentrated” than non-DIRs.¹⁸ Not only did MISO fail to explain its conclusory statements that it is “infeasible” or “unworkable” to manually screen for all DIR resources, this rationale, on its face, certainly cannot apply to the limited hybrid participation under current conditions. Nor has MISO even attempted to show that it will apply in the future when more hybrid resources come online.¹⁹

Accordingly, even crediting MISO’s blanket assertions regarding DIRs generally, the Commission lacked substantial evidence to apply its reasoning to the distinct category of hybrid resources. A rationale that—at best—justifies only part of the scope of an agency’s action is textbook arbitrary-and-capricious decision making.²⁰ By failing to provide any reasons for approving the prohibition on

¹⁸ August 31 Order at P 8; *see also id.* at P 65 (accepting MISO’s argument that the “manual process is infeasible to apply to DIRs”).

¹⁹ Because MISO has not shown that manual screening is infeasible more hybrid DIRs, there is no basis for applying a prohibition on providing Ramp-Up services, regardless of whether—as the joint concurrence notes—the battery component of hybrids may still participate in the market when they are modeled and offered as a co-located resource. *See* August 31 Order, Phillips and Clements Joint Concurrence, at P 3 n.7. Moreover, there are many good reasons why hybrids with batteries would choose to participate as an integrated DIR. For example, co-location and separate market registration may not be feasible for tightly coupled hybrids where shared cost in design does not allow for separate market participation. *See, e.g.,* MISO’s Response to Stakeholder Feedback; DIR Forecasting for Hybrid Resources, at 4 (April 6, 2022), [https://cdn.misoenergy.org/MSO%20Hybrid%20Resource%20Participation%20as%20Dispatchable%20Intermittent%20Resources%20\(MSC-2020-2\)%20Response%20\(20220310\)623901.pdf](https://cdn.misoenergy.org/MSO%20Hybrid%20Resource%20Participation%20as%20Dispatchable%20Intermittent%20Resources%20(MSC-2020-2)%20Response%20(20220310)623901.pdf).

²⁰ *See Dep’t of Homeland Sec.*, 140 S. Ct. at 1912 (agency action was arbitrary and capricious where “justification supported only” part of action (citing *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 47 (1983))).

hybrids, the Commission unlawfully “disregard[ed] important aspects of [the] problem.”²¹

IV. CONCLUSION

The Clean Energy Coalition hereby requests the Commission grant rehearing and reverse or otherwise revisit its August 31 Order.

Dated: October 2, 2023.

Respectfully submitted,

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²¹ *Ky. Mun. Energy Agency v. FERC*, 45 F.4th 162, 177 (D.C. Cir. 2022) (holding that “the Commission erred by backhanding” an issue that was an “important consideration under the facts of this case”); *New England Power Generators Ass’n*, 881 F.3d at 213 (holding that the Commission “must reasonably explain *how* [entities] are not similarly situated and in what respects the reasons are material”).

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing has been served in accordance with 18 C.F.R. § 385.2010 upon each party designated on the official service list in this proceeding, by email.

Dated: October 2, 2023.

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