149 FERC ¶ 61,047
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Indianapolis Power & Light Company v. Midcontinent Independent System Operator, Inc. — Docket No. EL14-70-000

ORDER GRANTING REQUEST FOR WAIVER
AND DISMISSING COMPLAINT AS MOOT

(Issued October 15, 2014)

1. On June 20, 2014, Indianapolis Power & Light Company (Indianapolis Power) filed a request for limited waiver of certain provisions of Midcontinent Independent System Operator, Inc.'s (MISO's) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) in connection with Indianapolis Power's retirement of Eagle Valley coal units 3-6 (Eagle Valley) to comply with environmental requirements. In the same filing, Indianapolis Power filed, in the alternative, a complaint, pursuant to section 206 of the Federal Power Act (FPA),[1] alleging that certain requirements of the MISO Tariff fail to address the specific circumstances resulting from the retirement of Eagle Valley. As discussed below, the Commission finds good cause to grant the requested waiver and dismisses as moot Indianapolis Power's complaint.

I. Background

2. Indianapolis Power states it is a public utility that owns and operates generating facilities with a capacity of 3,148 megawatts (MWs) and transmission and distribution facilities to provide retail electric service to residential, commercial and industrial customers in Indianapolis, Indiana, as well as portions of communities surrounding Marion County. Indianapolis Power states that Eagle Valley, located in Martinsville, Indiana, went into service in the 1950s. According to Indianapolis Power, Eagle Valley is being replaced by a new 650 MW gas-fired combined cycle facility approved by the

[1] 16 U.S.C. § 824e (2012).

Indiana Utility Regulatory Commission (Indiana Commission).[2] Indianapolis Power represents that the new facility will use the same electrical interconnection as Eagle Valley and is scheduled to begin testing after June 1, 2016, with full operation in March 2017.[3] Indianapolis Power represents it has expedited the construction of the new facility and related transmission upgrades; however, these projects cannot be completed before the retirement of the existing coal plants.[4]

3. Indianapolis Power represents that Eagle Valley was required to meet emissions limitations imposed by the United States Environmental Protection Agency (EPA) Mercury and Air Toxics Standards (MATS) requirements within three years of the effective date, or April 16, 2015.[5] Indianapolis Power states that it sought and received from the Indiana Department of Environmental Management a one-year extension to permit Indianapolis Power to continue operating Eagle Valley until April 16, 2016, after which Indianapolis Power states it will retire Eagle Valley because it will not meet those limitations. Indianapolis Power represents that, because MISO determined that Eagle Valley was not needed for reliability purposes beyond April 16, 2016,[6] Indianapolis Power could not obtain an administrative order from the EPA, which would allow Eagle Valley to continue to operate for up to a year past April 16, 2016 without risk that EPA will seek civil penalties for noncompliance.[7]

4. Indianapolis Power represents that MISO's 2015-2016 Planning Year runs from June 1, 2015 to May 31, 2016, which leaves approximately 6.5 weeks between the EPA MATS compliance date and the end of the MISO Planning Year. Indianapolis Power asserts that MISO's Tariff requires Capacity Resources be available for service during the entire 2015-2016 Planning Year and to meet this requirement Eagle Valley must be available for service from April 16, 2016 through May 31, 2016, over which it would not meet the EPA MATS requirements. Indianapolis Power asserts that, absent a waiver, it

[2] Indianapolis Power Request for Waiver and Complaint at 12 (citing Indiana Commission Cause No. 44339, *Verified Petition of Indianapolis Power & Light Co.*, Order of the Commission (May 14, 2014)).

[3] *Id.* at 12-13.

[4] *Id.* at 17.

[5] *See id.* at 13 & n.32.

[6] *Id.*, Attachment A (Testimony of L. Franks) at 7 (Franks Test.).

[7] *See id.* at 13-16, Franks Test. at 4.

has no economically reasonable alternatives to pursue because it is neither permitted to withhold Eagle Valley from offering into the MISO Planning Reserve Auction for the 2015-2016 Planning Year nor permitted to declare a forced or scheduled outage for the 6.5 week period. According to Indianapolis Power, the MISO Tariff does not provide a clear mechanism that would permit Indianapolis Power to purchase replacement capacity through the auction to cover the 6.5 week period. Further, Indianapolis Power asserts that there is no guarantee that bilateral replacement capacity would be available and no safeguards on the price of any qualified bilateral capacity, which means that Indianapolis Power may need to spend up to $22 million to purchase replacement capacity for the entire 2015-2016 Planning Year.[8]

5. Indianapolis Power states that, absent a waiver, it has a strong incentive to retire Eagle Valley prior to the 2015-2016 Planning Year to avoid potential compliance issues as well as to avoid the expenses of operating Eagle Valley for 45.5 weeks while effectively not receiving capacity credit for that time period.[9] In the alternative, Indianapolis Power argues that, if the Commission does not grant its waiver request, the Commission should require MISO to modify its Tariff because it is unjust and unreasonable in how it addresses the disconnect between the EPA MATS deadline and the MISO Planning Year.[10]

A. Indianapolis Power Request for Waiver

6. Indianapolis Power proposes five alternatives in its waiver request. As its first option, Indianapolis Power requests that the Commission waive that portion of the MISO Tariff that would bar Indianapolis Power from declaring Eagle Valley to be on an outage for the 6.5 week period at the end of the 2015-2016 Planning Year. Indianapolis Power suggests that this is the best option available to obtain the benefits of Eagle Valley's continued operations until forced to retire by the EPA MATS rule. Under section 69A.5 of the MISO Tariff, the "must offer obligation does not apply to the extent that the Capacity Resource is unavailable due to a full or partial forced or scheduled outage . . . ." Indianapolis Power states that this approach would recognize that Eagle Valley will be supplying vital capacity for 45.5 weeks of the 2015-2016 Planning Year, including during summer and winter peaks. Indianapolis Power further asserts that this option also eliminates what it asserts would be the artificial bias towards a higher capacity price across all of MISO that might otherwise result from Indianapolis Power retiring the unit

[8] *Id.* at 2-3.

[9] *Id.* at 3.

[10] *Id.* at 35-36.

on May 31, 2015, and being required to bid for and purchase unnecessary replacement capacity for the entire 2015-2016 Planning Year. Indianapolis Power contends this proposal would comply with the must-offer and performance requirements of the MISO Tariff and recognize that Eagle Valley will supply capacity for rest of the 2015-2016 Planning Year.[11] Indianapolis Power states that there are no reliability issues associated with this option. According to Indianapolis Power, MISO's "Maintenance Margin Communication" measured the submitted outages against the Planning Reserve Margin in Local Resource Zone 6 where Eagle Valley is located for 2014, 2015, and 2016.[12] Indianapolis Power asserts that Zone 6 is resource adequate in all years.[13] Further, Indianapolis Power argues that treating the 6.5 week period as a forced or scheduled outage would enhance reliability during peak periods without jeopardizing reliability during the 6.5 week period over which Eagle Valley would not be available. Indianapolis Power projects that it will have a reserve margin between 20 to 47 percent over the 6.5 week period and states that Indiana utilities have already coordinated their planned generation outages through 2017 to ensure resource sufficiency in the state. As such, Indianapolis Power argues that purchasing replacement capacity would serve no purpose.[14] Further, Indianapolis Power argues that a financial payment[15] would not add additional resources, but instead would be punitive to Indianapolis Power's customers.

7. If the Commission determines it is not appropriate to consider the 6.5 week period as an outage, Indianapolis Power requests that the Commission waive, for the 6.5 week period only, the must-offer requirement for Eagle Valley relative to the energy and ancillary services market under section 69A.5[16] and further waive for the same 6.5 week

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[11] *Id.* at 7 (citing MISO, FERC Electric Tariff, Module C, § 38.2.8 (30.0.0)).

[12] Planning Reserve Margin is the percentage above forecasted Coincident Peak Demand of Planning Resources required to meet the Loss of Load Expectation of one day in ten years. MISO, FERC Electric Tariff, Module A, § 1.P (31.0.0).

[13] Indianapolis Power Request for Waiver and Complaint at 25 (citing Franks Test. at 12).

[14] *Id.* at 7-8 (citing Franks Test. at 12-13).

[15] *See id.* at 9, 25-26.

[16] Under section 69A.5 of the MISO Tariff, capacity used to meet a Planning Resource Margin Requirement (unless replaced pursuant to section 69A.3.1.h) must offer into the energy and ancillary services markets for each hour of each day for the entire Planning Year. MISO, FERC Electric Tariff, Module E-1, § 69A.5 (31.0.0). The MISO Planning Year runs from June 1st of one year to May 31st of the following year.

period the requirement to purchase replacement capacity under section 69A.3.1.h.[17] Indianapolis Power states that this proposal would capture the same benefits as identified under its first option; that is, this second option would: (1) take advantage of Eagle Valley's available capacity for 45.5 weeks of the 2015-2016 Planning Year and (2) recognize that the Indiana utilities have coordinated their outage schedules and Indianapolis Power is anticipated to maintain a planning reserve margin of 20 percent or more during the 6.5 week period. According to Indianapolis Power, it would be unnecessary to replace the capacity associated with Eagle Valley.[18]

8. As a variant of the second option described above, if the Commission were to waive the must-offer requirement for the requested 6.5 week period but find that Indianapolis Power must replace Eagle Valley's capacity during that period, Indianapolis Power requests that the Commission condition any such requirement on the availability of replacement capacity to be purchased bilaterally at a just and reasonable cost that recognizes the limited 6.5 week period.

9. As a fourth alternative, Indianapolis Power requests that any fee or penalty associated with failing to have replacement capacity under contract during the 6.5 week period be capped by: (1) limiting the fee to the 6.5 week period and not the full Planning Year and (2) capping the fee at the annual auction clearing price. Under this proposal, Indianapolis Power also requests that the Commission clarify that failure to obtain replacement capacity for the 6.5 week period would not be a tariff violation.

10. As a fifth option, Indianapolis Power requests that the Commission require a change in the MISO Tariff that would permit a Market Participant to retire or suspend a Capacity Resource if it is retired in order to comply with federal or state environmental enforcement actions and if MISO is informed six months in advance of retirement.[19]

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[17] Section 69A.3.1.h of the MISO Tariff provides that if a Planning Resource is retired or suspended prior to the end of the Planning Year, the Market Participant must procure replacement capacity. MISO, FERC Electric Tariff, Module E-1, § 69A.3.1.h (33.0.0).

[18] Indianapolis Power Request for Waiver and Complaint at 8-9.

[19] *Id.* at 10 (citing a tariff amendment to section 69A.3.1.h adopted by the Supply Adequacy Working Group). According to Indianapolis Power, the MISO Supply Adequacy Working Group examined the EPA MATS issue and voted 36 to 18 with two abstentions in favor of the following language (revisions underlined):

69A.3.1.h Mothballing, Decommissioning or Retirement of Resources.

(continued ...)

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1. Market Participants that request a change in status for a Planning Resource in accordance with the System Support Resource (SSR) provisions described in Section 38.2.7 will no longer qualify as a Planning Resource effective as of the actual date that the status of the Resource changes to Retire or Suspend pursuant to Section 38.2.7. Market Participants that convert Unforced Capacity into a [Zonal Resource Credit] that clears in the [Planning Resource Auction] will not be eligible to Retire or Suspend such Planning Resource, until the year following the Planning Year for which such [Zonal Resource Credit] cleared in a [Planning Resource Auction] unless the Market Participant substitutes another [Zonal Resource Credit] within the same [local resource zone] that did not clear in the [Planning Resource Auction], unless the generation resource is Retired in order to comply with federal or state environmental enforcement actions. This includes, but is not limited to, the [EPA MATS rule].

2. If a Market Participant notifies the Transmission Provider in writing at least 6 months prior to suspending, decommissioning, or retirement of a Generation Resource with [Zonal Resource Credits] that will be unable to operate in compliance with federal or state environmental enforcement actions including the MATS standards after a specified date between January 1 and May 31 of either 2015 or 2016, then as of the date that the Generation Resource will be unable to operate no longer be available, the Market Participant for such Generation Resource: (1) will not be required to substitute [Zonal Resource Credits] from the [local resource zone] where the Generation Resource is located for the remainder of the Planning Year; (2) will not be obligated to comply with the Must Offer requirements in Section 69A.5 for the remainder of the Planning Year; and (3) will no longer receive daily [Auction Clearing Price or Traditional Auction Clearing Price] payments for [Zonal Resource Credits] associated with such Generation Resource for the remainder of the Planning Year.

Indianapolis Power states that, even though Indianapolis Power has worked with MISO to pursue a tariff amendment, MISO notified the Supply Adequacy Working Group on December 13, 2013 that MISO did not intend to file the adopted language.[20]

11. Indianapolis Power argues that its request for waiver meets the Commission's standard for granting waiver: (1) Indianapolis Power has been unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) a concrete problem will be remedied; and (4) the waiver does not have undesirable consequences, such as harm to third parties.[21]

12. Specifically, Indianapolis Power represents that it has acted in a timely and expeditious manner to submit its Attachment Y Notification of Potential Generation Resource Change of Status[22] to MISO to undergo a reliability analysis of Eagle Valley and to develop the new gas facility.[23] Additionally, Indianapolis Power argues that it has prepared to be resource sufficient by having a Planning Reserve Margin in excess of 20 percent even during the 6.5 week period after the Eagle Valley retirement.[24] Further, Indianapolis Power asserts that it has cooperated with MISO to address the 6.5 week

[20] Indianapolis Power Request for Waiver and Complaint at 42 (citing minutes of the December 13, 2013 Supply Adequacy Working Group meeting, *available at* https://www.misoenergy.org/Events/Pages/SAWG20140109.aspx).

[21] *Id.* at 30 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,132, at P 8 (2014); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069, at PP 8-9 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *Cal. Indep. Sys. Operator, Inc.*, 132 FERC ¶ 61,004, at P 10 (2010); *Hudson Transmission Partners, LLC*, 131 FERC ¶ 61,157, at P 10 (2010); *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182, at PP 9-10 (2010); *ISO New England Inc.-EnerNOC*, 122 FERC ¶ 61,297 (2008); *Cent. Vt. Pub. Serv. Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008)).

[22] Section 38.2.7 of the MISO Tariff requires that any Market Participant planning to retire or suspend a Generation Resource must notify MISO by submitting an Attachment Y Notification of Potential Generation Resource Change of Status at least 26 weeks prior to retirement/suspension. MISO then completes an Attachment Y Reliability Study to determine whether the Generation Resource is necessary for the reliability of the Transmission System. MISO, FERC Electric Tariff, Module C, § 38.2.7 (31.0.0).

[23] *See* Indianapolis Power Request for Waiver and Complaint at 30-31.

[24] *See id.* at 31 (citing Franks Test. at 12).

issue, including working with the Supply Adequacy Working Group and MISO to pursue a tariff amendment and by offering to operate Eagle Valley on oil during the 6.5 week period.[25]

13. Indianapolis Power argues that the 6.5 week problem here is limited in scope. Indianapolis Power asserts that the facts presented are specific to its situation and that Commission action with respect to Indianapolis Power does not mean the Commission or MISO would be bound to grant other waiver requests.

14. Additionally, Indianapolis Power argues that the 6.5 week problem is concrete, as it addresses a specific issue with respect to the MATS compliance deadline and the MISO Planning Year that, absent waiver, would cause Indianapolis Power to be subject to severe penalties that would not improve or supplement resource adequacy. Indianapolis Power argues that, absent receiving a waiver, it would be forced to either prematurely retire Eagle Valley on May 31, 2015, be in non-compliance with the EPA regulations, violate MISO's Tariff and potentially be subject to civil penalties up to $1 million per day, or pay an estimated cost of approximately $22 million for replacement capacity.[26] Further, Indianapolis Power argues that there is a significant risk that there will be no replacement capacity available to purchase and that there currently is no incremental auction under the MISO Tariff, so that those with excess capacity may not be in a position to sell capacity bilaterally for a 6.5 week period at a just and reasonable price.[27]

15. Regarding undesirable consequences, Indianapolis Power argues that treating the 6.5 week period as an outage or granting the waiver of the must-offer requirement for Eagle Valley will not harm third parties because (1) Indianapolis Power will meet all of its planning reserve requirements by keeping Eagle Valley on line during the summer 2015, fall 2015, and winter 2015/2016 seasons; (2) Indianapolis Power will have sufficient capacity during the 6.5 week period; and (3) the waiver of the must-offer requirement during this period will allow Indianapolis Power generation to be treated equitably relative to all other generators in the auction and will prevent unnecessary costs to be imposed on Indianapolis Power and its customers.[28] According to Indianapolis Power, the substantial reserve margin for the 6.5 week period makes the requirement to purchase replacement capacity an unnecessary and unwarranted cost because an

[25] *Id.* at 32.

[26] *Id.* at 5, 7, 33 & n.76.

[27] *Id.* at 33.

[28] *Id.* at 34.

additional 216 MW of replacement capacity merely increases Indianapolis Power's expense. Further, Indianapolis Power argues that Eagle Valley will be available during the 2015 summer peak period and the 2015-2016 winter peak period. Indianapolis Power asserts that it will either use this resource as a self-supply source by submitting a self-schedule or as a part of a Fixed Resource Adequacy Plan to meet its MISO Resource Adequacy Requirements for the 2015-2016 Planning Year. Thus, Indianapolis Power argues that granting it a waiver does not mitigate Indianapolis Power's responsibility to maintain adequate resources and reserves to meet its reliability obligations at any time, but merely protects Indianapolis Power from what would be an unjust and unreasonable expense to procure unneeded additional capacity for the 6.5 week period.[29]

16. Indianapolis Power argues that purchasing replacement capacity may result in its customers being double charged for having to support Eagle Valley's operation and the purchase of replacement capacity. According to Indianapolis Power, in order to protect its customers from this outcome, it would need to retire Eagle Valley on May 31, 2015, which would decrease rather than increase actual supply of capacity available to Zone 6, and would provide no incentive to construct new facilities at the Eagle Valley location since Indianapolis Power is already in the process of replacing Eagle Valley.[30]

B. Indianapolis Power Complaint

17. In its complaint, Indianapolis Power alleges that the MISO Tariff is unjust and unreasonable because it fails to sufficiently address the issues pertaining to the 6.5 week difference between the MISO 2015-2016 Planning Year and the EPA MATS compliance deadline. Indianapolis Power argues that it cannot run Eagle Valley after May 30, 2015 without: (1) committing a physical withholding from the Planning Resource Auction in violation of section 69A.3.1.h of the MISO Tariff;[31] (2) paying up to $22 million for replacement capacity for the entire planning year; or (3) violating the EPA MATS requirements. According to Indianapolis Power, under the MISO Tariff, Indianapolis Power has an incentive to retire Eagle Valley prematurely or choose among options which impose excessive financial burdens on Indianapolis Power or violate legal requirements, or both. Indianapolis Power therefore concludes that, in order to address

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[29] *Id.*

[30] *Id.* at 34-35.

[31] MISO, FERC Electric Tariff, Module E-1, § 69A.3.1.h (33.0.0).

concerns about supply inadequacy in the MISO region, Eagle Valley must be able to participate in a manner that does not trigger tariff violations.[32]

18. Indianapolis Power argues that a just and reasonable alternative to the MISO Tariff would be the proposal adopted by the MISO Supply Adequacy Working Group.[33] According to Indianapolis Power, the adopted language addresses the unjust and unreasonable tension in the existing MISO Tariff that requires a unit to undertake a must-offer obligation for 45.5 weeks and then finds that same unit to be in violation if it is required by federal law to shut down and no replacement capacity is available.[34]

19. Additionally, Indianapolis Power argues that, if the Commission determines that Indianapolis Power must purchase replacement capacity, then the MISO Tariff must provide a means for doing so. Indianapolis Power asserts that the auction provides only an annual product and that there is neither opportunity to secure capacity on a weekly or monthly basis nor a guarantee that replacement capacity will be available in the bilateral market after the auction. Indianapolis Power suggests that the Commission could require MISO to provide a mechanism for purchasing 6.5 weeks' worth of replacement capacity after the auction at a price capped at the auction clearing price. Indianapolis Power represents that revisions to the capacity tracking tool will also be required for this option and MISO will need to ensure the resources are not on scheduled outage.[35]

20. Indianapolis Power further argues that the MISO Tariff must be modified because it is producing dysfunctional results. According to Indianapolis Power, MISO found in its Attachment Y review that Eagle Valley is not needed to maintain system reliability – thereby precluding Indianapolis Power from seeking to extend the life of the facility beyond April 16, 2016 – while also refusing to treat the 6.5 week period as an outage.[36]

21. Indianapolis Power argues that the financial impacts of its current options could be significant. Indianapolis Power argues that, if it was forced to pay for replacement

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[32] Indianapolis Power Request for Waiver and Complaint at 35-36, 39.

[33] *See supra* note 19.

[34] Indianapolis Power Request for Waiver and Complaint at 37 (citing minutes of the December 13, 2013 Supply Adequacy Working Group meeting at 3, *available at* https://www.misoenergy.org/Events/Pages/SAWG20140109.aspx).

[35] *See id.* at 37-38, Franks Test. at 17.

[36] *Id.* at 39.

capacity, even on a 6.5 week basis, the cost could be approximately $22 million, with additional penalties for violating the MISO Tariff if no replacement capacity is available.[37] Indianapolis Power states that it would prematurely retire Eagle Valley if it is forced to offer Eagle Valley into the 2015-2016 Planning Year without assurance that replacement capacity could be obtained for the 6.5 week period at a just and reasonable cost.[38]

22. Accordingly, Indianapolis Power states that, if the Commission does not grant Indianapolis Power its requested waiver, it believes formal settlement and hearing proceedings may allow the parties to resolve the issues.[39]

II. Notice and Responsive Pleadings

23. Notice of Indianapolis Power's request for waiver and complaint was published in the *Federal Register*, 79 Fed. Reg. 36,798 (2014), with interventions and protests due on or before July 10, 2014. On July 10, 2014 and July 25, 2014, MISO filed answers. On July 24, 2014 and August 1, 2014, Indianapolis Power filed answers.

24. The following entities filed timely motions to intervene: Coalition of MISO Transmission Customers; Organization of MISO States; Potomac Economics, Ltd.; and Hoosier Energy Rural Electric Cooperative, Inc. The following entities filed timely motions to intervene and comments or protests: Xcel Energy Inc. on behalf of Northern States Power Company, a Minnesota corporation and Northern Power States Company, a Wisconsin corporation (together, Xcel); MidAmerican Energy Company (MidAmerican); Duke Energy Business Services, LLC (Duke);[40] Dynegy Marketing and Trade, LLC and Illinois Power Marketing Company (together, Dynegy); Alliant Energy Corporate Services, Inc. (Alliant); and NRG Companies.[41] The Indiana Commission submitted a notice of intervention and comments. Northern Indiana Public Service Company and

[37] *Id.* at 40 (citing Franks Test. at 16).

[38] *Id.* at 40 (citing MISO Filing Letter dated June 3, 2014 in Docket No. ER14-2113 at 3).

[39] *Id.* at 43.

[40] Duke filed the motion and comments on behalf of its franchised utility affiliate, Duke Energy Indiana, Inc.

[41] NRG Companies in this proceeding are NRG Power Marketing LLC and GenOn Energy Management LLC.

Exelon Corporation each submitted a motion to intervene out-of-time. Consumers Energy Company (Consumers Energy) submitted a motion to intervene out-of-time and comments out-of-time.

A. MISO July 10 Answer

25. In MISO's July 10 Answer, MISO states that it is unable to support Indianapolis Power's waiver request based on resource adequacy concerns facing the MISO region as a whole. MISO argues a variety of factors – including environmental requirements, an aging generation fleet, and economic conditions – have and will continue to reduce available reserves in the whole MISO region. For support, MISO contends that the reserve margin for the North and Central Regions dropped from 28 percent during the 2013-2014 Planning Year to slightly less than 20 percent during the 2014-2015 Planning Year, with the trend expected to continue in the near future such that the MISO North and Central Regions may face a capacity deficit below the Planning Reserve Margin Requirement by 2016.[42] According to MISO, such a shortfall would increase the risk of a loss of load event.[43] MISO argues that, in the event of an actual resource shortage, all loads share in the load curtailment proportionally, and this approach is fundamentally based upon an expectation of transparency, fairness in application of Tariff requirements, and equal contribution by Load Serving Entities on a planning basis.[44]

26. MISO argues that considering Indianapolis Power's request for waiver requires a broader perspective to protect against undermining the region's expectations for resource adequacy. According to MISO, a unit retirement is fundamentally different from scheduled maintenance or a planned outage because a retirement does not allow for rescheduling due to changed circumstances. MISO represents it is concerned about the erosion of the resource adequacy planning process if a unit being relied upon to meet the Planning Reserve Margin Requirement enters the Planning Year without being available for the duration of the Planning Year.[45]

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[42] Planning Reserve Margin Requirement is the amount of capacity required of each Load Serving Entity to meet its Resource Adequacy Requirements. MISO, FERC Electric Tariff, Module A, § 1.P (31.0.0).

[43] MISO July 10 Answer at 4.

[44] *See id.* at 4-5.

[45] *Id.* at 5.

27. MISO asserts that the Commission should not grant waiver of MISO's Tariff requirements unless and until it can be demonstrated that no other Tariff-compliant route is available. Regarding Indianapolis Power's assertion that its waiver is of limited scope, MISO argues that it is not clear how many other waiver requests may be submitted if the Commission grants Indianapolis Power's waiver request. Because the EPA MATS deadlines are generally applicable to other resources in the MISO footprint, MISO argues that other Market Participants may request special treatment of similar circumstances and, thus, there is no certainty with respect to how much capacity will be able to serve demand during the 6.5 week period in question.[46] Regarding Indianapolis Power's assertion that MISO's Tariff provisions would incentivize premature retirement of Planning Resources, MISO states that it is not aware of any other Market Participants with circumstances that would necessitate early retirement to comply with MISO's Tariff provisions.[47]

28. In addition, MISO argues that Indianapolis Power's complaint does not state sufficient grounds to show that MISO's Tariff is unjust and unreasonable because the circumstances of Indianapolis Power's Eagle Valley units should not form the basis for MISO Tariff changes of general applicability. MISO argues that each of Indianapolis Power's complaint alternatives presents challenges that may be difficult to resolve in a fashion that would address Indianapolis Power's issues. For example, MISO asserts that a Tariff revision to excuse compliance with the must-offer and resource replacement requirements in all circumstances where a Planning Resource retirement occurs during a Planning Year due to federal or state environmental enforcement action would present a serious resource adequacy concern. Despite certain stakeholder support, MISO indicates it decided not to pursue such a Tariff change due to concerns about providing preferential treatment in the Tariff to certain units and sacrificing resource adequacy.[48] MISO asserts it would be very difficult to envision successful implementation of a new market mechanism by September 2014, as Indianapolis Power proposes, that includes a thorough stakeholder vetting process.[49]

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[46] *Id.* at 5-6.

[47] *Id.* at 6.

[48] *Id.* at 8.

[49] *Id.* at 9.

B. Comments and Protests

29. The Indiana Commission supports Indianapolis Power's filing and asserts that Indianapolis Power presents a number of reasonable solutions that would allow the proper use of Eagle Valley and provide capacity to Indianapolis Power's customers at just and reasonable rates. The Indiana Commission states that it has the jurisdictional authority under both the FPA and Indiana state law regarding generation facilities, including Eagle Valley. Although Indianapolis Power as well as other Indiana utilities are approved by the Indiana Commission to be members of MISO, the Indiana Commission contends that the reasonable economic decisions of a state-jurisdictional utility regarding compliance with EPA rules should not be interfered with by the MISO Tariff provisions. The Indiana Commission also argues that, due to the 6.5 week difference in timeframes for the EPA MATS deadline and MISO's Planning Year, MISO's tariff provisions impose requirements that are unnecessary to assure resource adequacy during the 6.5 week period and impose unnecessary costs on Indianapolis Power ratepayers. The Indiana Commission, therefore, asserts that the unnecessary nature of the MISO Tariff's requirements and costs are unjust and unreasonable.[50]

30. In addition, the Indiana Commission asserts that MISO's own study of the impact of the Eagle Valley retirement verifies that there is no reliability issue related to the Eagle Valley retirement and that Indianapolis Power has sufficient resources to meet demand during the 6.5 week period. Further, the Indiana Commission asserts that Indiana utilities under its jurisdiction have submitted all necessary information to MISO, so that MISO should be assured that sufficient resources exist for the 6.5 week period.[51]

31. Alliant and Consumers Energy assert that, similar to Indianapolis Power's situation, they must retire certain units due to environmental mandates on dates that do not align with the MISO Planning Year.[52] As a result, Alliant and Consumers Energy claim that their customers would also be forced to pay for unneeded capacity and that MISO's Tariff, therefore, results in unjust and unreasonable rates.[53]

32. Alliant and Consumers Energy assert that, while they generally support Indianapolis Power's filing, they prefer that the Commission first accept Indianapolis

[50] Indiana Commission Comments at 2-3.

[51] *Id.* at 3.

[52] Alliant Comments at 10; Consumers Energy Comments at 5.

[53] Alliant Comments at 12; Consumers Energy Comments at 8.

Power's complaint and require MISO to amend its Tariff to adopt the language accepted by the Supply Adequacy Working Group on December 13, 2013, which includes an amendment proposed by Alliant.[54] Alliant argues that the MISO Tariff does not properly account for the misalignment between EPA-mandated retirement dates and the MISO Planning Year,[55] which Alliant argues is a widespread issue that extends beyond the MATS rule.[56] In support of Indianapolis Power's complaint, Alliant and Consumers Energy argue that the Supply Adequacy Working Group-adopted Tariff change is already developed and vetted by the group and would (1) avoid a plethora of waiver requests, (2) limit cost exposure to customers, (3) provide certainty to MISO and its Market Participants; and (4) recognize that other environmental issues affect generation retirement.[57]

33. Alternatively, Alliant and Consumers Energy state that they would not oppose Indianapolis Power's first or second waiver request proposals.[58] Alliant agrees with Indianapolis Power that a scheduled or forced outage is the best waiver option available because it allows for much-needed capacity to be available during the summer peak period and does not incur added costs to customers.[59] Alliant states that it would be amenable to Indianapolis Power's second waiver request proposal to obtain waiver of the must-offer and replacement requirements because it would provide the same benefits as the first proposal if applied to Alliant's situation.[60] However, unlike Consumers Energy, Alliant states that it is not prepared to support Indianapolis Power's third or fourth waiver request proposals because Alliant argues they are (1) less clear cut, (2) not easily

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[54] Alliant Comments at 6, 9, 10; Consumers Energy Comments at 8.

[55] Alliant Comments at 13.

[56] *Id.* Alliant claims that, in total, at least 55 generators and 6,100 MW of capacity are affected by this problem. *See id.* at 14 (citing MISO Planning Advisory Committee, *20140514 PAC Item 06 2014 Q1 EPA Survey Update* (May. 2014), *available at* https://www.misoenergy.org/Events/Pages/PAC20140514.aspx).

[57] Alliant Comments at 15-16; Consumers Energy Comments at 9.

[58] Alliant Comments at 17.

[59] *Id.*

[60] *Id.* at 18.

applicable to other entities that are bound by non-MATS retirement dates, and (3) more likely to cause customers to incur additional, unnecessary costs.[61]

34. Xcel also supports Indianapolis Power's filing. Xcel argues that MISO's rules on procurement of capacity on an annual basis effectively result in over-procurement of resources during non-peak seasons. According to Xcel, the MISO Tariff's annual construct for its resource adequacy requirements imposes an excessive burden on Market Participants who are required to have resources sufficient to meet the peak planning capacity requirement throughout the entirety of the year, not just the peak period.[62] Xcel argues that the current MISO annual capacity market has a less granular matching of resources and loads, resulting in a misallocation of resources and unnecessary costs to customers. Consequently, Xcel argues the Commission should grant Indianapolis Power's request for waiver and encourage MISO to resolve this issue as quickly as possible through appropriate changes to its capacity rules.[63]

35. MidAmerican supports Indianapolis Power's request for relief and believes adequate basis exists to find that the MISO Tariff is unjust and unreasonable based on its conflict with MATS compliance requirements.[64] MidAmerican argues that, while it understands the rationale for shifting from a monthly resource adequacy requirement to an annual resource adequacy requirement, the MISO Tariff did not anticipate the unique circumstances surrounding the need to comply with the EPA MATS requirements causing a number of resources to be retired very late in a MISO Planning Year.[65] MidAmerican adds that the conditions faced by Indianapolis Power are also faced by other MISO market participants.[66] MidAmerican argues that the Commission should order MISO to modify its Tariff to permit Capacity Resources to be retired for MATS compliance without the need to replace the associated capacity for the remainder of the

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[61] Alliant Comments at 18; Consumers Energy Comments at 9. Consumers Energy does agree with Alliant that Indianapolis Power's third and fourth waiver request proposals are more likely to cause customers to incur additional, unnecessary costs.

[62] Xcel Comments at 3-4.

[63] *Id.* at 5.

[64] MidAmerican Comments at 6.

[65] *Id.* at 8.

[66] *Id.* at 6.

Planning Year, and supports the language adopted by the Supply Adequacy Working Group.[67]

36. MidAmerican argues that, in the face of the EPA MATS requirements, MISO's current Tariff may inhibit rather than foster reliability.[68] MidAmerican adds that there would be essentially no reliability impact if resources were allowed to retire without replacement late in the Planning Year under the extraordinary circumstances created by the EPA MATS requirements, and that the current Tariff makes it more likely that resources will be retired earlier than they otherwise would be.[69]

37. Dynegy argues that Indianapolis Power's request for waiver appears premature and potentially unnecessary. Regarding Indianapolis Power's concern about procuring bilateral capacity, Dynegy argues that Indianapolis Power has not shown any actual effort to bilaterally procure replacement capacity. According to Dynegy, capacity is available on a bilateral basis, despite the anticipated level of MATS-related retirements, because more than 12 gigawatts of capacity did not clear the most recent 2014-2015 Planning Resource Auction.[70] Further, Dynegy asserts that MISO's proposed tariff revisions in Docket No. ER14-2113-000 allowing for inter-zonal replacement of capacity may broaden Indianapolis Power's bilateral options. According to Dynegy, the capacity for MISO 2014-2015 Planning Year cleared at a substantially lower price than the cost of new entry, meaning that Indianapolis Power's estimated $22 million cost for replacement capacity is likely to be much lower.[71] Dynegy argues, therefore, that Indianapolis Power's worst-case scenario for replacing capacity is unsupported without some evidence that the system will be short and will clear at the cost of new entry.

38. Dynegy asserts that Indianapolis Power's waiver request is motivated by a desire to avoid any financial cost for procuring the full amount of capacity necessary to meet its obligations for the entire Planning Year. Dynegy argues that this financial motivation should not be the reason for modifying the MISO Tariff. Further, Dynegy argues that

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[67] *Id.* at 6-7.

[68] *Id.* at 9.

[69] *Id.* at 9-10.

[70] Dynegy Protest at 4 (citing *Resource Adequacy: 2014-2015 Planning Year Planning Resource Auction (PRA) Results, Supply Adequacy Working Group,* at slide 3 (May 1, 2014)).

[71] *Id.* at 4-5.

Indianapolis Power's attempts to ignore the MISO Tariff and to not pay to procure replacement capacity is neither a "concrete problem" nor "good faith" effort. Moreover, Dynegy asserts that, because all resources are subject to the EPA MATS rules, Indianapolis Power does not face unique circumstances and its waiver request cannot be considered limited in scope.[72]

39. Dynegy also argues that Indianapolis Power cannot show that its request will not result in harm to the MISO markets, including suppliers participating in the market, or be a threat to reliability. According to Dynegy, Indianapolis Power's claim that reliability will not be harmed if Eagle Valley is unavailable during the last 6.5 weeks of the 2015-2016 Planning Year is unfounded. Dynegy argues that the period in question is 12.5 percent of the year and occurs during the spring season, a peak season for generation and transmission maintenance outages, which can cause unique operating scenarios and stresses on the system.[73] Regarding Indianapolis Power's argument that Zone 6 outages have already been coordinated in advance and that Zone 6 is resource-adequate through the end of 2017, Dynegy argues that Indianapolis Power fails to recognize that Zone 6 is part of an interconnected system in a Regional Transmission Organization (RTO) with a system-wide reserve margin that must be met.[74]

40. Further, Dynegy argues that the Commission should reject each of Indianapolis Power's requested waiver options because each will result in unjust, unreasonable, and unduly discriminatory rates. First, Dynegy argues that permitting Indianapolis Power to declare Eagle Valley to be on an outage, which is the temporary removal of a resource from service under the MISO Tariff, would not accurately reflect Indianapolis Power's intention to permanently retire those units.[75] Dynegy asserts that permitting Indianapolis Power to falsely declare an outage would put Eagle Valley on unequal footing with all other Capacity Resources and would be unduly preferential because Indianapolis Power would be allowed to include Eagle Valley in its Fixed Resource Adequacy Plan for the

[72] *Id.* at 5-6.

[73] *Id.* at 7.

[74] *Id.* at 8 (citing Indianapolis Power Request for Waiver and Complaint at 25).

[75] *Id.* at 9 (citing MISO, FERC Electric Tariff, Module A, § 1.G (32.0.0)). Dynegy asserts that the Supply Adequacy Working Group considered and rejected Indianapolis Power treating the 6.5 week period as an outage, and that the MISO Independent Market Monitor stated that treating the period as a planned or forced outage would be inconsistent with the terms of the MISO Tariff. *Id.*

2015-2016 Planning Year and would displace without compensating other resources that will ultimately be leaned on when Eagle Valley is on "outage" for the 6.5 week period.[76]

41. Second, Dynegy agrees with MISO that granting Indianapolis Power's second waiver option would give undue preference to a set of generators and discriminate against those generators that had elected to make the necessary investments to comply with MATS rules. Dynegy asserts that there is no cause to grant Indianapolis Power special dispensation when MISO has, within its authority, already decided that doing so was inappropriate.

42. Dynegy also argues that the Commission should deny Indianapolis Power's third waiver option that would find that Indianapolis Power is only required to obtain replacement capacity from April 16, 2016 to May 31, 2016. According to Dynegy, Indianapolis Power fails to provide any rationale why it alone should be exempted from the requirements that are generally applicable to Capacity Resources. Further, Dynegy argues that Indianapolis Power has not demonstrated that replacement capacity will not be available or not be available at a just and reasonable rate on a bilateral basis.[77]

43. Dynegy argues that Indianapolis Power's fourth waiver option is a veiled attempt to permit Indianapolis Power to include Eagle Valley as part of its Fixed Resource Adequacy Plan for the 2015-2016 Planning Year, thereby suppressing the true value of capacity. According to Dynegy, this option would require Indianapolis Power to only pay 12.5 percent of the suppressed auction clearing price for replacement capacity, which would result in harm to the market. Further, Dynegy argues that this option attempts to prematurely negotiate the fees or penalties that Indianapolis Power will face if it is in violation of the MISO Tariff and it jeopardizes system reliability. Regarding the charges under the MISO Tariff, Dynegy states that the Tariff's Capacity Deficiency Charge on Load Serving Entities that do not comply with their capacity obligations is Commission-approved and intended to deter Load Serving Entities like Indianapolis Power from shirking their capacity obligations.[78]

44. As to Indianapolis Power's fifth waiver option, Dynegy agrees with MISO that the Tariff language adopted by the Supply Adequacy Working Group would have been unduly preferential for resources like Eagle Valley and discriminatory against those resources that comply with federal and state environmental laws. Dynegy argues that

[76] *Id.* at 10.

[77] *Id.* at 11.

[78] *Id.* at 12 (citing MISO, FERC Electric Tariff, Module E-1, § 69A.10.a (30.0.0)).

Indianapolis Power has not provided any basis for reversing MISO's decisions and the Commission should reject Indianapolis Power's attempts to circumvent MISO's authority.

45. Dynegy argues that, to the extent the Commission considers any MISO Tariff modifications to address the issues raised by Indianapolis Power, the Commission should focus instead on structural, generally-applicable improvements to the MISO Tariff, such as whether MISO should adopt a longer forward commitment period or whether the MISO Tariff should exempt a resource that has obtained an Attachment Y determination from MISO that it is not required for reliability from having to offer into the Planning Resource Auction.[79]

46. Regarding Indianapolis Power's complaint, Dynegy argues that the complaint is procedurally improper and the Commission should summarily dismiss it. Dynegy argues that the Commission has consistently rejected efforts to combine complaints with other types of filings because a combined filing does not assure that the procedural and other requirements applicable to the processing of a complaint will be met.[80] Further, Dynegy argues that Indianapolis Power fails to satisfy its burden under section 206 of the FPA to demonstrate that the existing MISO Tariff is unjust and unreasonable, and to demonstrate that its proposed Tariff modifications are necessary or appropriate.[81]

47. NRG Companies also ask the Commission to reject Indianapolis Power's waiver request for several reasons.[82] First, NRG Companies argue that the Commission should reject Indianapolis Power's waiver request because of the potential harm to third parties that could result if the Commission waives a critical reliability requirement like the reserve margin. NRG Companies further assert that operating intentionally short could cause significant reliability issues for Indianapolis Power's native load, as well as native load customers across the MISO footprint. NRG Companies add that granting Indianapolis Power a waiver request would threaten the integrity of the already-suffering MISO resource adequacy market. Second, NRG Companies argue that the scope of the waiver request has broad implications and would have consequences well beyond the

[79] *Id.* at 14.

[80] *Id.* at 14-15 (quoting *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,248, at P 5 (2004); *La. Power & Light Co.*, 50 FERC ¶ 61,040, at 61,062-63 (1990); *Entergy Servs., Inc.*, 52 FERC ¶ 61,317, at 62,270 (1990)).

[81] *Id.* at 15-16.

[82] NRG Companies Protest at 3-4.

resource at issue, making it difficult for the Commission to deny requests from similarly-situated Load Serving Entities.[83] Third, NRG Companies argue that Indianapolis Power has not provided convincing evidence that it is unable to comply with MISO's reserve margin requirements after exercising good faith efforts. For example, NRG Companies state that it is highly likely that such capacity will be available on a bilateral basis, although they acknowledge that it is not guaranteed to be the case. NRG Companies assert that, at a minimum, the Commission should reject Indianapolis Power's request, without prejudice, until it conducts a Request for Proposal-type process to procure the necessary bilateral capacity. Fourth, NRG Companies assert that granting Indianapolis Power's waiver request does not remedy a concrete problem and that requiring Indianapolis Power to pay the market price for capacity during a period of scarcity should not be considered a "problem," but rather the market at work.[84]

48. Regarding Indianapolis Power's complaint, NRG Companies argue that the complaint also falls short of establishing a prima facie case that the existing resource adequacy rules are unjust and unreasonable.[85] Even if the Commission concludes that Indianapolis Power has met its initial burden of showing that the existing Tariff is not just and reasonable, NRG Companies argue that it should still find that Indianapolis Power's proposed changes to the MISO resource adequacy construct are not just and reasonable.[86]

49. Duke supports Indianapolis Power's desire for clarity of the MISO Tariff requirements, stating that it is unclear whether a resource has a must-offer obligation into the annual capacity auction for the planning year in which the resource retires.[87] Duke states that both Indianapolis Power and the Independent Market Monitor have said that generators that have announced retirements are subject to the must-offer requirement.[88] However, Duke argues that a resource with an approved Attachment Y

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[83] *Id.* at 4.

[84] *Id.* at 5.

[85] *Id.*

[86] *Id.* at 6.

[87] Duke Comments at 2-3 (citing MISO, FERC Electric Tariff, Attachment Y).

[88] *Id.* at 3 (citing Indianapolis Power Request for Waiver and Complaint at 5; Potomac Economics, Presentation "Participation of Units Planned for Retirement or Suspension in the Planning Resource Auctions" July 10, 2014, where the Independent Market Monitor states that there is no exemption from physical withholding mitigation for any of the MISO administered markets).

application does not have the must-offer obligation, but states that there is confusion about this issue. Duke requests Commission confirmation that its understanding of the Tariff is accurate.[89]

50. Duke also requests clarification that its interpretation of the MISO Tariff and the Business Practice Manual that, if a resource is not deliverable (i.e., it has an approved Attachment Y and has lost its interconnection rights absent re-entering the interconnection queue), then it cannot demonstrate the deliverability required of a Capacity Resource. As a result, Duke argues a retiring resource cannot be qualified to participate in the auction and does not have a must-offer requirement.[90]

51. While Duke appreciates Indianapolis Power's concerns, it does not believe that reliability should knowingly be compromised. Duke asserts that the MISO Tariff recognizes and complements reliability mechanisms of the states and regional entities within the MISO Region, and that without changes to the extant reliability requirements, MISO cannot deem some new level of reliability is satisfactory for the region.[91]

C. <u>Indianapolis Power July 24 Answer</u>

52. In its July 24 Answer, Indianapolis Power reiterates several points raised by Alliant, the Indiana Commission, MidAmerican, and Xcel that support its filing. Indianapolis Power also disagrees with statements made by MISO, NRG Companies, and Dynegy that its waiver request should be denied. First, Indianapolis Power asserts that MISO's July 10 Answer is based entirely on a generalized concern about resource adequacy. Indianapolis Power argues that MISO fails to demonstrate any relationship or link between Indianapolis Power's waiver request and its effect on reliability, and fails to apply a standard of review based on the Commission's policy. According to Indianapolis Power, MISO, as well as NRG Companies, fail to address the particulars of Indianapolis Power's evidentiary showing; MISO and NRG Companies do not dispute Indianapolis Power's filing regarding its available reserve margin during the 6.5 week period, nor do MISO, NRG Companies, or Dynegy dispute Indianapolis Power's analysis of maintenance outages in Zone 6.[92] Indianapolis Power argues that MISO's generalized

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[89] *Id.* at 4.

[90] *See id.* at 4-9. Duke raises similar arguments regarding units suspending operations due to MATS compliance.

[91] *Id.* at 9 (citing MISO, FERC Electric Tariff, Module E-1, § 68A (30.0.0)).

[92] Indianapolis Power July 24 Answer at 5, 7, 9.

concerns do not relate to the 6.5 week period requested but rather to a time period beyond the planning year at issue.[93]

53. Indianapolis Power asserts that obtaining a grant of its waiver request would relieve any reliability concerns that may exist because, absent a grant of the requested waiver or other relief, Indianapolis Power has an incentive to retire Eagle Valley at the start of the 2015-2016 Planning Year, which would remove Eagle Valley's capacity during the summer of 2015 and winter of 2016 when it is needed most.

54. Regarding MISO's concerns regarding additional waiver requests, Indianapolis Power argues that any such waiver requests should be considered on the unique facts and circumstances presented by each filing party. Accordingly, Indianapolis Power argues that its waiver request should be considered on its own.[94]

55. In response to NRG Companies' protest, Indianapolis Power argues that it has shown good faith in its efforts to meet MISO's Tariff requirements. Indianapolis Power states that it has attempted to procure the necessary replacement capacity through a bilateral transaction, but indicates that uncertainty impedes the process.

D. MISO July 25 Answer

56. In MISO's July 25 Answer, MISO responds to several commenters. In response to the Indiana Commission's statement that MISO's own study of Eagle Valley indicated that there was no reliability problems, MISO contends that the referenced reliability study does not include a review of the resource adequacy impacts related to a resource retirement or suspension, but instead examines the local transmission reliability impacts of the change in status for a generating unit.[95] MISO asserts that, instead, the Tariff addresses resource adequacy issues by requiring that resources used to meet resource adequacy reserves be replaced if they are retiring or suspended during a Planning Year.

57. In response to Xcel's call for changes to annual resource adequacy requirement in the MISO Tariff, MISO states that it is supportive of stakeholder-derived initiatives and notes that MISO and its stakeholders already are engaged in a process to evaluate whether MISO's current annual summer based resource adequacy construct contains gaps

[93] *Id.* at 5-6.

[94] *Id.* at 6.

[95] MISO July 25 Answer at 3 (citing Indiana Commission Comments at 3).

that prevent it from achieving resource adequacy during all periods of the year.[96] As such, MISO believes that the stakeholder process is essential and should not be truncated.

58. In response to Alliant and MidAmerican's recommendations that the Commission accept Indianapolis Power's complaint and order MISO to modify its Tariff, MISO reiterates that its concern with allowing a Capacity Resource that retires during a Planning Year due to any federal or state environmental enforcement action to do so without meeting the must-offer and resource replacement requirements for the balance of the Planning Year is that there are potential impacts to resource adequacy. According to MISO, there is no backstop to assure there are sufficient resources available to meet demand during the balance of the Planning Year. MISO argues that extending this treatment universally to any and all resources that retire due to environmental requirements anytime during the last five months of a Planning Year could result in a substantial deficit in resources needed to meet demand, and could have catastrophic resource adequacy consequences.[97]

E. Indianapolis Power August 1 Answer

59. In Indianapolis Power's August 1 Answer, Indianapolis Power argues that MISO incorrectly assumes that Indiana Commission's comments about MISO's own study were merely referring to the Attachment Y Notification of Potential Generation Resource Change of Status. However, Indianapolis Power argues that MISO's answer ignores the "maintenance margin" study discussed extensively in Indianapolis Power's June 20 filing and, as such, Indianapolis Power's discussion of the maintenance margin study remains unrebutted.[98]

60. Further, Indianapolis Power states that, while it takes no position on MISO's discussion of a seasonal construct in response to Xcel's comments, the process of moving to a seasonal construct may take as long as the 2017-2018 timeframe to implement, which is long after the time period in question in this case.[99]

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[96] *Id.* at 4 (citing Xcel Comments at 3).

[97] *Id.* at 4-5.

[98] Indianapolis Power August 1 Answer at 2-3 (citing MISO July 25 Answer at 3; Indianapolis Power Request for Waiver and Complaint at 25 & Franks Test. at 12-15).

[99] *Id.* at 3 (citing MISO July 25 Answer at 4).

III. Discussion

A. Procedural Matters

61. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), we will grant the late-filed motions to intervene of Consumers Energy, Northern Indiana Public Service Company, and Exelon Corporation given their interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

62. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept MISO's and Indianapolis Power's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

63. Based on our review of Indianapolis Power's request for limited waiver of the must-offer requirement and requirement to purchase replacement capacity in MISO Tariff sections 69A.5 and 69A.3.1.h, respectively, for the period from April 16, 2016 to May 31, 2016, we find good cause to grant the requested waiver. Accordingly, as discussed below, we will also dismiss as moot Indianapolis Power's complaint.

64. The Commission has previously granted one-time waivers of tariff provisions in situations where, as relevant here: (1) the waiver is of limited scope; (2) a concrete problem needed to be remedied; and (3) the waiver did not have undesirable consequences, such as harming third parties.[100]

65. Based on the information in the record, we find that Indianapolis Power's request for waiver satisfies the aforementioned conditions. The requested waiver is limited in scope in that it applies only to Eagle Valley for a limited period of time from April 16, 2016 to May 31, 2016 of the 2015-2016 Planning Year. While Dynegy argues that granting the requested waiver would give undue preference to a set of generators and

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[100] *See, e.g.*, *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,184, at P 18 (2014); *Southwest Power Pool, Inc.*, 148 FERC ¶ 61,013, at P 13 (2014); *PJM Interconnection, L.L.C.*, 146 FERC ¶ 61,041, at P 5 (2014).

discriminate against those generators that had elected to make the necessary investments to comply with MATS rules, we do not expect that the limited scope of the waiver will unduly influence a generator's decision to make investments to comply with MATS rules. As to protestors' arguments that the scope of the waiver would have broad implications and potential consequences beyond Eagle Valley, we disagree. As discussed herein, we find that Indianapolis Power has adequately demonstrated that waiver is warranted under the facts presented, and our determination here is limited to the specific facts of this proceeding. The Commission reviews each request for waiver on a case-by-case basis, and granting this waiver will not impact the Commission's decision-making process on other waiver requests.

66. Indianapolis Power's request addresses a concrete problem by allowing Eagle Valley to remain operational for 45.5 weeks of the 2015-2016 Planning Year, rather than subjecting Indianapolis Power to either prematurely retire Eagle Valley on May 31, 2015, be in non-compliance with the EPA regulations, violate MISO's Tariff and potentially be required to pay an unknown cost for replacement capacity or subject to civil penalties up to $1 million per day under section 316A of the FPA. While protestors argue that Indianapolis Power's request for waiver attempts to ignore the MISO Tariff and that Indianapolis Power's obligation to procure replacement capacity is not sufficient to establish a concrete problem, we do not find protestors' argument convincing. The requested waiver attempts to resolve the aforementioned problems created by the 6.5 week gap between EPA MATS deadlines and the MISO Planning Year that MISO and its stakeholders have recognized and spent over a year attempting, without success, to resolve through a tariff amendment.

67. We find that the requested waiver will also not cause undesirable consequences, based on Indianapolis Power's representation that it will meet all of its planning reserve requirements by being on line during the peak periods of the summer 2015 and winter 2015/2016 seasons. We note that MISO, following its completion of an Attachment Y Reliability Study to determine whether Eagle Valley is necessary for the reliability of the Transmission System, determined that Eagle Valley is not necessary for reliability beyond April 16, 2016.[101] With regard to protestors' arguments, and Dynegy's reference

[101] Indianapolis Power Request for Waiver and Complaint at 15-16. MISO's Transmission Planning Business Practices Manual (Reliability Evaluation section 6.2.3) states:

> System Intact (Category A) and single-element contingencies (Category B) will be considered in the evaluation, which are consistent with NERC Planning Standards I.A. Category B includes any single transformer,

(continued ...)

to MISO's concerns,[102] that granting the requested waiver could cause reliability issues, we find that these concerns are mitigated by MISO's Zone 6 Maintenance Margin Charts that indicate that the Planning Reserve Margin is still sufficient in Zone 6 during the 6.5 week period.[103]

68. Further, while MISO's capacity construct sets parameters for resource adequacy and provides a residual mechanism for utilities to procure capacity, MISO has not historically set the required reserve margin for Indianapolis Power or other utilities whose reserve margins are set by state regulators. Instead, under MISO's resource adequacy tariff provisions, the Indiana Commission has the authority to establish a Planning Reserve Margin for Indianapolis Power,[104] which MISO uses in its calculation of Indianapolis Power's Planning Reserve Margin Requirement. Thus, we find helpful the Indiana Commission's support for the requested waiver, as well as the Indiana Commission's statements that there is no reliability issue related to the Eagle Valley retirement and that Indianapolis Power has sufficient resources to meet demand during the 6.5 week period.

69. In granting this waiver, we remain cognizant of the Commission's responsibilities under the FPA for the reliability of the bulk electric system and the oversight of regional electric markets to ensure that they sustain reliability at just and reasonable rates.[105] Ultimately, we find that granting Indianapolis Power's requested waiver is an appropriate remedy to address the inconsistency between the start of the 2016-2017 MISO resource

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generator, or transmission line outage. In addition, significant multiple-element contingencies consistent with NERC Category C will be reviewed.

NERC Transmission Planning Standards TPL-001, TPL-002, and TPL-003 effective April 1, 2005 will be applied to test the system. In performing the [System Support Resource] study, Regional, State, and MISO Member (Local) planning criteria will be respected. In addition to NERC Standards, load deliverability will be tested in areas with potential load deliverable deficiency. A 1 day in 10 year [Loss of Load Event] criteria will be applied.

[102] Dynegy Protest at 11.

[103] Indianapolis Power Request for Waiver and Complaint, Franks Test. at 13.

[104] *See* MISO, FERC Electric Tariff, Module E-1, § 68A.1 (30.0.0).

[105] 16 U.S.C. §§ 824d, 824o (2012).

adequacy planning year (i.e., June 1, 2016) and the effective date of the EPA's MATS requirements for the Eagle Valley unit (i.e., April 16, 2016). While we acknowledge MISO's broad concerns about regional resource adequacy in 2016, we note that the limited waiver granted herein does not implicate the resource adequacy requirements for the summer 2016 peak season, the 2016-2017 Planning Year, or any planning years thereafter. Furthermore, as noted above, Indianapolis Power remains obligated to procure sufficient capacity for the remainder of the 2015-2016 Planning Year, including the peak seasons in summer 2015 and winter 2015-2016. We note that the Commission continues to monitor resource adequacy in the MISO region, particularly in anticipation of the 2016-2017 Planning Year, and remains committed to working with the states, MISO, and stakeholders to ensure resource adequacy in the MISO region.[106]

70. Finally, given that we grant Indianapolis Power's request for waiver, we need not address Indianapolis Power's request for clarification, as supported by Duke, regarding a resource's must-offer obligation into the annual capacity auction for the planning year in which the resource retires. Likewise, we deny Duke's request for clarification regarding the deliverability required of a retired/suspended capacity resource. However, we encourage MISO and its stakeholders to consider developing proposed tariff revisions and providing clarification to address the situation faced by Indianapolis Power or other entities who may face similar decisions.

71. Under the circumstances presented, we grant Indianapolis Power's request for waiver of the must-offer requirement and requirement to purchase replacement capacity under the MISO Tariff, as discussed above. Accordingly, we need not address Indianapolis Power's request for modifications to the MISO Tariff in the instant proceeding and will dismiss as moot Indianapolis Power's complaint.

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[106] FERC, *Update on MISO 2016 Resource Adequacy Forecast*, Docket No. AD-14-17-000 (Sept. 18, 2014), *available at* http://www.ferc.gov/CalendarFiles/20140918110305-A-3-total.pdf.

<u>The Commission orders</u>:

Indianapolis Power's request for waiver is hereby granted and its complaint is hereby dismissed as moot, as discussed in the body of this order.

By the Commission. Commissioners Clark and Moeller are concurring with a joint separate statement attached.
Commissioner Bay is dissenting with a separate statement to be issued at a later date.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Indianapolis Power & Light Company v. Midcontinent Independent System Operator, Inc. — Docket No. EL14-70-000

(October 15, 2014)

CLARK, MOELLER, Commissioners, *concurring*:

Indianapolis Power & Light Company's waiver request avoids unnecessary costs for Indiana ratepayers and does not create reliability issues that would cause undesirable consequences for third parties. This proceeding is a product of an unfortunate timing mismatch between MISO's planning year and the compliance date for the Environmental Protection Agency's Mercury and Air Toxics Standards (MATS) rule. To comply with the MATS rule, Indianapolis Power will retire 216 MW of coal-fired capacity at its Eagle Valley plant by April 16, 2016, which is approximately 6.5 weeks before the end of MISO's 2015-2016 planning year.

Realizing this gap, Indianapolis Power was forced to choose between procuring replacement capacity, paying penalties, or requesting waiver of certain MISO Tariff provisions. Based on concerns related to the imposition of unjust and unreasonable costs on its customers, Indianapolis Power ultimately chose to submit a request for waiver.[1]

Because Indianapolis Power's request for waiver of the must-offer requirement and waiver of the requirement to purchase replacement capacity will reduce available capacity by 216 MW, it was imperative that Indianapolis Power justify exactly how reliability will be maintained during this 6.5-week shoulder period in the Spring of 2016.

The reliability analysis presented by Indianapolis Power is two-fold. First, Indianapolis Power submitted an Attachment Y to MISO for its Eagle Valley units and was informed by MISO that the units were not needed for reliability beyond April 16, 2016.[2] As discussed in today's order, this finding covers the relevant NERC Standards critical for assessing whether local reliability will be maintained subsequent to retirement of the Eagle Valley units.

The second phase of Indianapolis Power's reliability analysis goes to resource adequacy and the determination that available supply will be sufficient to meet the demand of

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[1] *See also* Indiana Utility Regulatory Commission Comments at 2-3.

[2] Indianapolis Power Request for Waiver and Complaint, Attachment A (Testimony of L. Franks) at 7.

Indianapolis Power's customers during the 6.5-week period. In its testimony, Indianapolis Power shows that it will have abundant reserve margins of 47% and 20% in April and May 2016, respectively.[3] In addition, Indianapolis Power explains that Indiana utilities have taken the unique step of providing MISO with their generation outage schedules far in advance so that MISO could conduct a "maintenance margin" study for future years. MISO's analysis demonstrates that MISO Zone 6, in which Indianapolis Power is located, has a sufficient planning reserve margin even after accounting for scheduled outages.[4] This is an important resource adequacy study given the level of scheduled maintenance outages typically experienced during shoulder periods. Going forward, Indianapolis Power will also be constructing new generation that is expected to more than offset the retirements and further ensure reliability following the 6.5-week period.

While we appreciate MISO's concern for resource adequacy, it is clear that MISO's reservations are based more broadly on resource adequacy concerns in the MISO region as a whole and not on concerns directly related to Indianapolis Power's request for waiver of the Eagle Valley units. As today's order makes clear, however, the Commission's determination to grant Indianapolis Power's waiver is based on the facts and circumstances related to this specific case and in no way ties our hands to granting waivers under a different set of circumstances. Looking at Indianapolis Power specifically, it is notable that MISO's Attachment Y reliability study cleared the Eagle Valley units for retirement; the maintenance margin study demonstrates resource adequacy after accounting for outages; and Indianapolis Power's planning margin shows sufficient resources during the 6.5 week period. With regards to the broader issue of resource adequacy in the greater MISO region, we look forward to continuing engagement with MISO and the MISO States on these issues.

It is with this basis that we concur with the decision to grant Indianapolis Power's request for waiver and conclude that imposing additional costs on Indiana consumers is unnecessary and unwarranted.

____
Tony Clark
Commissioner

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Philip Moeller
Commissioner

[3] *Id.* at 11-13.

[4] *Id.* at 13-15.