UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

(Issued October 16, 2014)

Attached is the statement by Commissioner Bay dissenting to an order issued on October 15, 2014, in the above referenced proceeding. *Indianapolis Power and Light Company*, 149 FERC ¶ 61,047 (2014).

Kimberly D. Bose,
Secretary.

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BAY, Commissioner, *dissenting*:

To its credit, Indianapolis Power & Light Company (Indianapolis Power) has provided the Commission with five different options to consider. Under one of the options, Indianapolis Power has offered to purchase replacement capacity for the 6.5 weeks on the condition that it be available at a just and reasonable rate. Under the circumstances of this case, I would take up Indianapolis Power on its offer. This approach is effective and pragmatic, all but ensuring that MISO will receive the necessary capacity, while providing Indianapolis Power with one form of its requested relief. Unfortunately, however, I cannot agree with the majority's decision to grant Indianapolis Power's request for a waiver.

The Commission has previously granted requests for waiver of tariff provisions in situations where: (1) the applicant is unable to comply with the tariff provision in good faith; (2) the waiver is of limited scope; (3) a concrete problem will be remedied by granting the waiver; and (4) the waiver would not have undesirable consequences, such as harming third parties. The Commission does not grant waivers lightly, and the petitioner bears the burden of justifying its request.[1] In my view, on balance, Indianapolis Power has failed to carry its burden.

First, Indianapolis Power has not shown that it is unable to comply with the tariff provision in good faith. Indianapolis Power asserts that there is no clear mechanism to purchase replacement capacity in the MISO auction and speculates that bilateral replacement capacity may not be available or, if available, may cost up to $22 million. But according to MISO, its Attachment Y determination does not preclude a generator from seeking an administrative order that would extend operations past April 16, 2016. Nor has Indianapolis Power made any showing that replacement capacity is not available in the bilateral market or attempted to use the request for proposal process to find replacement capacity at a reasonable cost.

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[1] *See Massachusetts Municipal Wholesale Electric Company*, 148 FERC ¶ 61,227, n.8 (2014), *Granite Reliable Power, LLC*, 137 FERC ¶ 61187, P 6 (Dec. 9, 2011), *Hudson Transmission Partners, LLC*, 134 FERC ¶ 61030, PP 17-18 (2011).

Second, Indianapolis Power has not established that the waiver is of limited scope.[2] On the contrary, the waiver covers a 6.5 week period (or 12.5 percent of the planning year) and 216 megawatts of capacity. While the time period in question – April 16, 2016 through May 31, 2016 – is not the peak load season, it is a peak season for generation and transmission maintenance outages, which can create operational challenges. Today's decision creates a non-trivial temporal gap and capacity shortfall. Moreover, in another important respect, the waiver request is not of limited scope because there are presumably other resources that are similarly situated – i.e., subject to the MATS rule and able to make a similar claim.

Third, Indianapolis Power cannot demonstrate that the waiver would not have undesirable consequences. Indianapolis Power and the Indiana Commission both assert that Eagle Valley's retirement will not impair reliability locally or within Indiana. But MISO raises significant concerns about the potential impact of the waiver request on resource adequacy in its region as a whole.[3] According to MISO, a variety of factors – including environmental requirements, an aging generation fleet, and economic conditions – have reduced and will continue to reduce the region's available reserves through 2016. A capacity deficit below the Planning Reserve Margin Requirement increases the risk of a loss of load event.

In practical terms, today's decision gives Indianapolis Power the ability to participate in MISO's energy, capacity, and ancillary services markets for 45.5 weeks out of the 2015-16 planning year. This has the potential to provide significant financial benefit for Indianapolis Power. But having gotten the benefit of access to the markets for most of the year, Indianapolis Power will no longer have to cover its capacity obligation for Eagle Valley for the remaining 6.5 weeks. Granting this waiver creates an unfortunate precedent that erodes MISO's capacity construct, undermines the bilateral market for capacity, and blurs, unnecessarily, a line that had once been bright.

Accordingly, I respectfully dissent.

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Norman C. Bay
Commissioner

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[2] *See, e.g., Erie Power, LLC,* 148 FERC ¶ 61,038 at P 19 (2014) (denying requests for waivers because the applicant did not establish, *inter alia*, that the waivers are of limited scope).

[3] Answer of the Midcontinent Independent System Operator, Inc., filed July 10, 2014, at 4.