

149 FERC ¶ 61,110
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Consumers Energy Company

Docket No. ER14-2622-000

ORDER DENYING REQUEST FOR WAIVER

(Issued November 7, 2014)

1. On August 7, 2014, Consumers Energy Company (Consumers Energy) 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 Consumers Energy's suspension of seven coal-fired power plants (collectively, Classic Seven) totaling 940.7 megawatts (MW) to comply with environmental requirements.¹ As discussed below, the Commission denies the requested waiver, without prejudice.

I. Background

2. Consumers Energy states that it is a public utility that owns and operates generating facilities with a capacity of approximately 6,500 MW and serves over 1.8 million residential, commercial and industrial customers in the Lower Peninsula of the State of Michigan.² Consumers Energy plans to suspend the operations of the Classic Seven on April 15, 2016. Consumers Energy states that it has taken and will continue to take additional steps to replace the generation lost through the suspension of the Classic Seven. Consumers Energy explains that it has committed to purchase a 542 MW gas-

¹ The Classic Seven consist of: J.C. Weadock Unit 7 – Nameplate Capacity 151 MW; J.C. Weadock Unit 8 – Nameplate capacity 151 MW; B.C. Cobb Unit 4 – Nameplate Capacity 156 MW; B.C. Cobb Unit 5 – Nameplate Capacity 156 MW; J.R. Whiting Unit 1 – Nameplate Capacity 101.2 MW; J.R. Whiting Unit 2 – Nameplate Capacity 101.5 MW; and J.R. Whiting Unit 3 – Nameplate Capacity 124 MW. Consumers Energy Request for Waiver at 5.

² *Id.* at 4-5.

fueled generation plant in Jackson, Michigan (Jackson Plant) and intends to fully bridge the capacity gap by taking additional steps, which may include the expanded use of demand response.³ Consumers Energy also states that it considered retrofitting or refueling the Classic Seven, but that neither option would have been justified as reasonable and prudent based on the information available at that time.⁴

3. Consumers Energy represents that the Classic Seven were required to meet emissions limitations imposed by the United States Environmental Protection Agency (EPA) Mercury and Air Toxic Standards (MATS) requirements within three years of its April 16, 2012 effective date.⁵ Consumers Energy states that, on February 8, 2012, it announced to MISO its intention to suspend operations of the Classic Seven to comply with the April 16, 2015 MATS deadline by submitting an Attachment Y Notification of Potential Generation Resource Change of Status (Attachment Y Notification).⁶ Consumers Energy explains that MISO notified Consumers Energy on November 9, 2012 that the Classic Seven were needed for reliability beyond April 16, 2015.⁷ Consumers Energy states that, accordingly, it sought and, on February 28, 2013, received the one-year extension of the MATS deadline from the Air Quality Division of the State of Michigan's Department of Environmental Quality so that Consumers Energy may continue to operate the Classic Seven until April 16, 2016.⁸ Consumers Energy states that, on March 14, 2013, it submitted a revised Attachment Y Notification to announce its intention to suspend operations of the Classic Seven on April 15, 2016.⁹ Consumers Energy explains that, in June 2013, MISO notified Consumers Energy that the Classic

³ *Id.* at 5, 20.

⁴ *Id.* at Ronk Test. at 9-10.

⁵ *Id.* at 5.

⁶ *Id.* at Ronk Test. at 7 & Ex. A. 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 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).

⁷ Consumers Energy Request for Waiver, Ronk Test. at 7 & Ex. B.

⁸ *Id.* at 6 (citing Ronk Test. at 7-8) & Ex. C.

⁹ *Id.* at 8 (citing Ronk Test. at 7) & Ex. D.

Seven were not needed for reliability beyond April 15, 2016.¹⁰ Consumers Energy represents that MISO's determination effectively precluded Consumers Energy from seeking an administrative order from the EPA to operate in noncompliance for up to one year past April 16, 2016 without risk that the EPA will seek civil penalties.¹¹

4. Consumers Energy notes 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.¹² Consumers Energy asserts that it is not permitted to withhold the Classic Seven from offering into the MISO Planning Reserve Auction for the 2015-2016 Planning Year or declare a forced or scheduled outage for the 6.5 week period.¹³ According to Consumers Energy, the MISO Tariff does not provide a mechanism that ensures Consumers Energy will be able to purchase replacement capacity through the auction to cover the 6.5 week period.¹⁴ Further, Consumers Energy asserts that MISO provides no guarantees that bilateral replacement capacity would be available at any price.¹⁵ Instead, Consumers Energy states that it could have to purchase replacement capacity in the auction for the entire 2015-2016 Planning Year at an estimated cost ranging from \$5.8 million to \$84.8 million.¹⁶

A. Consumers Energy Request for Waiver

5. Consumers Energy proposes four alternatives in its waiver request. As its first option, Consumers Energy requests that the Commission waive the portion of the MISO Tariff that would bar Consumers Energy from declaring the Classic Seven to be on

¹⁰ *Id.* at 8 (citing Ronk Test. at 7) & Ex. E.

¹¹ *Id.* at 6-8 & n.23.

¹² *Id.* at 6.

¹³ *Id.* at 2.

¹⁴ *Id.*

¹⁵ *Id.* at 12-13 & Ronk Test. at 12.

¹⁶ *Id.* at 2. Consumers Energy developed this range by using the 2014-2015 Auction Clearing Price for Zone 7 (\$16.75 per MW-day) to calculate the low end and the 2014-2015 Cost of New Entry for Zone 7 (\$246.85 per MW-day) to calculate the high end. *See id.* at Ronk Test. at 14.

outage for the 6.5 week period at the end of the 2015-2016 Planning Year. Consumers Energy suggests that this is the best option available to obtain the benefits of the Classic Seven's continued operations until forced to suspend operations by the EPA MATS rule. Consumers Energy states that this approach would recognize that the Classic Seven will be supplying capacity for 45.5 weeks of the 2015-2016 Planning Year, including during summer and winter peaks, and exempt the Classic Seven from the must-offer obligation after the units are suspended.¹⁷ Even without the Classic Seven, Consumers Energy projects having 7,339 MW of available generation against a peak load of 4,968 MW in April and 5,724 MW in May of 2016, equating to a reserve margin of 47 percent and 28 percent, respectively.¹⁸ As such, Consumers Energy argues that purchasing replacement capacity will do nothing to improve the reliability of service to its customers.¹⁹

6. If the Commission determines it is not appropriate to consider the Classic Seven to be on outage for the 6.5 week period, Consumers Energy requests that the Commission waive the must-offer requirement for the Classic Seven relative to the energy and ancillary services market under section 69A.5²⁰ and the requirement to purchase replacement capacity under section 69A.3.1.h²¹ for the same 6.5 week period.²² Consumers Energy states that this proposal would capture the same benefits as identified under its first option; that is, this second option would take advantage of the Classic Seven's available capacity for 45.5 weeks of the 2015-2016 Planning Year and recognize

¹⁷ *Id.* at 3, 15 (citing MISO, FERC Electric Tariff, Module E-1, § 69A.5 (31.0.0)).

¹⁸ *Id.* at 15 (citing Ronk Test. at 13).

¹⁹ *Id.* at Ronk Test. at 13.

²⁰ 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 day-ahead energy market and contingency reserve market 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. MISO, FERC Electric Tariff, Module A, § 1.P (31.0.0).

²¹ 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).

²² Consumers Energy Request for Waiver at 3-4, 16-17.

that Consumers Energy expects to maintain a planning reserve margin of 28 percent or more during the 6.5 week period without the Classic Seven.²³

7. As a variant of the second option described above, if the Commission were to waive the must-offer requirement for the 6.5 week period but find that Consumers Energy must replace the Classic Seven's capacity during that period, Consumers Energy requests under its third option 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.²⁴

8. As a fourth option, Consumers Energy proposes that any fee or penalty associated with failing to have replacement capacity under contract for 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, Consumers Energy also requests that the Commission clarify that failure to obtain replacement capacity for the 6.5 week period would not be a Tariff violation.²⁵

9. Consumers Energy argues that its request for waiver meets the Commission's standard for granting waiver: (1) Consumers Energy 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.²⁶

10. Specifically, Consumers Energy represents that it has acted in good faith by timely submitting its Attachment Y Notification to MISO to undergo a reliability analysis of the Classic Seven and purchasing the Jackson Plant to be incorporated into the Consumers

²³ *Id.* at 4.

²⁴ *Id.* at 4, 17-18.

²⁵ *Id.* at 4, 18-19.

²⁶ *Id.* at 19 & n.42 (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, Corp.*, 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); *Central Vermont. Pub. Serv. Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008)).

Energy fleet before the Classic Seven are suspended.²⁷ Additionally, Consumers Energy argues that it will be resource sufficient with a planning reserve margin between 28 percent and 47 percent during the 6.5 week period after the suspension of the Classic Seven.²⁸ Further, Consumers Energy asserts that, as a member of the MISO Supply Adequacy Working Group, it worked with MISO to pursue a Tariff amendment to resolve the 6.5 week issue.

11. Consumers Energy argues that the 6.5 week period is limited in scope and brought on by the timing differential between a particular EPA compliance deadline and the MISO Planning Year.²⁹

12. Next, Consumers Energy argues that the 6.5 week problem is concrete, as it addresses a specific issue with respect to the relationship of the MATS compliance deadline and the MISO Planning Year that, absent waiver, would cause Consumers Energy's Classic Seven to be treated inequitably.³⁰ Consumers Energy argues that, absent a waiver, Consumers Energy could be subject to significant and unreasonable penalties that would not improve or supplement resource adequacy but would only require its customers to pay for expenses not needed to ensure resource adequacy or reliability.³¹

13. Regarding undesirable consequences, Consumers Energy argues that treating the 6.5 week period as an outage or granting the waiver of the must-offer requirement for the Classic Seven will not harm third parties because (1) Consumers Energy will meet all of its planning reserve requirements by keeping the Classic Seven on-line during the summer 2015, fall 2015, and winter 2015/2016 peak seasons; (2) Consumers Energy will have sufficient capacity during the 6.5 week period; and (3) the waiver of the most-offer requirement for the 6.5 week period will allow Consumers Energy's generation to be treated equitably relative to all other generators in the auction and will prevent unnecessary costs to be imposed on Consumers Energy.³² According to Consumers

²⁷ *Id.* at 20.

²⁸ *Id.*

²⁹ *Id.* at 21.

³⁰ *Id.*

³¹ *Id.* at 21-22.

³² *Id.* at 22.

Energy, the substantial reserve margin for the 6.5 week period makes the requirement to purchase replacement capacity an unnecessary and unwarranted cost that would be unjust and unreasonable because an additional 940.7 MW of replacement capacity merely increases Consumers Energy's expenses with no benefits to its customers.³³ Further, Consumers Energy argues that granting it a waiver does not mitigate its responsibility to maintain adequate resources and reserves to meet its reliability obligations at any time, but merely protects Consumers Energy from what would be an unjust and unreasonable expense to procure unneeded additional capacity for the 6.5 week period.³⁴

II. Notice and Responsive Pleadings

14. Notice of Consumers Energy's request for waiver was published in the *Federal Register*, 79 Fed. Reg. 49,298 (2014), with interventions and protests due on or before August 28, 2014.

15. The following entities filed timely motions to intervene: Indianapolis Power & Light Company (Indianapolis Power); MidAmerican Energy Company; DTE Electric Company; and the Organization of MISO States. The Michigan Public Service Commission (Michigan Commission) submitted a notice of intervention and comments. The following entities filed timely motions to intervene and comments or protests: Alliant Energy Corporate Services, Inc. (Alliant); MISO; and Calpine Corporation, the Dynegy Companies, and NRG Companies (together, Suppliers).³⁵ American Municipal Power, Inc. and Ameren Services Company, on behalf of Ameren Illinois Company and Union Electric Company d/b/a Ameren Missouri (together, Ameren), each submitted a motion to intervene out-of-time. On September 10, 2014, Consumers Energy filed an answer. On September 12, 2014, MISO filed an answer. On September 19, 2014, Alliant filed an answer.

A. Comments and Protests

16. The Michigan Commission and Alliant filed comments in support of Consumers Energy's waiver request. The Michigan Commission stresses that the waiver request should be managed in a manner that is practical to both address reliability concerns and

³³ *Id.*

³⁴ *Id.* at 22-23.

³⁵ For purposes of this filing, the Dynegy Companies are Dynegy Marketing and Trade, LLC and Illinois Power Marketing Company. NRG Companies in this proceeding are NRG Power Marketing LLC and GenOn Energy Management, LLC.

minimize the cost implications for rate payers.³⁶ The Michigan Commission states that the mismatch between the EPA MATS deadline and the MISO 2015-2016 Planning Year has created the potential for unnecessary cost increases. Therefore, the Michigan Commission argues that Consumers Energy's waiver request is reasonable and should be approved.³⁷

17. Alliant argues that, while it does not object to Consumers Energy's waiver request, it prefers that the Commission instead require MISO to modify its Tariff as proposed by Indianapolis Power in Docket No. EL14-70-000.³⁸ Alliant argues that the MISO Tariff is no longer just and reasonable to deal with the environmental regulatory environment.³⁹ Further, Alliant contends that encouraging waiver requests will likely compel similarly situated MISO Load Serving Entities to file similar requests with the Commission in the near future.⁴⁰ However, Alliant states that, if the Commission does not require MISO to modify its Tariff, Alliant would not oppose Consumers Energy's first or second proposed waiver options. Alliant states that both options allow for much-needed capacity to be available during the summer peak period without incurring added costs to customers. However, Alliant states that it would not support Consumers Energy's third or fourth proposed waiver solutions, arguing that both options add unnecessary costs to customers.⁴¹

18. In its protest, MISO states its opposition to Consumers Energy's waiver request. MISO asserts that, by 2016, the MISO North and MISO Central regions may face a capacity deficit below the Planning Reserve Margin and that a shortfall would increase the risk of a loss of load event.⁴² MISO argues that the Commission should use a broader perspective to protect against the opportunity for a confluence of factors to undermine the MISO region's expectations for resource adequacy.⁴³ Further, MISO notes that

³⁶ Michigan Commission Comments at 2.

³⁷ *Id.*

³⁸ Alliant Comments at 1, 5-6.

³⁹ *Id.* at 5.

⁴⁰ *Id.* at 2.

⁴¹ *Id.* at 8.

⁴² MISO Protest at 4.

⁴³ *Id.* at 5.

Consumers Energy's request for waiver reinforces MISO's resource adequacy concerns for the 6.5 week time period because the request implicates an additional 940.7 MW during the time period in which Indianapolis Power requests waiver of approximately 216 MW. MISO also states that both reliability criteria and reserve margin requirements can be used to support an administrative order from the EPA, and that its Attachment Y determination therefore does not preclude Consumers Energy from seeking an administrative order to extend operation of the Classic Seven past April 16, 2016.⁴⁴ Next, MISO indicates that the type of assessment Consumers Energy used to project its reserve margin for April and May of 2016 may not be the same as the type MISO uses for making resource adequacy determinations.⁴⁵ With regard to Consumers Energy's commitment to purchase the Jackson Plant, MISO notes that its Tariff allows Market Participants to qualify Planning Resources during a Planning Year and that those resources may be used to replace other resources that are retired or suspended during that Planning Year.⁴⁶ Finally, MISO argues that waiver of its Tariff requirements related to resource adequacy should not be considered unless and until it can be demonstrated that no other Tariff-compliant route is available.⁴⁷

19. Suppliers argue that Consumers Energy fails to satisfy the Commission's standards for waiver and that the request should therefore be denied.⁴⁸ Suppliers state that Consumers Energy will have had more than four years since the promulgation of the MATS rule to plan for suspension of the Classic Seven, and that Consumers Energy has made no attempt to explain why purchase of the Jackson Plant and other steps, such as purchasing demand response to fill the gap, cannot be completed by the beginning of the 2015-2016 Planning Year.⁴⁹

⁴⁴ *Id.* at 5-7 (citing EPA's Enforcement Response Policy for use of Clean Air Section 113(a) Administrative Orders in Relation to Electricity Reliability and the Mercury and Air Toxics Standard, at 7 (Dec. 16, 2011), *available at* <http://www2.epa.gov/sites/production/files/documents/mats-erp.pdf>).

⁴⁵ *Id.* at 7.

⁴⁶ *Id.* at 8.

⁴⁷ *Id.*

⁴⁸ Suppliers Protest at 5.

⁴⁹ *Id.* at 7.

20. Further, Suppliers state that Consumers Energy has made no showing that replacement capacity is not available, noting that more than 12 gigawatts did not clear the 2014-2015 auction, thereby indicating a significant surplus in the bilateral market.⁵⁰ Additionally, Suppliers note that the Commission recently approved MISO's proposed Tariff modifications in Docket No. ER14-2113-000, which allow for the inter-zonal replacement of capacity and provide additional bilateral opportunities for replacement capacity. Further, Suppliers note that Consumers Energy assumes that it will be forced to purchase replacement capacity at Cost of New Entry; however, Suppliers note that capacity is currently trading bilaterally at levels far below Cost of New Entry.⁵¹ Suppliers point out that, on August 12, 2014, Consumers Energy's subsidiary, CMS Energy Corp., issued a request for proposals seeking 1,150 MW of capacity beginning in the 2015-2016 Planning Year. Suppliers suggest that Consumers Energy may use the request for proposals process to find replacement capacity at a reasonable cost.⁵²

21. Suppliers argue that Consumers Energy only vaguely suggests that it could be subject to penalties for withholding, while the Tariff language in section 63.3.a.i suggests that the suspension of the Classic Seven's operation as a result of the verifiable implementation of the EPA MATS requirements may not be deemed to be physical withholding.⁵³ Further, Suppliers contend that the language in Tariff section 69A.3.1.h suggests that resources that are retiring or suspending operations in the middle of a Planning Year are not obligated to participate in the Planning Resource Auction.⁵⁴ Accordingly, Suppliers question why Consumers Energy's waiver request did not include a request for the Commission to find that Consumers Energy is not required to offer the Classic Seven into the 2015-2016 Planning Resource Auction. Suppliers argue that such a request would give Consumers Energy a guarantee that it would not be found to be in

⁵⁰ *Id.* at 7-8.

⁵¹ *Id.* at 8.

⁵² *Id.* at 9.

⁵³ *Id.* (citing MISO, FERC Electric Tariff, Module D, § 63.3.a.i (31.0.0)).

⁵⁴ *Id.* at 9-10. The Tariff provides that a resource "will no longer qualify as a Planning Resource effective as of the actual date that the status of the Planning Resource changes to Retire or Suspend . . ." MISO, FERC Electric Tariff, Module E-1, § 69A.3.1.h (33.0.0).

violation of the Tariff, while also avoiding any adverse market effects that would result from the participation of the Classic Seven in the Planning Resource Auction.⁵⁵

22. Suppliers also argue that Consumers Energy's waiver request is not limited in scope, noting that the likelihood of such waiver requests proliferating is made clear by the fact that Consumers Energy's waiver request largely replicates the Indianapolis Power filing in Docket No. EL14-70-000.⁵⁶ Next, Suppliers argue that Consumers Energy's waiver request harms the MISO markets and undermines the reliability of the system.⁵⁷ Specifically, Suppliers claim that allowing Consumers Energy to use non-functional resources to satisfy its capacity obligation for part of the year will suppress the Auction Clearing Price, thereby depriving other generators that have made substantial investments to comply with MATS of capacity revenues.⁵⁸

23. Suppliers contend that there is no guarantee that reliability will not be adversely affected if the Commission grants Consumers Energy's request. According to Suppliers, the spring season is typically a shoulder season for demand, which means that generation and transmission maintenance outages can cause unique operating scenarios and stresses on the system. Suppliers argue that the potential reliability concerns are highlighted by waiver requests such as the one filed by Consumers Energy.⁵⁹

24. Suppliers argue that all of Consumers Energy's options for relief should be rejected and propose that instead of granting waiver, the Commission could clarify that the Classic Seven need not be offered into the annual Planning Resource Auction. Suppliers argue that this would provide the Classic Seven and similarly situated resources the comfort of knowing that resources retiring during the Planning Year need not be offered into the Planning Resource Auction or included in a Fixed Resource Adequacy Plan, while also ensuring that other Capacity Resources that are capable of meeting the capacity requirements for the entire Planning Year will be compensated for helping to maintain overall system reliability.⁶⁰

⁵⁵ Suppliers Protest at 10.

⁵⁶ *Id.* at 11.

⁵⁷ *Id.*

⁵⁸ *Id.* at 11-12.

⁵⁹ *Id.* at 12-13.

⁶⁰ *Id.* at 19-20.

III. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice 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 American Municipal Power, Inc. and Ameren given their interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

26. 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 a protest or an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed and will, therefore, reject them.

B. Substantive Matters

27. One of the factors the Commission considers in determining whether to grant a waiver is whether the applicant has demonstrated that 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. We find that, on balance, Consumers Energy has failed to carry its burden because it has not adequately demonstrated that the waiver will not cause undesirable consequences, such as harming third parties.

28. Consumers Energy requests waiver for the Classic Seven from April 16, 2016 through May 31, 2016 to resolve a timing issue related to a gap between the MATS compliance deadline and the end of the MISO Planning Year. However, we find it significant that the Classic Seven comprise 940.7 MW of generation in Michigan, which represents approximately 14.5 percent of Consumers Energy's total capacity. While MISO has concluded through its Attachment Y Reliability Study that the Classic Seven are not necessary for reliability during the approximately 6.5 week period, Consumers Energy has not provided the Commission with additional information needed to more adequately assess the impacts of the waiver at this time. For instance, Consumers Energy has not identified whether the utilities within Zone 7 have coordinated to provide generation outage schedules for April 2016 and May 2016 to MISO.⁶¹ Recognizing the

⁶¹ See MISO's Maintenance Margin Information at: http://www.oasis.oati.com/woa/docs/MISO/MISODOCS/Maintenance_Margin.html.

magnitude of capacity being suspended and retired in Zone 7,⁶² such an analysis would enable the Commission to better assess the risk to supply adequacy in Zone 7 during the requested waiver period. Without this information, the Commission cannot make a determination about whether reserves may fall below the required system reserve margin during the 6.5 week period and, therefore, whether the waiver could cause undesirable consequences for third parties.

29. Accordingly, we find that Consumers Energy has not adequately demonstrated that waiver is warranted under the facts presented. We deny Consumers Energy's waiver request, without prejudice to Consumers Energy filing a new waiver request providing additional support. Of course, if Consumers Energy renews its waiver request, MISO will have the opportunity to present an updated analysis related to the effects of the proposed waiver on the region-wide reliability of its system.

The Commission orders:

Consumers Energy's request for waiver is hereby denied, without prejudice, as discussed in the body of this order.

By the Commission. Chairman LaFleur is concurring with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶² See also DTE Electric Company, Request for Waiver, Docket No. ER15-90-000 (filed Oct. 14, 2014).

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Consumers Energy Company

Docket No. ER14-2622-000

(Issued November 7, 2014)

LaFLEUR, Chairman, *concurring*:

I write separately to explain my vote for today's order to deny, without prejudice, the relief sought by Consumers Energy Company (Consumers Energy), in light of my recent vote to grant a similar waiver sought by Indianapolis Power & Light (Indianapolis Power).⁶³ In both cases, the utilities sought relief based on a mismatch between the Midcontinent Independent System Operator, Inc.'s (MISO) 2015-2016 planning year, which runs from June 1, 2015 through May 31, 2016, and the obligation to comply with the United States Environmental Protection Agency's Mercury and Air Toxics Standards (MATS) effective on April 16, 2016, which will result in the utilities retiring the generating facilities that are the subject of their respective waiver requests. The Commission, with Commissioner Bay dissenting, granted Indianapolis Power a waiver of its must-offer obligation and requirement to purchase replacement capacity for units 3-6 of its retiring Eagle Valley facility for the period from April 16, 2016 through May 31, 2016, based on the Commission's conclusion that Indianapolis Power satisfied the Commission's waiver criteria, including that the waiver sought would not cause undesirable consequences, such as harm to third parties.

I believe that the Commission must be willing to act, where appropriate and justified by the record of a given case, to ensure that this disconnect between the MISO planning year and the MATS compliance deadline does not result in reliability issues or unnecessary costs to customers. In this case, I agree with my colleagues that Consumers Energy failed to provide information similar to that provided by Indianapolis Power regarding potential impacts to zonal supply adequacy during the 6 ½ week period, and I find, particularly given the size of the unit at issue in this proceeding, that this is a

⁶³ *Indianapolis Power & Light Co. v. MidContinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,047 (2014).

reasonable basis to distinguish between the two cases. Given the lack of sufficient support to grant the relief sought by Consumers Energy, I support today's order because it provides guidance and clarity to Consumers Energy as it prepares for the upcoming MISO 2015-2016 planning year.

Importantly, today's order denies Consumers Energy's requested relief without prejudice and therefore does not foreclose Consumers Energy from attempting to address this deficiency in a future filing.

Accordingly, I respectfully concur.

Cheryl A. LaFleur
Chairman