150 FERC ¶ 61,124
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

MidAmerican Energy Company   Docket No. ER15-199-000

ORDER GRANTING WAIVER

(Issued February 20, 2015)

1. On October 27, 2014, MidAmerican Energy Company (MidAmerican) filed a request for limited waiver of certain provisions of Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) in connection with MidAmerican's retirement of Neal Energy Center Units 1 and 2 (Neal Units) to comply with environmental requirements.[1] As discussed below, and based on the facts of this case, the Commission finds that MidAmerican need not offer the Neal Units into the 2015-2016 Planning Resource Auction.

I. Background

2. MidAmerican states that it is an electric and natural gas utility serving regulated retail customers in Iowa, Illinois, South Dakota, and Nebraska, and competitive retail customers in the central and eastern United States. MidAmerican represents that it is a transmission-owning member of MISO, owns an extensive transmission system within the MISO footprint and actively markets wholesale electric power in various regions in the eastern interconnection.[2]

3. MidAmerican states that, in June 2013, it submitted an Attachment Y Notification of Potential Generation Resource Change of Status (Attachment Y Notification) for the retirement of the Neal Units on March 31, 2015 to comply with Environmental Protection

[1] Neal Units are coal-fueled units located in Sioux City, Iowa and have a combined nameplate capacity of 496 megawatts (MW). MidAmerican Request for Waiver at 3, 6, 28.

[2] *Id.* at 2.

Agency's (EPA's) Mercury and Air Toxics Standards (MATS) rule.[3] According to MidAmerican, MISO accepted MidAmerican's Attachment Y Notification and found that, once certain transmission upgrades to ensure reliable service to customers are in place, the Neal Units will not be required to maintain system reliability.[4]

4. MidAmerican states that it informed MISO on September 4, 2014 that the necessary transmission upgrades would not be complete by March 31, 2015. MidAmerican represents that, on September 16, 2014, MISO accepted MidAmerican's request to delay retirement of the Neal Units until April 15, 2016. According to MidAmerican, it will complete the transmission upgrades prior to the April 15, 2016 retirement date.[5]

5. MidAmerican states that it faces conflicts in simultaneously attempting to comply with the MATS requirements and the MISO Tariff. MidAmerican represents that these conflicts arise from a six-week difference between the April 16, 2016 MATS compliance deadline and the May 31, 2016 end of the MISO 2015-2016 Planning Year.[6] In its request, MidAmerican asks that the Commission synchronize the timing of the MATS compliance deadline and the end of the MISO 2015-2016 Planning Year so that MidAmerican may comply with both MATS and MISO's resource adequacy requirements.[7]

6. MidAmerican states that, because of the necessary transmission upgrades, it cannot retire the Neal Units prior to the MISO 2015-2016 Planning Year and, as a result, the Tariff's restrictions on physical withholding will impose a must-offer obligation on

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[3] 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 or 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); MidAmerican Request for Waiver at 6, Attachment A (Testimony of Neil D. Hammer) at 3 (Hammer Test.)

[4] MidAmerican Request for Waiver at 7, 18, 28; Hammer Test. at 4, 8.

[5] *Id.* at 3-4, 18, 28; Hammer Test. at 8.

[6] MISO's Planning Year begins June 1 and extends until May 31 of the following Year. MidAmerican Request for Waiver at 3; *see* MISO, FERC Electric Tariff, Module A, § 1.P (34.0.0).

[7] MidAmerican Request for Waiver at 5, 12, 16-17.

MidAmerican with respect to the capacity associated with the Neal Units and the 2015-2016 Planning Resource Auction.[8] MidAmerican explains that, while the Independent Market Monitor considered it reasonable, subject to a showing that replacement capacity may not be available or cost-effective to obtain, for certain resources that must retire in April 2015 to withhold from the 2014-2015 Planning Resource Auction, MidAmerican is unaware of a similar determination for the 2015-2016 Planning Resource Auction.[9] MidAmerican claims that given the lack of assurance by the Independent Market Monitor and the Commission, it is reluctant to not offer the Neal Units into the 2015-2016 Planning Resource Auction.[10]

7. MidAmerican represents that if the capacity associated with the Neal Units clears the 2015-2016 Planning Resource Auction, that capacity becomes subject to the must-offer obligation in MISO's day-ahead market for the entirety of the 2015-2016 Planning Year.[11] MidAmerican contends that the capacity associated with the Neal Units cannot meet these performance obligations beginning April 16, 2016 and that MidAmerican would have to replace this capacity for the six-week period between the April 15, 2016 retirement date and the May 31, 2016 end of the 2015-2016 Planning Year.[12]

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[8] *Id.* at 4, 12; Hammer Test. at 4. Under section 63.3 of the MISO Tariff, mitigation may be warranted for "*Physical withholding of an Electric Facility including a Planning Resource* . . . capable of serving the Energy and Operating Reserve Markets, [Planning Resource Auction], or any other market administered by [MISO]." MISO, FERC Electric Tariff, Module E-1, § 63.3 (30.0.0).

[9] MidAmerican Request for Waiver at 10-12 (citing Independent Market Monitor, *MATS Issue regarding Capacity Obligation* (Sept. 2013), *available at* https://www.misoenergy.org/Library/Repository/Meeting%20Material/Stakeholder/SAWG/2013/20130905/20130905%20SAWG%20Item%2006%20IMM%20MATS%20Capacity%20Memo.pdf).

[10] *Id.* at 14.

[11] *Id.* at 10. 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). MidAmerican states that under the MISO Tariff, this requirement does not apply to resources on forced or scheduled outage, but contends that MISO does not interpret its Tariff to equate a retirement with a forced or scheduled outage. *See id.*; MidAmerican Request for Waiver at 8-9.

[12] MidAmerican Request for Waiver at 3-4, 14-15.

8. MidAmerican states that, if a resource is retired during a Planning Year, that resource must replace from its retirement date through the end of the Planning Year any capacity that clears in the Planning Resource Auction or is otherwise used to meet a load serving entity's Planning Reserve Margin Requirement.[13] MidAmerican contends that, despite the Tariff's requirement to replace such capacity, no product for partial year capacity exists. MidAmerican acknowledges that a partial year product could arguably be available in the bilateral market, but argues that by selling capacity for the final six weeks of a Planning Year, a supplier would forego the value of its capacity for the first 46 weeks of the Planning Year to consummate a six-week transaction. Thus, according to MidAmerican, capacity purchased for the six-week period would likely be the same price as the cost of capacity for the entire Planning Year.[14]

9. MidAmerican claims that it requires, at most, only a small fraction of the capacity associated with the Neal Units to satisfy its own Planning Reserve Margin Requirement and that its primary concern is that it not be forced to sell its capacity to others for the first 46 weeks of the MISO 2015-2016 Planning Year to avoid physical withholding only to be forced to purchase replacement capacity for the final six weeks of the Planning Year, particularly when no clear market or price for partial year products exists.[15] As for the six-week period, MidAmerican insists that its reserve margins are adequate and that its generation will far exceed its load. According to MidAmerican, it projects having 5,002 MW of unforced capacity against a peak load of 3,530 MW in April 2016 and a peak load of 4,045 MW in May 2016, resulting in reserve margins of 41.7 percent and 23.7 percent, respectively.[16] However, to the extent that MidAmerican ultimately requires a limited amount of the capacity associated with the Neal Units to satisfy its own Planning Reserve Margin Requirement, MidAmerican argues that a waiver is still appropriate because of the unique circumstances surrounding the implementation of

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[13] 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 (34.0.0).

[14] MidAmerican Request for Waiver at 12-13.

[15] *Id.* at 14-16. 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 (34.0.0).

[16] MidAmerican Request for Waiver at 18-19.

MATS and for the same reasons that the Commission granted waiver to Indianapolis Power.[17]

10. MidAmerican contends that the Loss of Load Expectation[18] is negligible during the six-week period. According to MidAmerican, MISO's anticipated Loss of Load Expectation on a monthly basis demonstrates that well over 95 percent of the annual Loss of Load Expectation accumulates in July and August. MidAmerican states that a waiver for April and May would have an imperceptible impact on Loss of Load Expectation.[19]

11. MidAmerican states that MISO's Maintenance Margins Charts show the MW amount of generation that can be taken out of service for planned maintenance for a given time period without increasing risk to supply adequacy within an individual zone. MidAmerican represents that the Maintenance Margin Charts indicate that Zone 3, which generally consists of Iowa, shows an available margin in excess of 1,600 MW during the entire six-week period.[20]

12. MidAmerican contends that the Commission addressed an essentially identical situation involving Indianapolis Power & Light Company (Indianapolis Power) in Docket No. EL14-70-000. MidAmerican points out that, like Indianapolis Power, MidAmerican identified the following conflicting regulatory and Tariff requirements: (1) MATS compliance forced retirement of resources by April 16, 2016; (2) Resource Adequacy Requirements are based on the 2015-2016 Planning Year, which extends through May 31, 2016; (3) the MISO Tariff does not permit retired units to be withheld from the MISO 2015-2016 Planning Resource Auction; (4) the MISO Tariff does not permit retired units to be on a forced or scheduled outage during the six-week period; (5) no clear mechanism exists for replacing capacity for a six-week period; and (6) absent a waiver of or

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

[18] Loss of Load Expectation is the sum of the loss of load probability for the integrated daily peak hour for each day of the year. The requirement is set such that the loss of load is no greater than 0.1day in one year. MISO, FERC Electric Tariff, Module A, § 1.L (34.0.0).

[19] *Id.* at 19-20 (citing Hammer Test. at 9-10).

[20] *Id.* at 20-21; Hammer Test. at 10-11; *see* MISO, *Maintenance Margin Information, available at* http://www.oasis.oati.com/woa/docs/MISO/MISOdocs/Maintenance_Margin.html.

modification of certain Resource Adequacy Requirements, no economically reasonable alternatives have been identified.[21]

13. MidAmerican states that the Commission granted Indianapolis Power's request for limited waiver of the must-offer requirement and requirement to purchase replacement capacity for the six-week period. MidAmerican represents that the Commission held that Indianapolis Power's request for waiver was consistent with Commission precedent for granting one-time waivers that are of limited scope, remedy a concrete problem, and have no undesirable consequences. MidAmerican notes that the Commission dismissed as moot Indianapolis Power's complaint.[22]

14. MidAmerican contends that the facts in this proceeding match the facts that the Commission faced in the Indianapolis Power proceeding in Docket No. EL14-70-000 and therefore asks for the same waiver that the Commission granted Indianapolis Power.[23] MidAmerican identifies two possible differences between its situation and Indianapolis Power's: (1) due to the necessary transmission upgrades, MidAmerican does not have the option to retire the Neal Units prior to the 2015-2016 Planning Year; and (2) MidAmerican does not expect to need the capacity from the Neal Units to meet its Planning Reserve Margin Requirement.[24]

<u>MidAmerican Request for Waiver</u>

15. MidAmerican requests limited waiver of the must-offer requirement and the requirement to purchase replacement capacity for the period from April 16, 2016 to May 31, 2016.[25] MidAmerican represents that its request for waiver meets the Commission's standards for granting such requests: the waiver (1) is in good faith; (2) is of limited scope; (3) will address a concrete problem; and (4) will not have undesirable consequences.[26]

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[21] MidAmerican Request for Waiver at 21-22 (citing Indianapolis Power, Request for Waiver and Complaint, Docket No. EL14-70-000, at 2-3 (filed June 20, 2014)).

[22] *Id.* at 24-26 (citing *Indianapolis Power & Light Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,047 (2014) (*Indianapolis Power* Order)).

[23] *Id.* at 26-27 (citing *Indianapolis Power* Order, 149 FERC ¶ 61,047 at P 71).

[24] *Id.* at 27; Hammer Test. at 5.

[25] *Id.* at 27.

[26] *Id.* at 29.

16. MidAmerican argues that its request for the waiver is in good faith. MidAmerican states that it has diligently attempted to meet the conflicting MATS compliance deadlines and MISO's Resource Adequacy Requirements while maintaining reliable and economic service to its customers. MidAmerican states that it will have ample capacity, far in excess of its load and far in excess of the required reserve margins through the summer 2015 and winter 2015-2016 peak seasons. MidAmerican claims that, since the problem results from timing conflicts within the MISO Tariff and the MATS regulations, it knows of no other means to address this issue in good faith other than request a waiver.[27]

17. MidAmerican argues that the waiver request is limited in scope. First, MidAmerican explains that it only affects the Neal Units with a combined nameplate capacity less than 500 MW in a market footprint with over 177,000 MW of nameplate capacity.[28] Second, MidAmerican points out that the waiver request is limited in duration, applying only to a six-week period. Third, MidAmerican argues that the six-week waiver request is for a six-week period that does not impact reliability because MidAmerican will maintain large reserves during the low-load period when the waiver would apply. MidAmerican reiterates that the waiver would address a difference in timing between the MATS compliance deadline and the MISO Planning Year and does not reflect a fundamental alteration in the resource adequacy requirements.[29]

18. MidAmerican states that the request for waiver addresses a specific, well-defined problem: a six-week difference between the MATS compliance deadline and the end of the MISO Planning Year. MidAmerican explains that it must (1) retain the Neal Units in operation for reliability purposes until after the 2015-2016 Planning Year has started; (2) retire the Neal Units by April 16, 2016 to achieve MATS compliance; (3) offer the Neal Units into the 2015-2016 Planning Resource Auction to avoid physical withholding; and (4) obtain replacement capacity for the final six weeks of the Planning Year at an indeterminate price.[30]

19. MidAmerican argues that the waiver will not have undesirable consequences because it would effectively synchronize the MATS compliance deadline without

[27] *Id.* at 29-30.

[28] *Id.* at 30 (citing MISO, *Corporate Information* (Sept. 2014), *available at* https://www.misoenergy.org/Library/Repository/Communication%20Material/Corporate/Corporate%20Fact%20Sheet.pdf).

[29] *Id.*

[30] *Id.* at 30-31.

fundamentally altering MISO's Resource Adequacy Construct. MidAmerican states that it is aware of no other consequences associated with the limited waiver.[31]

20. MidAmerican asks the Commission to issue an order prior to February 1, 2015 so that MidAmerican may finalize its resource plans in advance of the MISO 2015-2016 Planning Resource Auction.[32]

II. Notice and Responsive Pleadings

21. Notice of MidAmerican's request for waiver was published in the *Federal Register*, 79 Fed. Reg. 65,388 (2014), with interventions and protests due on or before November 17, 2014.

22. The following entities filed timely motions to intervene: Alliant Energy Corporate Services, Inc.; Duke Energy Corporation; and Indianapolis Power. Organization of MISO States filed a notice of intervention. The following entities filed timely motions to intervene and protests: MISO; and Dynegy Companies,[33] NRG Companies,[34] and Exelon Corporation (together, Suppliers). Iowa Utilities Board filed a notice of intervention and comments. Consumers Energy Company (Consumers Energy) submitted a motion to intervene out-of-time and comments out-of-time. On December 5, 2014, MidAmerican filed an answer.

23. In its comments, the Iowa Utilities Board states that it has responsibility of ensuring that the rates charged by MidAmerican to Iowa customers are just and reasonable and notes that rates charged by MidAmerican for transmission service are passed through to Iowa customers. The Iowa Utilities Board recommends that the Commission work with the EPA to eliminate the conflict between EPA regulations and Commission tariff requirements, noting that the need for such a waiver request would become moot if the EPA could delay the April 16, 2016 MATS compliance deadline to May 31, 2016, the end of the MISO Planning Year. The Iowa Utilities Board argues that without the waiver, Iowa customers of MidAmerican will be required to pay rates that include significant costs associated with replacement capacity that result from the timing

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[31] *Id.* at 31.

[32] *Id.* at 2, 5, 31.

[33] For purposes of this filing, Dynegy Companies are Dynegy Marketing and Trade, LLC and Illinois Power Marketing Company.

[34] For purposes of this filing, NRG Companies are NRG Power Marketing LLC and GenOn Energy Management, LLC.

difference. The Iowa Utilities Board states that the information provided by MidAmerican shows that the waiver request complies with the four criteria normally applied by the Commission to waiver requests and, on that basis, the Iowa Utility Board supports the limited waiver request.[35]

24. In its comments, Consumers Energy states that it supports the relief requested by MidAmerican. Consumers represents that the request for waiver is limited in scope in that it applies to only the Neal Units for 6.5 weeks. Next, Consumers Energy states that the request for waiver addresses a concrete problem by allowing the Neal Units to remain operational for 45.5 weeks of the 2015-2016 Planning Year. Last, Consumers Energy argues that the request for waiver will not cause undesirable consequences based on (1) MidAmerican's representation that it will meet its reserve requirements by having the Neal Units on-line during the peak periods of summer 2015 and winter 2015-2016; (2) MISO's determination that the Neal Units are not necessary for reliability beyond April 16, 2016; (3) MISO's Zone 3 Maintenance Margin Charts that indicate a sufficient Planning Reserve Margin for the 6.5 week period; and (4) the Iowa Utility Board's support for the requested waiver.[36]

25. In its protest, MISO states that it is unable to support MidAmerican's waiver request based on the same resource adequacy concerns MISO raised in its answer to the Indianapolis Power filing in Docket No. EL14-70-000.[37] 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. MISO argues that a broader perspective is warranted to protect against the opportunity for a confluence of factors to undermine the region's expectations for resource adequacy. MISO notes that, to date, several companies have made waiver requests for the same 6.5 week period, implicating a total of 1,772 MW, and it is possible that other companies will make similar waiver requests. Moreover, MISO suggests that a large number of pending requests creates additional regulatory uncertainty among buyers and sellers of capacity and hinders the efficiency of MISO's capacity construct.[38]

26. MISO does not dispute the fact that MidAmerican committed to complete certain transmission upgrades prior to the retirement of the Neal Units to avoid reliability issues. However, MISO states that it is MidAmerican's role to determine the timing of such

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[35] Iowa Utilities Board Comments at 5-7.

[36] Consumers Energy Comments at 3.

[37] MISO Protest at 4 & n.11.

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

transmission upgrades and clarifies that MISO did not dictate the retirement date of the Neal Units or the timing of the associated transmission upgrades.[39]

27. MISO states that the Maintenance Margin analysis included in MidAmerican's request for waiver is not the type of assessment MISO uses for making resource adequacy determinations and states that unit retirements are fundamentally different from scheduled maintenance or a planned outage since there is no opportunity to reschedule a retired unit. MISO contends that the Maintenance Margin process does not provide the type of analysis necessary to determine that generation retirements will not contribute to broader resource adequacy concerns. MISO notes that generators that are not Capacity Resources are reflected in the Maintenance Margin analysis because they are available to serve load; however, those generators have the ability to sell capacity and energy to other markets and do not have an obligation to serve load in MISO. MISO argues that relying on units that will not be available for the duration of the Planning Year to meet Planning Reserve Margin Requirements contributes to erosion of the resource adequacy planning process.[40]

28. MISO acknowledges its engagement in an extensive stakeholder process to explore options related to the timing difference between the MATS compliance deadline and the end of the Planning Year; however, MISO explains that it very carefully considered a variety of proffered options and ultimately decided to not propose Tariff revisions. MISO represents that it expressed to stakeholders that "[t]oday there is an obligation to provide capacity, or buy it from other participants who have it. Removing that obligation does in fact provide preference for those customers to supply at the expense of other [Market Participants]."[41] MISO contends 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. MISO argues that it seems premature to conclude that MidAmerican will have no other means to address the capacity deficit created by the retirement of the Neal Units.[42]

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[39] *Id.* at 6.

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

[41] *Id.* at 7-8 (citing minutes of the December 5, 2013 Supply Adequacy Working Group meeting, *available at* https://www.misoenergy.org/Library/Repository/Meeting%20Material/Stakeholder/SAWG/2014/20140109/20140109%20SAWG%20Item%2001c%20Minutes%2020131205.pdf).

[42] *Id.* at 8.

29. In their protest, Suppliers argue that, if granted, MidAmerican's requested waiver would create an uneven and unduly discriminatory playing field for Capacity Resources, threatening MISO's capacity market and reliability in the region. Suppliers point out that MidAmerican's filing is only one of a series of filings requesting waiver of MISO's resource adequacy rules for the same 6.5 week period and suggest that these requests, together, present a significant threat to MISO's resource adequacy structure. According to Suppliers, MidAmerican's request for waiver is an attempt to utilize the Neal Units to satisfy its capacity obligations for the 2015-2016 Planning Year and then be permitted to retire the units without having to purchase replacement capacity for the final 6.5 week period. Suppliers contend that MidAmerican has not satisfied the Commission's standards for waiver.[43]

30. Suppliers contend that MidAmerican has not shown that a concrete problem exists and point out that MidAmerican will have had more than four years since the promulgation of the MATS rule to plan for the retirement of the Neal Units. Suppliers allege that MidAmerican did not take any steps to procure replacement capacity and instead asks the Commission to relieve it of the responsibility to comply with its capacity obligations for a significant portion of the 2015-2016 Planning Year. Suppliers respond to MidAmerican's claim that replacement capacity for the 6.5 week period would likely be the same as the price for the cost of capacity for the entire Planning Year by suggesting that MidAmerican fails to (1) explain why that cost would be unjust and unreasonable; (2) provide any support for this price claim; (3) consider that capacity may be available for part of the year (i.e., new capacity may come online, existing contracts may terminate, or capacity may not clear the 2015-2016 Planning Resource Auction). According to Suppliers, more than 12 gigawatts (GW) of capacity did not clear the 2014-2015 Planning Resource Auction, which suggests that suppliers may be willing to agree to sales for a more limited period rather than not make a sale at all. Further, Suppliers represent that Dynegy Companies recently entered into a bilateral agreement to sell nearly 800 MW of capacity for the final eight months of the 2014-2015 Planning Year at a price that is close to the 2014-2015 Auction Clearing Price.[44]

31. Suppliers argue that MidAmerican's request is not limited in scope but instead attempts to reverse MISO's change from a monthly to an annual capacity construct by asking the Commission to approve a shorter resource adequacy period for the Neal Units. Suppliers argue that a request to be relieved of resource obligations for 6.5 weeks or 12.5 percent of the 2015-2016 Planning Year can hardly be considered of limited scope.[45]

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[43] Suppliers Protest at 4-5.

[44] *Id.* at 5-8.

[45] *Id.* at 8-9 (citing *Indianapolis Power* Order, 149 FERC ¶ 61,047 (Bay, Comm'r, dissenting)).

Suppliers insist that this is particularly true because MidAmerican's request for waiver, combined with the other similar requests, presents a cumulative threat to reliability and to the viability of MISO's resource adequacy construct. Suppliers warn that granting MidAmerican's requested relief would only send the message that waiver can and should be sought in any situation where the timing of an environmental or other regulatory obligation does not perfectly coincide with the MISO Planning Year.[46]

32. Suppliers argue that, if granted, MidAmerican's request for waiver would harm the MISO markets and the suppliers participating in those markets, and undermine the reliability of the system. Suppliers argue that the waiver, if granted, will permit MidAmerican to use non-functional resources to satisfy its capacity obligations and, as a result, will result in undue preference for MidAmerican and undue discrimination against other load serving entities and Capacity Resources that must comply with MISO's requirements for the entirety of the year. Suppliers represent that the Commission recently rejected a waiver request that would "result in unduly favorable treatment to [the applicant] while other market participants abided by the Tariff requirement," and recommends that the Commission do the same here.[47] Suppliers claim that MidAmerican's request for waiver will also harm MISO's capacity market by suppressing Planning Resource Auction prices and causing other resources, which may be called on to maintain reliability, to be deprived of capacity revenue.[48]

33. Suppliers also argue that there is no guarantee that reliability will not be adversely affected if MidAmerican's request for waiver is granted. Suppliers contend that MISO's Attachment Y analysis only assesses transmission-related reliability issues and does not review resource adequacy impacts related to a resource retirement or suspension.[49] Suppliers represent that MISO acts as a pool for resource adequacy purposes and that there is no basis for assessing reliability impacts by narrowly looking at one utility or one

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[46] *Id.* at 8-9.

[47] *Id.* at 10 (citing *Massachusetts Muni. Wholesale Elec. Co.*, 148 FERC ¶ 61,227, at P 14 (2014)).

[48] *Id.*

[49] *Id.* at 11 (citing MISO, Answer, Docket No. EL14-70-000, at 3 (filed July 25, 2014)).

state in isolation and that such an approach conflicts with Commission precedent.[50] Further, Suppliers claim that the MISO Maintenance Margin Charts are only intended to provide an additional criterion to evaluate planned generator outage requests and does not demonstrate that a Capacity Resource may be removed without jeopardizing reliability.[51]

34. While Suppliers maintain that the Commission should not have granted Indianapolis Power's request for waiver in Docket No. EL14-70-000, Suppliers note that Commissioners Clark and Moeller emphasized in a concurring statement that the Indianapolis Power Order "in no way ties our hands to granting waivers under a different set of circumstances."[52] Suppliers argue that examination of specific circumstances requires the Commission to deny MidAmerican's request for waiver. First, Suppliers represent that Indianapolis Power's 216 MW Eagle Valley facility represents approximately 1.2 percent of the total 17,629 MW demand forecast for MISO Zone 6, while the 496 MW Neal Units represent approximately 5.7 percent of the 8,757 MW demand forecast for MISO Zone 3.[53] Next, Suppliers represent that while Indianapolis Power's filing was the first of its kind, it is now clear that other load serving entities have already sought waivers for over 1,700 MW of generation and further waivers are likely to be filed. Suppliers argue that, together, these requests for waiver present an increasing threat to the viability of MISO's capacity market and reliability in the interconnected region, and the Commission should therefore consider the cumulative impact of these requests.[54]

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[50] *Id.* at 12 (citing *California Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 1113 (2006), *on clarification & reh'g*, 119 FERC ¶ 61,076 (2007) ("[O]ne participant's reliability decisions can impact the reliability of service available to other participants and the related costs the other participants must bear.")).

[51] *Id.* at 12-13 (citing MISO's Maintenance Margin whitepaper reviewed by the Supply Adequacy Working Group in December 2013, *available at* http://www.oatioasis.com/woa/docs/MISO/MISOdocs/MM_Whitepaper.pdf).

[52] *Id.* at 14 (citing *Indianapolis Power* Order, 149 FERC ¶ 61,047 (Clark and Moeller, Comm'rs, concurring)).

[53] *Id.* at 14-15 (citing Indianapolis Power, Request for Waiver and Complaint, Docket No. EL14-70-000, at 15 (filed June 20, 2014); MISO, *2014/2015 MISO Planning Resource Auction (PRA)* (Apr. 2014), *available at* https://www.misoenergy.org/Library/Repository/Report/Resource%20Adequacy/AuctionResults/2014-2015%20PRA%20Summary.pdf).

[54] *Id.* at 15.

35. Suppliers suggest that, to the extent that the Commission is inclined to grant some form of relief, the Commission could clarify that MidAmerican will not be found to have engaged in physical withholding if it does not offer the Neal Units into the 2015-2016 Planning Resource Auction or, alternatively, the Commission could adopt Commissioner Bay's recommendation in the Indianapolis Power case and require MidAmerican to "purchase replacement capacity for the 6.5 weeks on the condition that it be available at a just and reasonable rate."[55]

36. In its answer, MidAmerican states that a Commission determination that MidAmerican need not offer the Neal Units into the 2015-2016 Planning Resource Auction would largely resolve MidAmerican's concerns. MidAmerican also states it continues to believe that the relief sought in its request for waiver presents a better overall solution because (1) other load serving entities may desire the Neal Units' capacity; (2) the Auction Clearing Price will tend to be higher if MidAmerican does not offer the Neal Units; and (3) the Neal Units contribute to reliability and can help supply MISO's capacity and energy needs for all but the last six weeks of the 2015-2016 Planning Year. Nonetheless, MidAmerican asserts that, if the Commission does not grant MidAmerican's request for waiver, MidAmerican would prefer a Commission determination that MidAmerican need not offer the Neal Units into the 2015-2016 Planning Resource Auction to a rejection of the request for waiver outright.[56]

37. MidAmerican agrees with Suppliers' assertion that the Commission could provide clarity by holding that MidAmerican does not face a must-offer obligation in the Planning Resource Auction for capacity that is being retired. MidAmerican represents that the confusion around this point justifies MidAmerican's reluctance to purchase replacement capacity for the Neal Units. MidAmerican also suggests that if MidAmerican, for example, purchased replacement capacity for the final six weeks of the 2015-2016 Planning Year from one of the Suppliers, that Supplier would face a must-offer obligation in the 2015-2016 Planning Resource Auction and any cleared capacity would be double subscribed during the final six weeks of the Planning Year. Further, MidAmerican argues that it has not had ample time to purchase replacement capacity because MidAmerican does not know if any of the Neal Units' capacity will have to be replaced at all. MidAmerican asserts that it has nonetheless made inquiries about additional capacity for the six-week period following the Neal Units retirement and that the cost of purchasing such replacement capacity is essentially the same for the six-week period as for the entire Planning Year.[57] Further, MidAmerican agrees that the definition

[55] *Id.* at 17-18 (citing *Indianapolis Power* Order, 149 FERC ¶ 61,047 (Bay, Comm'r, dissenting)).

[56] MidAmerican Answer at 4-6, 9-10.

[57] *Id.* at 7-9, 10-13.

of a "just and reasonable rate" for a partial-year product under these conditions is unclear, but believes that any Commission proceeding to determine what that may be would likely extend beyond the time of the 2015-2016 Planning Resource Auction.

38. MidAmerican argues that MISO's general arguments do not refute the case-specific facts related to MidAmerican's request for waiver. MidAmerican makes note of MISO's representation that its North and Central Regions may face a capacity deficit by 2016, but points out that the 2016 peak falls in the 2016-2017 Planning Year whereas its request for waiver is for the 2015-2016 Planning Year.[58]

39. MidAmerican argues that it has used valid criteria to demonstrate that its request for waiver poses no threat to reliability. While MidAmerican acknowledges objections to its reliance on the Maintenance Margin analysis and MISO's Attachment Y analysis, MidAmerican argues that each of these studies is a valid tool among several that justify MidAmerican's request for waiver and, together with the Loss of Load Expectation graph based on MISO's Loss of Load Expectation analysis, show that reliability will not be affected if MidAmerican's request for waiver is granted.[59]

40. Finally, MidAmerican provides two clarifications. First, MidAmerican explains that it intends to retire the Neal Units at the end of April 15, 2016 and that the Neal Units will be unavailable on and after April 16, 2016. Second, MidAmerican observes that some pleadings have contained apples-to-oranges comparisons of nameplate capacity to unforced capacity and accordingly provides the appropriate nameplate and unforced capacity values for the Indianapolis Power, DTE Electric Company and Consumers Energy generators that are subject to similar waiver requests, where available, to permit consistent comparisons. This includes the 365 MW unforced capacity value for the Neal Units.[60]

III. Discussion

A. Procedural Matters

41. 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

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[58] *Id.* at 13-14.

[59] *Id.* at 14-16.

[60] *Id.* at 16-17.

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 motion to intervene of Consumers Energy given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

42. 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 unless otherwise ordered by the decisional authority. We will accept MidAmerican's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

43. Based on our review of the record, we find good cause to hold that MidAmerican need not offer the Neal Units into the 2015-2016 Planning Resource Auction.

44. MidAmerican seeks a Commission determination either that (1) it should be relieved of the must-offer obligation and obligation to procure replacement capacity under sections 69A.5 and 69A.3.1.h of the MISO Tariff for the Neal Units during the 6.5 week period from April 16, 2016 through May 31, 2016,[61] or (2) MidAmerican need not offer the Neal Units into the 2015-2016 Planning Resource Auction. In support of its first request, MidAmerican argues that the record demonstrates that it should receive the same relief that the Commission previously granted to Indianapolis Power. We disagree with MidAmerican, and therefore decline to grant MidAmerican a waiver of sections 69A.5 and 69A.3.1.h of the MISO Tariff.

45. MidAmerican states that it can meet all (or essentially all) of its Planning Reserve Margin requirement without relying on the Neal Units' capacity as a self-supply resource. Instead, MidAmerican indicates that it seeks to sell the Neal Units' capacity to third parties through the 2015-2016 Planning Resource Auction, despite the fact that MidAmerican acknowledges that the Neal Units will be retired on April 15, 2016, before the end of the planning year. MidAmerican's primary request for relief would therefore relieve MidAmerican of its obligation to deliver a full year's worth of capacity to the purchaser(s) of that capacity while nonetheless being compensated for a full year's capacity through the Planning Resource Auction.

46. We find that MidAmerican is in a fundamentally different position than Indianapolis Power, and therefore decline to grant to MidAmerican the same relief previously granted to Indianapolis Power. In the Indianapolis Power Order, the Commission addressed a waiver request regarding the Eagle Valley Units, which

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[61] This relief sought is the same relief granted to Indianapolis Power in the *Indianapolis Power* Order, 149 FERC ¶ 61,047.

Indianapolis Power sought to use *as a self-supply resource* in its capacity portfolio for the 2015-2016 Planning Year. The Commission granted Indianapolis Power a waiver of sections 69A.5 and 69A.3.1.h of the MISO Tariff to relieve Indianapolis Power of its must-offer obligation and obligation to procure replacement capacity for the Eagle Valley Units during the 6.5 week period from April 16, 2016 to May 31, 2016. In granting Indianapolis Power's request for waiver, a key consideration for the Commission was the unknown and potentially significant cost to Indianapolis Power's ratepayers of replacing the Eagle Valley Units' capacity during that off-peak shoulder season, where the cost of that replacement capacity likely would greatly outweigh any incremental reliability benefits.

47. Here, by comparison, MidAmerican does not plan to use the Neal Units' capacity as a self-supply resource, where its ratepayers might be exposed to unknown and significant replacement capacity costs. Instead, MidAmerican seeks to benefit from the sale of the Neal Units' capacity to third parties while being relieved of the obligation to deliver on its capacity commitment during the 6.5 weeks at issue. We find that the same concern regarding ratepayer impacts that underpinned the Commission's determination in the Indianapolis Power Order is not present here, and therefore decline to grant MidAmerican waiver of sections 69A.5 and 69A.3.1.h of the MISO Tariff.

48. However, we nonetheless recognize that the disconnect between the MISO 2015-2016 Planning Year and the April 16, 2016 deadline for MATS compliance presents challenges for the Neal Units, which are required to remain in service until certain transmission upgrades are completed later in 2015 and are scheduled to retire prior to the deadline for MATS compliance. In particular, MidAmerican highlights the confusion regarding its obligation to offer the Neal Units' capacity into the 2015-2016 Planning Resource Auction as an ongoing problem. MidAmerican explains that, if it is required to offer the Neal Units' capacity even though the units will retire prior to the end of the planning year, MidAmerican could be exposed to significant replacement capacity costs for the 6.5 week period if the Neal Units clear the auction and MidAmerican incurs an obligation to provide capacity for the full year.

49. Under the facts presented here, we conclude that granting MidAmerican relief – a determination that it need not offer the retiring Neal Units into the 2015-2016 Planning Resource Auction – is appropriate. We acknowledge that there is disagreement regarding whether, under MISO's existing Tariff, the failure of a generating unit that is retiring during a MISO planning year to offer its capacity in that year's Planning Resource Auction would be deemed physical withholding. Certain parties, including Suppliers, argue that the MISO Tariff does not require retiring units to offer into the Planning

Resource Auction, while others disagree with that reading of the Tariff.[62] MidAmerican, in particular, states that a Commission determination that MidAmerican is not obligated to offer the Neal Units' capacity into the 2015-2016 Planning Resource Auction would resolve MidAmerican's concerns.[63] Given the targeted nature of MidAmerican's request, we grant MidAmerican relief as to the Neal Units under the facts presented, and we grant waiver, to the extent necessary, of the provisions of the MISO Tariff that would require that MidAmerican offer the Neal Units into the 2015-2016 Planning Resource Auction.[64]

50. 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.[65]

51. Based on the record, we find that MidAmerican need not offer the Neal Units into the 2015-2016 Planning Resource Auction, and that this relief satisfies the aforementioned waiver conditions. First, we find that the relief is of limited scope, as it applies only to the retiring 496 MW Neal Units and the 2015-2016 Planning Resource Auction.

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[62] We acknowledge that, on January 28, 2015, MISO submitted proposed Tariff revisions in Docket No. ER15-918-000 that propose to revise its Tariff provisions regarding application of physical withholding mitigation to generation resources that are retiring or suspending operations during the period of time between the 2015-2016 Planning Resource Auction and the end of the 2015-2016 Planning Year. In granting the relief sought by MidAmerican herein, we do not prejudge the merits of MISO's proposed Tariff revisions; we do note, however, that MISO's filing, if accepted, would go into effect on the next to last day of the offer period for the 2015-2016 Planning Resource Auction.

[63] *See* MidAmerican Answer at 9-10.

[64] We limit our relief in this order to MidAmerican's Neal Units and decline to determine, on a general basis, whether the existing MISO Tariff provides that *all* resources that retire during a given planning year may elect not to offer their capacity into that year's Planning Resource Auction without being deemed to have physically withheld that capacity.

[65] *See, e.g.*, *California 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).

52. The granted relief addresses a concrete problem by clarifying that MidAmerican need not offer the Neal Units into the 2015-2016 Planning Resource Auction, and avoiding the undesirable options that MidAmerican be in non-compliance with the EPA regulations by continuing to operate the Neal Units after April 15, 2016; possibly violate MISO's Tariff and/or be required to pay an unknown cost for replacement capacity; or be subject to civil penalties up to $1 million per day under section 316A of the FPA. This relief resolves the aforementioned problems created by the 6.5 week gap between EPA MATS deadlines and the MISO Planning Year while also allowing the Neal Units to remain in service and provide valuable energy and ancillary services during much of the 2015-2016 Planning Year, including during the summer 2015 and winter 2015-2016 peak periods.

53. We also find that this relief will not cause undesirable consequences, based on MidAmerican's representation that it can meet all or essentially all of its Planning Reserve Margin Requirements without the use of the Neal Units. Furthermore, the capacity associated with the Neal Units will contribute to reliability by being available to be offered into the daily energy and ancillary markets until April 16, 2016.

54. In granting this relief, 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.[66] Ultimately, we find that granting this relief is an appropriate remedy to address the inconsistency between the compliance date of the EPA's MATS requirements for the Neal Units (i.e., April 16, 2016) and the end of MISO's 2015-2016 Planning Year (i.e., May 31, 2016). We note that the limited relief granted herein does not implicate resource adequacy requirements for the 2015-2016 Planning Year, the 2016-2017 Planning Year, or any planning years thereafter. Furthermore, the Neal Units remain available for MidAmerican to offer into the daily energy and ancillary services markets for the first 45.5 weeks of the 2015-2016 Planning Year, including the peak seasons in summer 2015 and winter 2015-2016, and the capacity from the Neal Units could also be available in the bilateral market for resource adequacy during that time. We also 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.

55. Under the circumstances presented, we find that MidAmerican need not offer the Neal Units into the 2015-2016 Planning Resource Auction and waive, to the extent necessary, provisions of the MISO Tariff that would require MidAmerican to offer the Neal Units into the 2015-2016 Planning Resource Auction, as discussed above.

[66] 16 U.S.C. §§ 824d, 824o (2012).

<u>The Commission orders</u>:

MidAmerican's requested relief is hereby granted, as discussed in the body of this order.

By the Commission. Commissioner Bay is dissenting with a separate statement attached.
Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

MidAmerican Energy Company | Docket No. ER15-199-000

(Issued February 20, 2015)

BAY, Commissioner, *dissenting*:

The Commission today compounds the error it first committed in *Indianapolis Power & Light Co. v. Midcontinent Indep. Sys. Operator, Inc.*[1], when it granted Indianapolis Power's request for a waiver of the must-offer requirement and the requirement to purchase replacement capacity for a six-and-a-half week long period.[2] I noted in my dissent that the waiver was not of limited scope because other resources were presumably similarly situated and would file similar requests. Not surprisingly, this has come to pass. Other resources have seen the *Indianapolis Power* waiver and have decided to seek one for themselves. One can hardly blame them. At last count, six other entities with a nameplate capacity of almost 2,641 megawatts have filed for waivers.[3] MISO has urged the Commission to adopt a broader perspective on reliability and warned 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.[4] The IMM has also noted market-related concerns. Unlike the majority, I would heed those concerns and deny MidAmerican's request for a waiver.

As a legal matter, MidAmerican cannot carry its burden of justifying its waiver request. The Commission does not grant waivers lightly, for waivers, by their nature, tend to diminish regulatory certainty and may frustrate the settled expectations of market participants. I will not repeat the analysis from my dissent in *Indianapolis Power,* but note that it is equally applicable here. MidAmerican cannot show that (1) it is unable to comply with the tariff provision in good faith,

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[1] 149 FERC ¶ 61,047 (2014).

[2] *Id*. at P 71.

[3] MISO Protest at 5-6.

[4] *Id.* at 5.

(2) the waiver is of limited scope, or (3) the waiver would not have undesirable consequences, such as harming third parties.

Like Indianapolis Power, MidAmerican relies on estimates for the cost of replacement capacity and has made no effort to procure capacity. It has not shown that capacity is unavailable or not cost effective to obtain. Beyond that, the case for denial is stronger here than in *Indianapolis Power* because we now know that other entities have filed requests for waiver, and it is possible that more are on the way. It is difficult to see how this waiver is of limited scope, as it involves 496 megawatts. It is equally difficult to establish that there would not be undesirable consequences resulting from the waiver.[5] Greater reliability risk is one; according to the IMM, higher capacity costs may be another if MidAmerican is excused from offering the resources into the auction.

Although the legal analysis is dispositive, granting this waiver, along with the others, has the unfortunate consequence of creating unsound policy as well. It leads to regulatory uncertainty where once there was none, erodes MISO's capacity construct and reliability, undermines the bilateral capacity market, and, ironically, may even increase costs to consumers. By allowing MidAmerican to withhold the Neal Units from the auction, clearing prices for the auction may well be higher. A better, more market-oriented approach would be to deny the waiver and to implement the rather elegant proposal by the IMM to allow MidAmerican to incorporate the costs of replacement capacity in its capacity offer, as well as in the resource's facility-specific reference levels.[6] If the offer clears, MidAmerican is made whole for the replacement capacity's cost and the capacity offered into the auction has helped lower the clearing price to the benefit of consumers. If the offer does not clear, MidAmerican has met its obligations under the tariff.

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[5] While the majority relies upon Attachment Y study, MISO has explained that Attachment Y only assesses transmission-related reliability issues and does not review resource adequacy impacts. *See* MISO Answer at 6. The majority's reliance on MISO's Maintenance Margin analysis is also unavailing, because that analysis is used for scheduled maintenance purposes, not to assess resource adequacy based on unit retirements. *See* MISO Answer at 7. Despite MISO's repeated attempts to explain what its own studies do, the majority characterizes them as establishing that the waivers pose no risk to local or system-wide reliability.

[6] IMM Protest at 3.

Under the majority's order today, MidAmerican will still have the option of providing energy, ancillary services, and bilateral capacity from the Neal Units for 45.5 weeks out of the planning year. Nevertheless, having gotten the benefit of access to the markets for most of the year, MidAmerican will be relieved of its capacity obligations for the Neal Units. For all those reasons, I would not grant MidAmerican's waiver request.

Accordingly, I respectfully dissent.

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Norman C. Bay
Commissioner