150 FERC ¶ 61,222
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midcontinent Independent System Operator, Inc. Docket No. ER15-918-000

ORDER ACCEPTING TARIFF REVISIONS

(Issued March 24, 2015)

1. On January 28, 2015, pursuant to section 205 of the Federal Power Act (FPA)[1] and Part 35 of the Commission's regulations,[2] Midcontinent Independent System Operator, Inc. (MISO) submitted proposed revisions to Module D of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to clarify that, under a defined set of circumstances, owners of generation resources that will retire or suspend on or after March 31, 2015 and by May 31, 2016 will be relieved of the physical withholding mitigation provisions in Module D if they decide not to offer those resources into the 2015-2016 Planning Resource Auction (January 28 Filing). As discussed below, we accept the January 28 Filing, to become effective March 30, 2015, as requested.

I. Background

2. In July 2011, MISO proposed Module E-1 of the Tariff, which sets forth MISO's currently effective annual resource adequacy construct.[3] Under Module E-1, MISO conducts a Planning Resource Auction to determine the auction clearing price in each Local Resource Zone for the upcoming Planning Year.[4] As relevant to the January 28

[1] 16 U.S.C. § 824d (2012).

[2] 18 C.F.R. pt. 35 (2014).

[3] Midwest Independent Transmission System Operator, Inc., Application, Docket No. ER11-4081-000 (filed July 20, 2011). Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

[4] MISO's Planning Year begins June 1 and extends until May 31 of the following Year. MISO, FERC Electric Tariff, Module A, § 1.P (34.0.0).

Filing, Module E-1 provides that the Independent Market Monitor (IMM) will evaluate potential withholding of Planning Resources from the Planning Resource Auction, consistent with Module D of the Tariff.[5] On June 11, 2012, the Commission conditionally accepted Module E-1 to become effective October 1, 2012.[6]

3. The market power mitigation measures within Module D of the Tariff are intended to provide MISO the means to mitigate the market effects of conduct that would substantially distort competitive outcomes, while avoiding unnecessary interference with competitive price signals.[7] As relevant to the January 28 Filing, one category of conduct that may warrant mitigation is physical withholding of an electric facility, which may include not submitting offers into the Planning Resource Auction for universally deliverable Planning Resources that are not designated to satisfy the capacity obligations of a load serving entity in MISO or exported.[8] There are, however, certain circumstances under which market participants with excess capacity can refuse to submit Planning Resource offers in to the Planning Resource Auction without being deemed to have engaged in physical withholding, including selling the capacity bilaterally or using the capacity to meet capacity requirements.[9]

4. The System Support Resource (SSR) procedures within Module C of the Tariff provide MISO a mechanism to enter into agreements with market participants that own generation resources that are required to maintain the reliability of the transmission system if the generation resources would otherwise either retire or suspend.[10] The SSR procedures require any market participant planning to retire or suspend all or a portion of a generation resource to provide advance notice to MISO by submitting an Attachment Y Notification of Potential Generation Resource Change of Status (Attachment Y Notification) at least 26 weeks prior to taking such actions. Upon receiving an Attachment Y Notification, MISO conducts an Attachment Y Reliability Study to

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[5] MISO, FERC Electric Tariff, Module E-1, § 69A.7.1 (34.0.0).

[6] *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199 (2012).

[7] MISO, FERC Electric Tariff, Module D, § 62 (30.0.0).

[8] *Id.* § 63.3 (30.0.0).

[9] *Id.* § 64.1.1 (31.0.0).

[10] The SSR procedures within Module C are not limited to generation resources in that they also apply to synchronous condenser units. MISO, FERC Electric Tariff, Module C § 38.2.7 (32.0.0).

determine whether the generation resource is necessary for the reliability of the transmission system. If MISO determines that the generation resource is not necessary for the reliability of the transmission system, the generation resource will retire or suspend on the date provided on the Attachment Y Notification, unless modified by the market participant.[11]

5. MISO states that the Tariff does not address the application of physical withholding mitigation in the Planning Resource Auction for generation resources that are in operation during the Planning Resource Auction offer window (Offer Window),[12] but will retire or suspend between the end of the Offer Window and the end of the upcoming Planning Year.[13] MISO understands that several market participants will retire or suspend generation resources just before or during the 2015-2016 Planning Year to meet environmental compliance requirements.[14] According to MISO, the current Tariff provisions may subject market participants to physical withholding mitigation for these generation resources because they will be operational at the time of the Offer Window, even if those generation resources will suspend or retire prior to or during the Planning Year. MISO explains that these circumstances create risk for market participants concerning their obligations to participate in the Planning Resource Auction and their performance requirements should their retiring or suspending generation resources clear in the Planning Resource Auction.[15]

6. MISO states that the proposed Tariff language will clarify that under a defined set of circumstances, owners of generation resources that will retire or suspend during the time period between the end of the upcoming Offer Window (i.e., March 31, 2015) and the end of the 2015-2016 Planning Year (i.e., May 31, 2016) will be relieved of the physical withholding mitigation provision if they decide not to offer those resources in the 2015-2016 Planning Resource Auction. According to MISO, the proposed Tariff language will provide market participants greater certainty and flexibility by providing a clear option to avoid the risk related to choosing between offering retiring or suspending

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[11] *Id.*

[12] The Offer Window begins at 12:01 am EST three business days before the last business day in March and ends at 11:59 pm EST on the last business day in March. MISO, FERC Electric Tariff, Module E-1, § 69A.7.1 (34.0.0).

[13] January 28 Filing at 3.

[14] *Id.* (citing Attachment C (Testimony of Joseph Gardner) at 4 (Gardner Test.)).

[15] *Id.* (citing Gardner Test. at 3-5).

generation resources in the 2015-2016 Planning Resource Auction, or being faced with the potential of physical withholding mitigation.[16] MISO clarifies that the proposed Tariff language will not relieve a load serving entity of the obligation to meet its Planning Reserve Margin Requirement for the entire Planning Year.[17] MISO explains that the proposed Tariff language will not affect the ability of a market participant to participate in the Planning Resource Auction and notes that any capacity resources that clear the Planning Resource Auction must meet the applicable performance requirements for the entire Planning Year.[18]

7. In order to effectuate the above mentioned changes, MISO proposes to add to section 64.1.1.g of Module D of the Tariff an additional circumstance for which a market participant may decide not to submit offers into the Planning Resource Auction without being deemed to have engaged in physical withholding. MISO states that the additional circumstance would apply to market participants that have submitted an Attachment Y Notification to retire or suspend a generation resource or synchronous condenser unit for which MISO has determined prior to the Offer Window deadline that an SSR agreement is not necessary. MISO clarifies that the proposed Tariff language only applies to the Planning Resource Auction for the 2015-2016 Planning Year to allow MISO and its stakeholders to engage in a thorough discussion of a permanent solution regarding alignment of Attachment Y, Module D, and Module E-1. To clarify that this proposed language only applies to generation resources that will retire or suspend between the end of the Offer Window and the end of the 2015-2016 Planning Year, MISO specifies the exact date range (i.e., March 31, 2015 through May 31, 2016) to eliminate potential confusion related to eligibility for this treatment. MISO also proposes to update certain language in section 64.1.1.g to reflect terminology consistent with MISO's currently-effective annual resource adequacy construct.[19]

8. According to MISO, it discussed draft Tariff language with stakeholders at a January 26, 2015 Supply Adequacy Working Group meeting. MISO explains that the discussion resulted in MISO modifying the draft Tariff language to include retirements and suspensions as early as the end of the Offer Window for the 2015-2016 Planning

[16] *Id.*

[17] *Id.* at 3-4 (citing Gardner Test. at 6; MISO, FERC Electric Tariff, Module E-1, § 69A (30.0.0)).

[18] *Id.* at 4 (citing MISO, FERC Electric Tariff, Module E-1, §§ 69A.3.1.h (34.0.0), 69A.5 (31.0.0)).

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

Year. MISO acknowledges that the IMM is concerned that the proposed Tariff revision would limit retrospective physical withholding mitigation for the generation resources affected by this filing, but nonetheless believes this treatment is appropriate to provide certainty to market participants with generation resources for which MISO has determined that retirement or suspension does not present reliability issues. MISO states that it is committed to working with its stakeholders and the IMM on longer-term solutions.[20]

II. <u>Notice and Responsive Pleadings</u>

9. Notice of the January 28 Filing was published in the *Federal Register*, 80 Fed. Reg. 7445 (2015), with interventions and protests due on or before February 18, 2015.

10. Timely motions to intervene were filed by: Exelon Corporation; Wisconsin Public Service Corporation; NRG Companies; MidAmerican Energy Company (MidAmerican); Dynegy Companies;[21] Xcel Energy Services Inc.; Wisconsin Electric Power Company; NRG Companies;[22] Ameren Services Company; and the IMM.[23] Organization of MISO States and Michigan Public Service Commission filed notices of intervention. Timely motions to intervene and comments were filed by: Electric Power Supply Association (EPSA), Duke Energy Indiana, Inc. (Duke Indiana), DTE Electric Company (DTE Electric), Wisconsin Power and Light Company (Wisconsin Power); Consumers Energy Company (Consumers Energy); and Indianapolis Power & Light Company (Indianapolis Power). Public Service Commission of Wisconsin (Wisconsin Commission) filed a notice of intervention and comments. Iowa Utilities Board filed an out-of-time motion to intervene. Illinois Commerce Commission (Illinois Commission) filed a notice of intervention and submitted out-of-time comments.

11. Duke Indiana and Wisconsin Power support the January 28 Filing and state that MISO's proposed changes provide valuable certainty that they will not face withholding penalties for the units they plan to retire during the upcoming planning year.[24] Wisconsin

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[20] *Id.* at 5.

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

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

[23] Potomac Economics, Ltd. is MISO's IMM.

[24] Duke Indiana Comments at 3; Wisconsin Power Comments at 3.

Power further states that the proposed changes remove the incentive for other resources needing to retire due to environmental compliance reasons to retire prior to the planning year to avoid withholding issues, and that the proposed changes instead provide the opportunity for these resources to support the operating needs of the MISO footprint during critical peak periods without penalty. Wisconsin Power also states that the changes proposed by MISO are not a permanent fix, and that permanent Tariff changes, such as implementation of a seasonal resource adequacy construct, would address these issues on a permanent basis.[25] Duke Indiana requests that the Commission issue an order accepting the proposed Tariff proposal on or before March 13, 2015.[26]

12. DTE Electric and Consumers Energy do not oppose MISO's proposal and state that it alleviates the concern of mitigation for physical withholding for the units that need to retire due to the United States Environmental Protection Agency (EPA) Mercury and Air Toxics Standards (MATS) compliance during the 2015-2016 Planning Year. However, DTE Electric and Consumers Energy argue that MISO's proposal is only a step toward resolving the disconnect between EPA MATS compliance and MISO's resource adequacy requirements.[27] DTE Electric and Consumers Energy state that, without additional measures such as those set forth in their respective waiver requests, MISO's proposal will not relieve market participants of the obligation to purchase unnecessary replacement capacity at potentially exorbitant costs, and therefore would not provide their customers relief from the unnecessary cost increases caused by the disconnect.[28] Consumers Energy suggests that requiring a supplemental planning resource auction for a 6.5 week product, with prices capped at the pro rata Cost of New Entry, would be a reasonable compromise it could support.[29] DTE Electric and Consumers Energy request that the Commission take expedited action on the MISO proposal no later than March 26, 2015, prior to the planning resource auction bid period from March 27, 2015 through March 31, 2015.[30]

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[25] Wisconsin Power Comments at 3-4.

[26] Duke Indiana Comments at 4.

[27] DTE Electric Comments at 3; Consumers Energy Comments at 3-4.

[28] DTE Electric Comments at 3-4; Consumers Energy Comments at 4-5.

[29] Consumers Energy Comments at 6.

[30] DTE Electric Comments at 5; Consumers Energy Comments at 7.

13. EPSA agrees that MISO's proposal would provide greater clarity for market participants and close a gap that would allow generation suppliers the confidence to engage in the planning resource auction without fear of the IMM penalizing resources for physically withholding if they do not enter the auction.[31] EPSA states that MISO's proposal is a viable option for the numerous pending requests for waiver of the MISO Tariff requirements pertaining to cleared capacity resources currently pending before the Commission.[32] Additionally, EPSA states that the proposed tariff revisions will result in the commitment of only generation that will be available for the upcoming planning year and not resources that will be retiring or suspending operations during the planning year, but have not been found to be needed for reliability.[33] EPSA argues that MISO's proposal will result in clearing and committing the generation resources which are online and capable of providing reliability to MISO for resource adequacy purposes for the entire planning year, as opposed to leaning on other online resources not committed to MISO, which could be unavailable to ensure resource adequacy, or retired resources that will certainly be unavailable to ensure resource adequacy when needed. Further, EPSA states that, in considering future Tariff filings, the Commission should ensure that the Tariff treats buyers and sellers consistently.[34]

14. Indianapolis Power states that, while it is not opposed to MISO's proposed Tariff revisions, it finds them ineffective and inadequate. Indianapolis Power states that the proposed Tariff amendment could effectively move up the retirement date of units scheduled to retire during the 2015-2016 Planning Year since those units will not have to offer into the Planning Resource Auction, and that the proposal serves to remove capacity from the footprint that would otherwise be available as capacity for all but 6.5 weeks.[35]

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[31] EPSA Comments at 2-3.

[32] *Id.* at 3 (citing Indianapolis Power & Light Company v. Midcontinent Independent System Operator, Inc., Request for Waiver and Complaint, Docket No. EL14-70-000 (filed June 20, 2014); Consumers Energy, Request for Waiver, Docket No. ER14-2622-000 (filed Aug. 7, 2014); DTE Electric, Request for Waiver, Docket No. ER15-90-000 (filed Oct. 14, 2014); MidAmerican, Request for Waiver, Docket No. ER15-199-000 (filed Oct. 27, 2014); Duke Indiana, Request for Waiver, Docket No. ER15-592-000 (filed Dec. 5, 2014); Wisconsin Power, Request for Waiver, Docket No. ER15-852-000 (filed Jan. 16, 2015)).

[33] *Id.* at 3-4.

[34] *Id.* at 4.

[35] Indianapolis Power Comments at 5.

Indianapolis Power states that MISO's proposal only solves the issue of physical withholding and that MISO's proposal actually reduces reliability because it: (1) encourages more capacity to be removed from market participants' portfolios at the start of the planning year; and (2) potentially sends a signal that there is risk of load shed where no risk actually exists.[36] Indianapolis Power states that the Commission approved an appropriate mechanism in the Indianapolis Power waiver request that allows resources to retire on time and provide valuable capacity during the summer peaks of 2015 and winter peaks of 2015-2016. Additionally, Indianapolis Power indicates that the IMM already has a process in place in which it independently evaluates suspension or retirement decisions and that market participants will still need to navigate the IMM's process, notwithstanding MISO's proposal.[37]

15. The Wisconsin Commission argues that MISO's proposal would permit market participants to withhold planning resources that would otherwise supply additional capacity and reduce overall prices for capacity. The Wisconsin Commission further states that finding a way to qualify supply into the market would be the preferable solution.[38] While the Wisconsin Commission agrees that action is needed to provide certainty to market participants regarding sanctions for physical withholdings, it questions whether the proposed solution goes far enough, in that it fails to fully address all relevant issues. The Wisconsin Commission concludes that an approach that qualifies additional generation supply for the 2015-2016 Planning Resources Auction would be more beneficial than MISO's proposed Tariff changes; nonetheless, such an approach should be in place after the 2015-2016 Planning Year.[39]

16. The Illinois Commission recommends that the Commission reject MISO's proposed Tariff revisions because the Commission can and should address the retirement of units by acting on individual waiver requests. The Illinois Commission notes that the Commission has acted on five such requests already, with the request for waiver by Wisconsin Power still pending before the Commission.[40] According to the Illinois

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[36] *Id.* at 5.

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

[38] Wisconsin Commission Comments at 4-5.

[39] *Id.* at 5.

[40] Illinois Commission Comments at 3-4 (citing Indianapolis Power & Light Company v. Midcontinent Independent System Operator, Inc., Request for Waiver and Complaint, Docket No. EL14-70-000 (filed June 20, 2014); Consumers Energy, Request for Waiver, Docket No. ER14-2622-000 (filed Aug. 7, 2014); DTE Electric, Request for

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Commission, MISO's proposed Tariff revisions therefore represent an unnecessary step that does not address the issue of the gap between generator retiring dates and the end of the 2015-2016 Planning Year.[41]

17. The Illinois Commission states that it is concerned that MISO's proposal will permit large capacity values to be wasted simply because generators propose to retire or suspend their units for a part of the Planning Year.[42] The Illinois Commission argues that excusing such capacity from participating in the auction would result in driving the auction clearing price higher given the lower supply to meet the same demand. Further, the Illinois Commission asserts that MISO's proposal would exempt retiring generators from physical withholding challenges by the IMM, regardless of the length of the units' unavailability during the Planning Year. For example, the Illinois Commission argues that, under MISO's proposal, a generator that plans to retire on May 30, 2016 would be exempt from all IMM challenges if it chose not to offer into the Planning Resource Auction, even though it could be available for all but one day of the Planning Year. According to the Illinois Commission, such physical withholding could substantially raise the auction clearing price, which would allow all other generators that clear the auction to obtain that higher auction clearing price. The Illinois Commission therefore argues that MISO's proposal invites and incentivizes generators to exercise market power.[43]

18. The Illinois Commission states that MISO's position on how to treat retiring generators in a resource adequacy perspective has been inconsistent and is not well reasoned. The Illinois Commission asserts that, while MISO has generally opposed the retiring generators' requests for waiver for a short period of the 2015-2016 Planning Year, citing reliability concerns,[44] MISO's proposal allows units to be unavailable for the entirety of the 2015-2016 Planning Year.

Waiver, Docket No. ER15-90-000 (filed Oct. 14, 2014); MidAmerican, Request for Waiver, Docket No. ER15-199-000 (filed Oct. 27, 2014); Duke Indiana, Request for Waiver, Docket No. ER15-592-000 (filed Dec. 5, 2014); Wisconsin Power, Request for Waiver, Docket No. ER15-852-000 (filed Jan. 16, 2015)).

[41] *Id.* at 4.

[42] *Id.*

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

[44] *Id.* at 5 (citing, *e.g.*, MISO, Protest, Docket No. ER15-872-000, at 3 (filed Feb. 6, 2015)).

19. The Illinois Commission argues that load serving entities and retail customers will be the ones who will bear the potential for reliability impacts and the higher auction clearing prices that will result from MISO's proposal. Further, the Illinois Commission contends that MISO should take all reasonable steps to prevent the exercise of market power and instead adopt a policy that makes use of the existing capacity of the system rather than simply sidelining retiring generators.[45]

20. The Illinois Commission states that, although MISO's proposal does not specify a cut-off date, any generator planning to retire between March 31, 2015 and May 31, 2016 and seeking to obtain MISO's proposed exemption would have to have submitted its Attachment Y Notification to MISO on or before January 15, 2015 in order for MISO to complete its reliability analysis for that generator to retire before the Offer Window closes. However, because that January 15, 2015 deadline precedes the submission of MISO's proposed Tariff revisions, the Illinois Commission argues that MISO's proposal gives undue preference to generators planning to retire earlier in the 2015-2016 Planning Year, as those generators are more likely to have met the pre-conditions for exemption proposed in MISO's filing.[46]

21. The Illinois Commission argues it is particularly opposed to MISO's proposal that generators that are suspending operations be exempt from physical withholding penalties if they choose to not offer into the auction. The Illinois Commission argues that the length of a suspension under the Tariff can be as short as two months.[47] According to the Illinois Commission, a retiring resource forfeits its interconnection rights on the first date of retirement, effectively ensuring that it will not be used as a part of a plan to manipulate the MISO energy or capacity markets. However, the Illinois Commission argues that suspending generators will have the opportunity to withhold resources and manipulate the market not just for the 2015-2016 Planning Year but for subsequent years as well. The Illinois Commission asserts that the consequences for a unit owner using a retirement strategy to withhold from the capacity market are much more significant than the consequences faced by a unit owner using a suspension strategy for withholding, and therefore MISO's proposal as it pertains to suspending resources is even less appropriate. While the Illinois Commission objects to MISO's proposal outright, it states that, if the Commission does not reject MISO's proposal in its entirety, the Commission should at

[45] *Id.* at 6.

[46] *Id.* at 6-8.

[47] *Id.* at 8-9 (citing MISO, FERC Electric Tariff, Module A, § 1.S (39.0.0)).

least reject the proposal as it applies to generators that are merely suspending operations, rather than retiring altogether.[48]

III. Discussion

A. Procedural Matters

22. 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 motion to intervene of the Iowa Utilities Board given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay. We will also accept the Illinois Commission's late-filed comments.

B. Substantive Matters

23. We accept MISO's proposal as a reasonable solution for resources that cannot offer a full-year capacity product into the upcoming 2015-2016 Planning Resource Auction because they must suspend operation or retire during the 2015-2016 Planning Year. By limiting the applicability of its proposal to resources that MISO has determined are not needed for reliability and requiring that load serving entities continue to meet their planning reserve margin, we find that MISO has shown that its proposal does not have implications for reliability or resource adequacy for the 2015-2016 Planning Year. We also find that MISO's proposal is a reasonable solution to address the mismatch between the 2015-2016 Planning Year and retirement or suspension deadlines occurring during that planning year while MISO and its stakeholders work on longer-term solutions.

24. We disagree with Indianapolis Power's argument that the proposed Tariff language should be rejected because it could effectively move up the retirement date of units scheduled to retire during the 2015-2016 Planning Year and reduce reliability. Market participants with units affected by the proposed Tariff language have already submitted proposed retirement or suspension dates in their respective Attachment Y Notifications. There is no evidence in the record that these market participants will accelerate their respective retirement dates, nor do we see an incentive to do so if they are still participating in the daily energy and ancillary service markets. Further, the proposed Tariff language is limited to resources that MISO has determined prior to the Offer

[48] *Id.* at 9.

Window deadline are not needed for reliability (i.e., an SSR agreement is not necessary), and therefore there is no basis for Indianapolis Power's claim that the proposal reduces reliability. Also, as noted above, the proposal has no impact on resource adequacy since it makes no change to the requirement that load serving entities procure sufficient capacity for the entire 2015-2016 Planning Year.

25. We are not persuaded by the Wisconsin Commission and the Illinois Commission that the Commission should reject MISO's proposal because it could cause capacity prices to increase or provide an incentive to exercise market power. First, we note that proposed market designs are not *per se* unjust and unreasonable simply because they might cause prices to increase. Here, where MISO's Planning Resource Auction is built on an annual capacity product, we find it is reasonable that resources that cannot deliver that full year of capacity not be subject to physical withholding mitigation simply because their resources are retiring or suspending operations during the planning year. In any event, we note that auction prices would likely increase even in the absence of MISO's proposal, as the market participants owning these partial-year resources would have to obtain other resources for the remainder of the year – and factor the costs of the replacement resource into their offers.[49] Inasmuch as the Illinois Commission has not demonstrated how resources not offered into the auction under MISO's proposal would result in significantly higher revenues than would occur if they offered their capacity including higher cost replacement capacity, we find no basis for its claim that the MISO proposal incentivizes generators to exercise market power. Furthermore, we note that resources that do not offer into the 2015-2016 Planning Resource Auction, but continue to participate in MISO's energy and ancillary services markets during the portion of the year that they remain in service, would be subject to MISO's mitigation rules for those markets.

26. We disagree with the Illinois Commission's argument that the Commission should address the retirements of units by acting on individual waiver requests on a case-by-case basis. While market participants can still seek further waiver from the Commission, MISO's proposed Tariff language may prevent the need for such requests. In fact, the Commission has previously encouraged MISO and its stakeholders to consider developing proposed Tariff revisions to address the situation faced by Indianapolis Power and other entities.[50] Accordingly, we see no reason to foreclose other solutions, such as Tariff revisions, to address this problem.

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[49] The IMM has detailed the process for such a modified auction offer. IMM, Protest, Docket No. ER15-592-000, at 3 (filed Dec. 29, 2014).

[50] *Indianapolis Power & Light Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,047, at P 70 (2014).

27. While the Illinois Commission argues that capacity values for retiring resources will be wasted, we disagree. The proposed Tariff revisions instead allow market participants to offer their retiring resources into the 2015-2016 Planning Resource Auction if they are willing to procure replacement capacity, as required by section 69A.5 of the Tariff. Otherwise, market participants can sell the capacity bilaterally up until the date of retirement or suspension. MISO's proposal therefore encourages resources retiring or suspending operations during the 2015-2016 Planning Year to provide their capacity for the period in which they will actually be in service, and to offer their capacity into the 2015-2016 Planning Resource Auction if it is economic for them to do so, considering the cost of purchasing replacement capacity for the period in which the resource will be retired or in suspension.

28. We do not agree with the Illinois Commission that there is a reason to distinguish between suspended and retiring resources. Both situations result in resources that are unable to offer a full-year capacity product into the auction, and therefore it is reasonable that both circumstances be provided an exemption from the physical withholding requirements. The Illinois Commission's concern that suspended resources may come back into service at some point and thereby obtain energy market revenues does not make MISO's proposal unreasonable. Also, MISO's proposal only applies to the 2015-2016 Planning Year, and therefore there is no opportunity to re-exercise a withholding strategy in future capacity auctions, contrary to the Illinois Commission's claim.

29. While the Illinois Commission argues that the proposed Tariff language discriminates against generators planning to retire late in the 2015-2016 Planning Year, no party to this proceeding makes the argument that it must offer into the 2015-2016 Planning Resource Auction a retiring or suspending generation resource because it has not yet submitted its Attachment Y Notification and/or MISO has not yet determined that an SSR agreement is not necessary. In fact, the record in the waiver proceedings show that market participants with late retirement dates (i.e., 6.5 weeks before the end of the 2015-2016 Planning Year) completed their Attachment Y processes well before, typically years before, the January 15, 2015 deadline.[51] In this context, we do not see a basis for

[51] Duke Indiana submitted its Attachment Y Notification on May 31, 2013. Duke Indiana, Request for Waiver, Docket No. ER15-592-000, at 6 (filed Dec. 5, 2014). MidAmerican submitted its Attachment Y Notification in June 2013. MidAmerican, Request for Waiver, Docket No. ER15-199-000, at 18 (filed Oct. 27, 2014). Consumers Energy submitted its Attachment Y Notification on March 14, 2013. Consumers Energy, Request for Waiver, Docket No. ER15-435-000, at 7 (filed Nov. 18, 2014). DTE Electric submitted its Attachment Y Notification on August 12, 2014. DTE Electric, Request for Waiver, Docket No. ER15-90-000, at 7 (filed Oct. 14, 2014). Indianapolis Power

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concluding that the January 15, 2015 deadline cited by the Illinois Commission has any practical meaning, and therefore we do not find a basis to conclude that the MISO proposal should be rejected because it unduly discriminates against later retiring resources.

The Commission orders:

MISO's proposed Tariff revisions are hereby accepted, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

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Nathaniel J. Davis, Sr.,
Deputy Secretary.

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submitted its Attachment Y Notification in July 2013. Indianapolis Power, Request for Waiver and Complaint, Docket No. EL14-70-000, at 15 (filed June 20, 2014).