

150 FERC ¶ 61,221
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Wisconsin Power and Light Company

Docket No. ER15-872-000

ORDER DENYING REQUEST FOR WAIVER

(Issued March 24, 2015)

1. On January 16, 2015, Wisconsin Power and Light Company (Wisconsin Power) 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 Wisconsin Power's retirement of the Nelson Dewey Units to comply with environmental requirements.¹ As discussed below, the Commission denies Wisconsin Power's request for waiver.

I. Background

2. Wisconsin Power states that it is a load serving entity that owns and operates electric facilities engaged in the generation, purchase, distribution, and sale of electric power and energy in Wisconsin.²

3. Wisconsin Power notes that, on December 14, 2009, the United States Environmental Protection Agency (EPA) issued a notice and finding of violation against Wisconsin Power, alleging violations of the Clean Air Act with respect to several generating units owned, or jointly owned, by Wisconsin Power. According to Wisconsin Power, the Sierra Club lodged a complaint against Wisconsin Power in September 2010, also alleging that Wisconsin Power had not complied with certain requirements of the Clean Air Act. Wisconsin Power states that it and its co-owners entered into a Consent

¹ The Nelson Dewey Units are two coal-fueled units located in southwestern Wisconsin and have a combined nameplate capacity of 200 megawatts (MW). Wisconsin Power Request for Waiver at 2.

² *Id.*

Decree with the EPA and the Sierra Club that resolved claims under the Clean Air Act while not admitting any liability. Wisconsin Power states that it must retire the Nelson Dewey Units no later than December 31, 2015 to fulfill the requirements of the Consent Decree.³

4. Wisconsin Power states that it submitted an Attachment Y Notification of Potential Generation Resource Change of Status (Attachment Y Notification) to MISO on August 1, 2012, notifying MISO of Wisconsin Power's intent to retire the Nelson Dewey Units no later than December 31, 2015. Wisconsin Power represents that MISO determined that the Nelson Dewey Units could retire at the end of 2015, subject to the completion of new transmission facilities.⁴ According to Wisconsin Power, the transmission facilities are expected to be in-service by late 2015.⁵

5. Wisconsin Power states that the Tariff's annual resource adequacy construct cannot adequately accommodate retirements due to environmental requirements. Wisconsin Power represents that a resource must be available for the entire Planning Year in order to participate in the Planning Resource Auction.⁶ Wisconsin Power represents that a market participant is unable to apply the capacity from a unit that is retiring during the Planning Year towards its resource adequacy requirement because there is no certainty that replacement capacity will be available during the period of the Planning Year that the unit is retired.⁷

³ *Id.* at 3-4 (citing Consent Decree, *United States v. Wis. Power and Light Co.*, No. 13-cv-266 (W.D. Wis.) (filed Apr. 22, 2013) (Consent Decree), available at <http://www2.epa.gov/sites/production/files/documents/wisconsinpower-cd.pdf>).

⁴ *Id.* at 13.

⁵ *Id.* at 3-4, 13.

⁶ Under section 69A.5 of the Tariff, capacity used to meet a Planning Resource Margin Requirement (unless replaced pursuant to section 69A.3.1.h) must offer into the energy and ancillary services markets for each hour of each day for the entire Planning Year. MISO, FERC Electric Tariff, Module E-1, § 69A.5 (31.0.0). The MISO Planning Year begins June 1 and extends until May 31 of the following Year. MISO, FERC Electric Tariff, Module A, § 1.P (34.0.0).

⁷ Wisconsin Power Request for Waiver at 5 (citing MISO, FERC Electric Tariff, Module E-1, § 69A.3.1.h (34.0.0)). Section 69A.3.1.h of the 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).

6. Wisconsin Power states that it faces a compliance dilemma under the annual resource adequacy construct: based on MISO's Attachment Y reliability study, the Nelson Dewey Units cannot retire before the start of the 2015-2016 Planning Year (i.e. June 1, 2015), but the Tariff requires the Nelson Dewey Units to be available for the entire 2015-2016 Planning Year, yet the Consent Decree mandates that the Nelson Dewey Units retire no later than December 31, 2015. According to Wisconsin Power, out of an abundance of caution, it procured and paid for an additional 155 MW of capacity to be compliant with the requirements of both the Tariff and the Consent Decree.⁸

7. Wisconsin Power acknowledges that Indianapolis Power & Light Company (Indianapolis Power) and Consumers Energy Company (Consumers Energy) previously filed requests for waiver with the Commission under Docket Nos. EL14-70-000 and ER14-2622-000, respectively.⁹

8. Wisconsin Power notes that it filed comments in support of Indianapolis Power's complaint and two of the four waiver alternatives requested by Indianapolis Power. Wisconsin Power states that the Commission granted Indianapolis Power's request for limited waiver of the must-offer requirement and requirement to purchase replacement capacity under Tariff sections 69A.5 and 69A.3.1.h, respectively, for the period from April 16, 2016 through May 31, 2016, while dismissing Indianapolis Power's complaint as moot.¹⁰

9. Wisconsin Power states that the Commission denied Consumers Energy's request for waiver without prejudice to filing a future request, finding that the 940.7 MW of generation represented 14.5 percent of Consumers Energy's total capacity and arguing that Consumers Energy failed to provide the information necessary to properly assess the impacts of the waiver.¹¹

⁸ Wisconsin Power Request for Waiver at 5-6.

⁹ *Id.* at 6-9 (citing Indianapolis Power, 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)).

¹⁰ *Id.* at 7 (citing *Indianapolis Power & Light Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 149 FERC ¶ 61,047 (2014) (Indianapolis Power Order)).

¹¹ *Id.* at 8 (citing *Consumers Energy Co.*, 149 FERC ¶ 61,110 (2014) (Consumers Energy Order)).

Wisconsin Power Request for Waiver

10. Wisconsin Power requests limited waiver of the must-offer requirement and requirement to purchase replacement capacity under Tariff sections 69A.5 and 69A.3.1.h, respectively, for the period from January 1, 2016 through May 31, 2016. Wisconsin Power argues that its request for waiver meets the Commission's criteria for granting waiver: (1) a concrete problem needs to be remedied; (2) the waiver will not have undesirable consequences; (3) the waiver is of limited scope; and (4) the entity seeking waiver acted in good faith.¹²

11. Wisconsin Power claims that the problem is concrete in that it concerns the misalignment between the Consent Decree retirement deadline and the timeline of the 2015-2016 Planning Year. Wisconsin Power represents that, absent the requested waiver, the capacity from the Nelson Dewey Units will not be counted towards the resource adequacy requirement of Local Resource Zone 2, the zone in which Wisconsin Power is located.¹³ Wisconsin Power argues that there is no mechanism under the Tariff that provides entities the opportunity to confidently secure replacement capacity on a monthly basis and, therefore, these entities must rely on the availability of capacity that did not clear the Planning Resource Auction for replacement capacity. Due to the uncertainty related to the availability of replacement capacity after the Planning Resource Auction, Wisconsin Power procured additional capacity through a bilateral purchase for the entire 2015-2016 Planning Year in order to comply with the Tariff and meet its resource adequacy requirements.¹⁴

12. Wisconsin Power argues that granting the requested waiver for the Nelson Dewey Units will not have undesirable consequences or harm third parties. Wisconsin Power argues that the waiver will benefit customers, who would otherwise shoulder the costs associated with the procurement of additional capacity, and reduce customer costs by

¹² *Id.* at 9-10 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,132, at P 8 (2014); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069, at PP 8-9 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *Cal. Indep. Sys. Operator, Inc.*, 132 FERC ¶ 61,004, at P 10 (2010); *Hudson Transmission Partners, LLC*, 131 FERC ¶ 61,157, at P 10 (2010); *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182, at PP 9-10 (2010); *ISO New England Inc.-EnerNOC*, 122 FERC ¶ 61,297 (2008); *Cent. Vt. Pub. Serv. Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008)).

¹³ *Id.* at 10 & n.36.

¹⁴ *Id.* at 10-11 (citing Attachment A (Testimony of Marc A. Nielsen) at lines 213-215, 227-230 (Nielsen Test.)).

providing Wisconsin Power the opportunity to sell excess capacity in the MISO market and direct the proceeds of the sale to its customers.¹⁵

13. Wisconsin Power also argues that the waiver will not significantly impact reliability. Wisconsin Power represents that, for the remaining five months of the 2015-2016 Planning Year, its reserve margins will exceed Wisconsin Power's monthly peak demand by no less than 29.5 percent of unforced capacity, well in excess of the 7.1 percent of unforced capacity margin required by MISO. Moreover, Wisconsin Power states that the Nelson Dewey Units represent approximately 1.56 percent of the 2016 forecast demand for Local Resource Zone 2, and that it has purchased 155 MW of capacity for the entire 2015-2016 Planning Year and improved the capacity values of other resource to compensate for the retirement of the Nelson Dewey Units.¹⁶ Lastly, Wisconsin Power notes that MISO found that any reliability issues related to the retirement of the Nelson Dewey Units would be avoided when the necessary transmission upgrades are complete. Wisconsin Power represents that the necessary upgrades are either under construction or in the planning stage, and are expected to be complete by late 2015, prior to the retirement of the Nelson Dewey Units on December 31, 2015.¹⁷

14. Wisconsin Power argues that the requested waiver is limited in scope. Wisconsin Power notes that the request for waiver is limited to 200 MW of capacity located in Local Resource Zone 2 for the final five months of the 2015-2016 Planning Year.¹⁸

15. Wisconsin Power claims that it has acted in good faith. According to Wisconsin Power, Alliant Energy Corporate Services, Inc., on behalf of Wisconsin Power, worked cooperatively with MISO and other participants of MISO's Supply Adequacy Working Group to modify the Tariff to address the issue of generation resources that are obligated to meet environmental regulation deadlines that do not correspond with MISO's Planning Year. Wisconsin Power explains that MISO ultimately decided not to initiate a filing to the Commission and instead recognized that any impacted generator could file a request for waiver of specific Module E-1 Tariff requirements at the Commission.¹⁹

¹⁵ *Id.* at 5, 11, 12-13, Nielsen Test. at lines 276-285.

¹⁶ *Id.* at 11-12, Nielsen Test. at lines 224-245.

¹⁷ *Id.* at 13, Nielsen Test. at lines 257-273.

¹⁸ *Id.*

¹⁹ *Id.* at 13-14.

16. Wisconsin Power asks the Commission to issue an order within 60 days so the waiver can be effective prior to the start of the 2015-2016 Planning Resource Auction, which begins on March 27, 2015.²⁰

II. Notice and Responsive Pleadings

17. Notice of Wisconsin Power's request for waiver was published in the *Federal Register*, 80 Fed. Reg. 3962 (2015), with interventions and protests due on or before February 6, 2015.

18. Potomac Economics, Ltd. filed a timely motion to intervene. The Public Service Commission of Wisconsin (Wisconsin Commission) filed a notice of intervention and comments. The following entities filed timely motions to intervene and comments or protests: MISO; and Dynegy Companies,²¹ NRG Companies,²² and Exelon Corporation (together, Suppliers). Organization of MISO States and Iowa Utilities Board filed out-of-time motions to intervene.

19. The Wisconsin Commission supports Wisconsin Power's request for waiver because it would permit the Nelson Dewey Units to be offered as additional generation capacity in the MISO market, thereby increasing supply and lowering market prices. The Wisconsin Commission claims that it is the customers in the MISO region, especially Wisconsin Power's ratepayers in Wisconsin, who would ultimately benefit from lower prices.²³

20. The Wisconsin Commission argues that the problem arises from the application of MISO's annual resource adequacy construct. The Wisconsin Commission represents that, while the Nelson Dewey Units are obligated to operate for reliability, the units' capacity cannot be counted towards Wisconsin Power's resource adequacy requirements. According to the Wisconsin Commission, this amounts to an unwarranted crimp in the supply of generator capacity, an artificial scarcity contributing to higher capacity prices,

²⁰ *Id.* at 14.

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 Wisconsin Commission Comments at 3.

and a market distortion contrary to the Commission's intention to use market forces to create just and reasonable rates as required by section 205 of the Federal Power Act.²⁴

21. The Wisconsin Commission notes that one of the requirements for waiver, that there be no undesirable consequences, leaves out of the picture the opportunity for a positive consumer benefit. The Wisconsin Commission states that, if the Nelson Dewey Units were qualified to sell capacity, the Wisconsin Commission's fuel cost rules would net any resulting wholesale capacity and energy revenues against fuel costs, all to the benefit of Wisconsin Power's retail ratepayers.²⁵ According to the Wisconsin Commission, the Commission should consider the potential for fuel cost savings to be a desirable consequence in support of Wisconsin Power's request for waiver.²⁶

22. In its protest, MISO explains that it is unable to support Wisconsin Power's waiver request based on the same resource adequacy concerns MISO raised in its answers to previous waiver requests.²⁷ MISO states that, by 2016, the MISO North and MISO Central regions may face a capacity deficit below the Planning Reserve Margin and that such 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, implicating a total of 2,640 MW during the period of time from April 16, 2016 through May 31, 2016. According to MISO, Wisconsin Power's request compounds this concern because it includes the final five months of the 2015-2016 Planning Year, including the winter peak demand period. MISO states that it is very difficult to understand how these accumulated waiver requests are limited in scope and will not have a great potential for undesirable consequences.²⁸

23. MISO states that it understands there are risks associated with using a generation resource that will retire during a Planning Year to participate in the Planning Resource Auction. To provide an additional option to market participants facing this situation for the 2015-2016 Planning Year, MISO filed with the Commission a proposed Tariff change that would allow such market participants to not participate in the 2015-2016 Planning

²⁴ *Id.* at 3-4.

²⁵ *Id.* at 4-5 (citing Attachment A, Wis. Admin. Code §§ PSC 116.01, 116.02, 117.03).

²⁶ *Id.* at 5.

²⁷ MISO Protest at 4.

²⁸ *Id.* at 4-6.

Resource Auction.²⁹ According to MISO, this option would provide Wisconsin Power a way to appropriately mitigate the risk associated with the circumstance that the Nelson Dewey Units must retire five months prior to the end of the 2015-2016 Planning Year.³⁰

24. MISO acknowledges its engagement in an extensive stakeholder process to explore options related to the difference between environmental compliance deadlines 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].”³¹ 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.³²

25. In their protest, Suppliers state that Wisconsin Power’s request for waiver is the latest in a string of filings requesting waiver of MISO’s resource adequacy rules for the 2015-2016 Planning Year.³³ Suppliers note that in Wisconsin Power’s case, the Nelson Dewey Units will not be available for five full months – more than 40 percent of the 2015-2016 Planning Year. Suppliers argue that, if granted, Wisconsin Power’s request

²⁹ *Id.* at 6 (citing MISO, Application, Docket No. ER15-918-000 (filed Jan. 28, 2015)).

³⁰ *Id.* at 6-7.

³¹ *Id.* at 7 (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>).

³² *Id.*

³³ Suppliers Protest at 4-5 & n.19 (citing Indianapolis Power, 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); Consumers Energy, Request for Waiver, Docket No. ER14-435-000 (filed Nov. 18, 2014); DTE Electric Company, Request for Waiver, Docket No. ER15-90-000 (filed Oct. 14, 2014) (DTE Electric); MidAmerican Energy Company, Request for Waiver, Docket No. ER15-199-000 (filed Oct. 27, 2014) (MidAmerican); Duke Energy Indiana, Inc., Request for Waiver, Docket No. ER15-592-000 (filed Dec. 5, 2014) (Duke Indiana)).

for waiver would create an uneven and unduly discriminatory playing field for capacity resources and threaten MISO's capacity market and reliability in the region.³⁴

26. Suppliers argue that the problem identified by Wisconsin Power is of its own making. Suppliers note that the Consent Decree at issue in this case was the result of settlement discussions between Wisconsin Power, EPA, and other parties. Suppliers state that the parties filed the Consent Decree and obtained a judge's approval well after MISO filed revisions to its Tariff to switch from a monthly to an annual resource adequacy construct and the Commission approved such revisions.³⁵ Thus, according to Suppliers, Wisconsin Power was aware of MISO's annual capacity requirements when it agreed to the Consent Decree, but nonetheless consented to retire, refuel, or repower the Nelson Dewey Units by December 31, 2015, in the middle of the 2015-2016 Planning Year.³⁶

27. Suppliers note that the Commission stated in the Indianapolis Power Order that it reviews waiver requests "on a case-by-case basis" and that Commissioners Clark and Moeller emphasized that the Indianapolis Power Order "in no way ties our hands to granting waivers under a different set of circumstances."³⁷ Suppliers argue that this case clearly involves a different set of circumstances because, unlike the Mercury and Air Toxics Standards (MATS) deadline that was unilaterally announced by EPA, Wisconsin Power had input into the compliance deadline set forth in the Consent Decree. Suppliers allege that Wisconsin Power agreed to the December 31, 2015 date set forth in the Consent Decree, even though it knew that the Planning Year ends a full five months later. Suppliers argue that Wisconsin Power should not be permitted to complain to the Commission that the Consent Decree poses a concrete problem.³⁸

28. Suppliers argue that, under the resource adequacy rules set forth in the Tariff, capacity resources are required to be available for the entirety of the Planning Year and, thus, the disqualification of the Nelson Dewey Units is a natural and intended result of

³⁴ *Id.* at 5.

³⁵ *Id.* at 5-6 (stating that the Consent Decree was filed on April 22, 2013, then signed by the judge on June 17, 2013, and that MISO filed its Tariff revisions on July 20, 2011, with the Commission approving such revisions on June 11, 2012 in *Midwest Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,199 (2012)).

³⁶ *Id.* (citing Consent Decree at P 80).

³⁷ *Id.* at 7 (citing Indianapolis Power Order, 149 FERC ¶ 61,047 (Clark and Moeller, Comm'rs, concurring)).

³⁸ *Id.* at 7-8.

the fact that those units will not be available for a large portion of the Planning Year. Suppliers contend that Wisconsin Power's dissatisfaction with MISO's resource adequacy rules does not equate to a problem or provide a basis for Wisconsin Power to ignore the rules and return to a monthly capacity construct.³⁹

29. Suppliers note Wisconsin Power's claim that there is "currently no mechanism under the MISO Tariff that provides entities the opportunity to confidently secure capacity on a monthly basis when those entities need to procure replacement [capacity]."⁴⁰ Suppliers argue that Wisconsin Power overlooks the fact that more than 12 gigawatts of capacity did not clear the 2014-2015 Planning Resource Auction, which suggests that there is a substantial amount of capacity that will be made available bilaterally. 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.⁴¹

30. Suppliers argue that Wisconsin Power's suggestion that it has to bear extra costs to maintain reliability is disingenuous. Suppliers assert that Wisconsin Power suggests it has been forced to incur "related operating costs" when MISO is accommodating Wisconsin Power's requested retirement date of December 31, 2015. Suppliers note that Wisconsin Power voluntarily chose to purchase capacity for the entirety of the Planning Year rather than attempt to purchase partial-year replacement capacity. According to Suppliers, Wisconsin Power should not be asking the Commission to defray the costs of its business decision.⁴²

31. Suppliers argue that Wisconsin Power has not satisfied its burden of demonstrating that harm will not result if its requested waiver is granted. Suppliers argue that the waiver, if granted, will permit Wisconsin Power to use non-functional resources to satisfy its capacity obligations and, as a result, will result in undue preference for Wisconsin Power and undue discrimination against 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

³⁹ *Id.* at 8.

⁴⁰ *Id.* at 9 (citing Wisconsin Power Request for Waiver at 10-11).

⁴¹ *Id.*

⁴² *Id.* at 10.

requirement,” and recommend that the Commission do the same here.⁴³ Suppliers claim that the capacity from the Nelson Dewey Units will provide a lower reliability value than capacity from resources that will be available for the entirety of the Planning Year and that Wisconsin Power’s request for waiver will harm MISO’s capacity market by suppressing Planning Resource Auction prices and causing other resources, which may otherwise be called on to maintain reliability, to be deprived of capacity revenue.⁴⁴

32. Suppliers contend that the Commission has approved MISO’s annual resource adequacy requirements, and should reject Wisconsin Power’s suggestion that such requirements are unnecessary or that Wisconsin Power is permitted to pick and choose when to comply. Suppliers note that the Nelson Dewey Units will not be available for the winter peak, nor will they be available during the spring, when generation and transmission outages traditionally are scheduled, which can cause unique operating scenarios and stresses on the system.⁴⁵ Suppliers state that the region-wide resource adequacy concerns raised by MISO in opposition to Indianapolis Power’s request for waiver are likely to be even more pressing in the winter peak period.⁴⁶

33. Suppliers argue that Wisconsin Power’s arguments that the reserve margins are adequate during the five-month period at issue are unavailing.⁴⁷ Suppliers state that MISO acts as a pool for resource adequacy purposes and the reliability of the pool is dependent on the regional availability of resources. Suppliers argue that there is no basis for assessing reliability impacts by narrowly looking at one utility or one state in isolation and that such an approach conflicts with Commission precedent.⁴⁸ Suppliers point out that together, these requests for waiver to date cover over 2,500 MW of generation and

⁴³ *Id.* at 10-11 (citing *Mass. Muni. Wholesale Elec. Co.*, 148 FERC ¶ 61,227, at P 14 (2014)).

⁴⁴ *Id.* at 11-12.

⁴⁵ *Id.* at 12 (citing Indianapolis Power Order, 149 FERC ¶ 61,047 (Bay, Comm’r, dissenting) (observing that generation and transmission maintenance outages can create operational challenges)).

⁴⁶ *Id.* at 12-13 (citing MISO, Answer, Docket No. EL14-70-000, at 4 (filed July 25, 2014)).

⁴⁷ *Id.* at 13 (citing Wisconsin Power Request for Waiver at 11-12).

⁴⁸ *Id.* (citing *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 1113 (2006), *on clarification & reh’g*, 119 FERC ¶ 61,076, *on clarification & reh’g*, 120 FERC ¶ 61,271 (2007)).

present an ever increasing threat to the viability of MISO's capacity market and reliability in the interconnected region. Suppliers argue that the Commission should consider the cumulative impact of these requests, particularly because a recent MISO presentation stated that "[z]onal survey results indicate uncertainty as to whether the system will have adequate resources to meet its desired reserve margin in 2016."⁴⁹

34. In response to Wisconsin Power's statement that there will not be any adverse effects on reliability because MISO's Attachment Y reliability study found that, subject to the completion of certain transmission facilities and upgrades, the Nelson Dewey Units could retire at the end of 2015,⁵⁰ 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. Suppliers note that MISO stated that "resources . . . used to meet resource adequacy requirements through the annual resource adequacy construct . . . are considered necessary resources to meet demand."⁵¹ Suppliers therefore argue that Wisconsin Power's reliance on MISO's Attachment Y analysis is misplaced. Further, Suppliers note that Consumers Energy, in its request for waiver in Docket No. ER14-2622-000, stated that MISO's Attachment Y analysis "found that the shutdown of the Classic Seven does not pose a reliability risk."⁵² Suppliers state that the Commission nonetheless denied Consumers Energy's request for waiver, finding that Consumers Energy "has not provided the Commission with additional information needed to more adequately assess the impacts of the waiver at this time."⁵³ Suppliers argue that the same is true here and that the Commission should be exceedingly wary of granting Wisconsin Power's request or any other requests that could jeopardize reliability in the MISO region.⁵⁴

⁴⁹ *Id.* at 14 (citing *Update on MISO 2016 Resource Adequacy Forecast*, Docket No. AD14-17-000, at 4 (filed Sept. 18, 2014), *available at* <http://www.ferc.gov/CalendarFiles/20140918110305-A-3-total.pdf>).

⁵⁰ *Id.* (citing Wisconsin Power Request for Waiver at 13).

⁵¹ *Id.* at 14-15 (citing MISO, Answer, Docket No. EL14-70-000, at 3 (filed July 25, 2014)).

⁵² *Id.* at 15 (citing Consumers Energy, Request for Waiver, Docket No. ER14-2622-000, at 15 (filed Aug. 7, 2014)).

⁵³ *Id.* (citing Consumers Energy Order, 149 FERC ¶ 61,110 at P 28).

⁵⁴ *Id.* at 15-16.

35. Suppliers argue that Wisconsin Power's waiver request is not limited in scope. Suppliers note that Wisconsin Power's request for waiver covers five months, a period that is more than three times as long as that requested by Indianapolis Power. Suppliers argue that a request to be relieved of resource adequacy obligations for over 40 percent of the year cannot be viewed as limited in scope.⁵⁵ Suppliers also argue that there has been a proliferation of waiver requests, each seeking waiver from MISO's resource adequacy requirements because of the implementation of MATS. Suppliers warn that granting Wisconsin Power's requested relief would send the message that waiver can and should be sought where the timing of an environmental or other regulatory obligation does not perfectly coincide with the MISO Planning Year.⁵⁶

36. Suppliers state that Wisconsin Power's request for waiver was not made in good faith. Suppliers stress that any problem that exists here is solely the result of Wisconsin Power's own business decisions and its unwillingness to pay the costs associated with such decisions. Next, Suppliers argue that Wisconsin Power hardly acted in good faith when it tried to convince MISO to adopt unduly preferential Tariff modifications and then, when that effort failed, asked for special dispensation from the Commission in an attempt to achieve the same result. Suppliers also claim that Wisconsin Power's assertion that it acted in good faith by submitting its Attachment Y Notification to MISO is equally unavailing because the notification is required under the Tariff and is intended to accommodate Wisconsin Power's desire to retire the Nelson Dewey Units.⁵⁷

III. Discussion

A. Procedural Matters

37. 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 Organization of MISO States and Iowa Utilities Board given their interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

⁵⁵ *Id.*

⁵⁶ *Id.* at 16-17.

⁵⁷ *Id.* at 17-18.

B. Substantive Matters

38. Wisconsin Power requests one-time waiver of the must-offer requirement and the requirement to purchase replacement capacity under Tariff sections 69A.5 and 69A.3.1.h, respectively, for the period from January 1, 2016 through May 31, 2016. One of the factors the Commission considers in determining whether to grant a waiver is whether the applicant has demonstrated that a concrete problem needs to be remedied. The Commission does not grant waivers lightly, and the petitioner bears the burden of justifying its request. However, based on our review, we find that Wisconsin Power has failed to carry its burden, and we therefore decline to grant Wisconsin Power a waiver of sections 69A.5 and 69A.3.1.h of the Tariff.

39. Wisconsin Power represents that it will satisfy its Planning Reserve Margin Requirement without relying on the Nelson Dewey Units' capacity as a self-supply resource. Wisconsin Power therefore asks for the opportunity to sell the Nelson Dewey Units' capacity in the Planning Resource Auction without having to purchase replacement capacity for the period after the Nelson Dewey Units retire. This would effectively relieve Wisconsin Power 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 worth of capacity through the Planning Resource Auction.

40. We find that Wisconsin Power is in a fundamentally different position than Indianapolis Power, and therefore decline to grant Wisconsin Power 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 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 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.⁵⁸

41. Here, by comparison, Wisconsin Power does not plan to use the Nelson Dewey Units' capacity as a self-supply resource, where its ratepayers might be exposed to unknown and significant replacement capacity costs. Instead, Wisconsin Power seeks to

⁵⁸ Indianapolis Power Order, 149 FERC ¶ 61,047; *see also* DTE Electric Co., 150 FERC ¶ 61,127 (2015); *Consumers Energy Co.*, 150 FERC ¶ 61,125 (2015).

benefit from the sale of the Nelson Dewey Units' capacity to third parties while being relieved of the obligation to deliver on its capacity commitment during the five months 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 Wisconsin Power waiver of sections 69A.5 and 69A.3.1.h of the Tariff.

42. Nonetheless, we recognize that the December 31, 2015 retirement date mandated by the Consent Decree presents challenges for Wisconsin Power and its Nelson Dewey Units. However, the Tariff revisions proposed by MISO in Docket No. ER15-918-000, and accepted in an order issued concurrently,⁵⁹ provide Wisconsin Power relief similar to that which the Commission granted MidAmerican and Duke Indiana in Docket Nos. ER15-199-000 and ER15-592-000, respectively.⁶⁰ In the MISO Tariff Order, the Commission accepts Tariff provisions that give Wisconsin Power the ability to sell capacity bilaterally and to participate in MISO's energy and ancillary services markets for the first seven months of the 2015-2016 Planning Year. This relief therefore provides Wisconsin Power with the appropriate opportunity to obtain revenue for the seven months while the Nelson Dewey Units are operational. Moreover, Wisconsin Power is able to comply with the requirements of both the Consent Decree and the Tariff without being required to procure replacement capacity for the final five months of the 2015-2016 Planning Year.

43. We find that the Commission's findings in the MISO Tariff Order provide Wisconsin Power relief from the misalignment between the Consent Decree retirement deadline and the timeline of the 2015-2016 Planning Year and therefore, on balance, we find that Wisconsin Power has not adequately demonstrated that a concrete problem needs to be remedied. Accordingly, we deny Wisconsin Power's request for waiver.

⁵⁹ *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,222 (2015) (MISO Tariff Order).

⁶⁰ *MidAmerican Energy Co.*, 150 FERC ¶ 61,124 (2015); *Duke Energy Indiana, Inc.*, 150 FERC ¶ 61,126 (2015). While both MidAmerican and Duke Indiana also sought waiver of sections 69A.5 and 69A.3.1 of the Tariff (i.e., the same relief granted to Indianapolis Power, DTE Electric, and Consumers Energy, and requested by Wisconsin Power in this proceeding), the Commission concluded that alternative relief, clarifying that those entities need not offer the units at issue in those proceedings into MISO's 2015-2016 Planning Resource Auction, was appropriate under the facts of those cases.

The Commission orders:

Wisconsin Power's request for waiver is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.