

154 FERC ¶ 61,224  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Public Citizen, Inc. v. Midcontinent Independent System Operator, Inc.	Docket Nos. EL15-70-001
The People of the State of Illinois By Illinois Attorney General Lisa Madigan v. Midcontinent Independent System Operator, Inc.	EL15-71-001
Southwestern Electric Cooperative, Inc. v. Midcontinent Independent System Operator, Inc., Dynegy, Inc., and Sellers of Capacity into Zone 4 of the 2015-2016 MISO Planning Resource Auction	EL15-72-001
Illinois Industrial Energy Consumers v. Midcontinent Independent System Operator, Inc.	EL15-82-001
Midcontinent Independent System Operator, Inc.	ER16-833-000

ORDER ON COMPLIANCE FILING AND REQUESTS FOR REHEARING AND  
CLARIFICATION

(Issued March 18, 2016)

1. On January 29, 2016, Midcontinent Independent System Operator, Inc. (MISO) submitted a filing<sup>1</sup> to comply with the directives in the Commission's order issued on December 31, 2015 in response to four complaints filed regarding, among other things, the outcome of MISO's 2015/16 Planning Resource Auction (Auction) for Local

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<sup>1</sup> MISO, Compliance Filing, Docket No. ER16-833-000 (filed Jan. 29, 2016) (Compliance Filing).

Resource Zone 4 (Zone 4).<sup>2</sup> In the December 31 Order, the Commission required MISO to revise certain provisions of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) related to market mitigation and local clearing requirements.

2. On January 29, 2016, Illinois Industrial Energy Consumers (Industrial Consumers) and the People of the State of Illinois (Illinois Attorney General)<sup>3</sup> and MISO<sup>4</sup> filed requests for clarification or, in the alternative, rehearing of the December 31 Order. On February 1, 2016, Southwestern Electric Cooperative, Inc. (Southwestern)<sup>5</sup> and the Electric Power Supply Association (EPSA)<sup>6</sup> filed requests for rehearing of the December 31 Order.

3. In this order, we accept MISO's Compliance Filing, subject to a further compliance filing. We also grant MISO's request for clarification and Industrial Consumers and Illinois Attorney General's request for clarification with respect to going-forward costs and deny all other requests for clarification and rehearing.

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<sup>2</sup> *Public Citizen, Inc. v. Midcontinent Independent System Operator, Inc.*, 153 FERC ¶ 61,385 (2015) (December 31 Order).

<sup>3</sup> Industrial Consumers and Illinois Attorney General, Request for Clarification or, in the Alternative, Rehearing, Docket Nos. EL15-70-001, EL15-71-001, EL15-72-001, and EL15-82-001 (filed Jan. 29, 2016) (Industrial Consumers and Illinois Attorney General Request for Rehearing).

<sup>4</sup> MISO, Request of Midcontinent Independent System Operator, Inc. for Clarification, or in the Alternative Rehearing, Docket Nos. EL15-70-001, EL15-71-001, EL15-72-001, and EL15-82-001 (filed Jan. 29, 2016) (MISO Request for Rehearing).

<sup>5</sup> Southwestern, Request for Rehearing, Docket Nos. EL15-70-001, EL15-71-001, EL15-72-001, and EL15-82-001 (filed Feb. 1, 2016) (Southwestern Request for Rehearing).

<sup>6</sup> EPSA, Request for Rehearing, Docket Nos. EL15-70-001, EL15-71-001, EL15-72-001, and EL15-82-001 (filed Feb. 1, 2016) (EPSA Request for Rehearing).

## **I. Background**

### **A. Complaints**

4. Four complaints (Complaints) were filed with the Commission in response to the results of MISO's 2015/16 Auction for Zone 4.<sup>7</sup> These Complaints alleged that the 2015/16 Auction results for Zone 4 are unjust and unreasonable, that the results were the product of market manipulation, and that certain Tariff provisions governing the Auction are no longer just and reasonable.

### **B. December 31 Order**

5. In the December 31 Order, the Commission addressed only the portions of the Complaints that challenged, prospectively, Tariff provisions governing the Auction. As discussed in greater detail below, the Commission granted the Complaints in part and found that current Tariff provisions associated with market power mitigation and Capacity Import Limits were no longer just and reasonable for prospective application. The Commission directed MISO to file Tariff revisions to be applied in future Auctions, including the upcoming 2016/17 Auction. The Commission required MISO to file Tariff revisions implementing certain of these provisions within 30 days of the date of the December 31 Order.<sup>8</sup> The Commission denied the Complaints in part regarding changes to zonal boundaries and MISO's stakeholder process.<sup>9</sup>

6. The Commission stated it would continue to consider other issues raised in the Complaints regarding the 2015/16 Auction, such as the need for an evidentiary hearing and the motions to dismiss. With respect to allegations of market manipulation, the Commission stated that the Office of Enforcement is conducting a formal, non-public investigation into whether market manipulation occurred before or during the 2015/16 Auction. The Commission stated that it would determine in a subsequent order whether additional action may be appropriate pending the outcome of the formal investigation.

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<sup>7</sup> Complaints were filed by Public Citizen (Docket No. EL15-70-000), Illinois Attorney General (Docket No. EL15-71-000), Southwestern (Docket No. EL15-72-000), and Industrial Consumers (Docket No. EL15-82-000).

<sup>8</sup> December 31 Order, 153 FERC ¶ 61,385 at PP 93, 98, 99, 100, 148, 149. The Commission also required MISO to file additional Tariff revisions within 90 days of the date of the December 31 Order. These additional Tariff revisions will be implemented in time for the 2017/18 Auction. *Id.* at P 97.

<sup>9</sup> *Id.* at P 3.

Further, the Commission stated that the findings in the December 31 Order do not prejudice the findings that might be made in the investigation or in any future Commission order in these dockets.<sup>10</sup>

7. In the December 31 Order, the Commission found that the record showed that certain Tariff provisions governing market mitigation measures were no longer just and reasonable. Specifically, the Commission found that recent changes to PJM Interconnection, LLC's (PJM) capacity market construct made basing MISO's Initial Reference Level on the opportunity to sell capacity to PJM problematic going forward because, as PJM's capacity performance requirements continue to be phased in, MISO capacity resources must now satisfy additional requirements to sell capacity into PJM.<sup>11</sup> The Commission also found that the amount of MISO capacity that can be sold into PJM is significantly limited by the availability of transmission service. Therefore, the Commission concluded that, under these circumstances, it is not appropriate to continue to base the Initial Reference Level, applicable to all MISO resources, on the opportunity cost of selling capacity to PJM. The Commission also found that the record did not provide a more suitable alternative basis for estimating an opportunity cost that could be used in the Initial Reference Level.<sup>12</sup>

8. As a result of these findings, the Commission directed MISO to revise certain market power mitigation provisions in the Tariff. With respect to Tariff section 64.1.4.e, which provided that Initial Reference Levels for capacity supply offers will be based on the estimated opportunity cost of exporting capacity to a neighboring region, the Commission required MISO to replace Tariff language that sets the Initial Reference Level for capacity "based on the estimated opportunity cost of exporting capacity to a neighboring region" with language that sets the Initial Reference Level for capacity at \$0/MW-day. The Commission also required MISO to remove from its Tariff sections 64.1.4.e.i and 64.1.4.e.ii, which addressed the implementation of that provision. These changes required all resources that wish to submit offers that exceed the Conduct Threshold of 10 percent of the Cost of New Entry to request facility-specific reference levels, supported by evidence of their going-forward costs, as defined in the Tariff.<sup>13</sup>

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<sup>10</sup> *Id.* at P 4.

<sup>11</sup> *See PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208 (2015) (Capacity Performance Order).

<sup>12</sup> December 31 Order, 153 FERC ¶ 61,385 at PP 86-87.

<sup>13</sup> *See* MISO, FERC Electric Tariff, Module D, § 64.1.4.f.i (30.0.0); December 31 Order, 153 FERC ¶ 61,385 at P 93.

9. The Commission directed MISO to revise section 64.2.1.e of the Tariff to set the Impact Threshold for mitigation of capacity offers to \$0/MW-day in Zones where the import constraint binds. The Commission also directed MISO to revise section 64.1.2.d of its Tariff to set the Conduct Threshold for resources that use facility-specific reference levels to \$0/MW-day. The Commission further ordered MISO to revise its Tariff to require that, in order for opportunity costs to be included in a facility-specific reference level, the opportunities must be legitimate and verifiable for the individual resource. The Commission directed MISO to revise section 64.1.4.f.i(b) of the Tariff to require that market participants provide documentation that demonstrates the availability of the specific opportunity to sell capacity outside of MISO, including any counter-party, and demonstrate that there is adequate available transmission service. The Commission also directed MISO to revise its Tariff to specify that the Independent Market Monitor (Market Monitor) must respect the limits of that opportunity, such as the amount of available transmission service. The Commission directed MISO to file these revisions in a compliance filing within 30 days of the date of the December 31 Order.<sup>14</sup>

10. The Commission also directed MISO to propose Tariff revisions allowing facility-specific reference levels to include default technology-specific avoidable costs.<sup>15</sup> The Commission stated that default technology-specific avoidable costs would be an estimate of the non-fuel costs of operating a generation resource, and these costs would be a component of facility-specific going-forward costs, which would also include facility-specific capital expenditures and be reduced by the resource's estimated MISO energy and ancillary services revenues. Accordingly, market participants seeking to use facility-specific reference levels will have the option to rely on the default technology-specific avoidable costs rather than facility-specific avoidable costs. The Commission also found that allowing facility-specific reference levels to include default technology-specific avoidable costs would provide more transparency and less administrative burden than requiring all requests for facility-specific reference levels to provide information on their facility-specific avoidable costs. The Commission directed MISO to file these revisions in a compliance filing within 90 days of the date of the December 31 Order.<sup>16</sup>

11. In the December 31 Order, the Commission also found that the Tariff provisions MISO relied upon to calculate Capacity Import Limits understate the impact that counter-flows from capacity exports out of MISO have on a Zone's Capacity Import Limit, and

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<sup>14</sup> December 31 Order, 153 FERC ¶ 61,385 at PP 98-100.

<sup>15</sup> *See, e.g.*, PJM, Intra-PJM Tariffs, OATT, Attachment DD, §§ 6.7 and 6.8 (11.0.0).

<sup>16</sup> December 31 Order, 153 FERC ¶ 61,385 at PP 95-97.

therefore were unjust and unreasonable. The Commission found that MISO's then-current approach for calculating Capacity Import Limits failed to accurately reflect the counter-flows created by capacity exports committed to neighboring regions, such as PJM.<sup>17</sup> The Commission found that, under MISO's methodology, capacity exports would reduce a Zone's Capacity Import Limit even though the First Contingency Incremental Transfer Capability modeling dictates that the counter-flow from such capacity exports should increase the Capacity Import Limit.<sup>18</sup> The Commission therefore concluded that the then-current methodology used by MISO was unjust and unreasonable because it could underestimate the impact that counter-flows from capacity exports have on the Capacity Import Limit.<sup>19</sup>

12. The Commission found the recommendation proposed by the Market Monitor to be a just and reasonable approach to calculate Capacity Import Limits. The Market Monitor recommended adding back the amount of capacity exports included in the Base Power Transfer component, thereby eliminating the negative impact that those capacity exports have on the calculation of the Capacity Import Limits.<sup>20</sup> The Commission stated that this would directly resolve the deficiency in MISO's current approach without affecting any of the modeling used by MISO because the proposed calculation would not change the First Contingency Incremental Transfer Capability or the analysis therein that relies on relative shift factors on limiting constraints. The Commission therefore directed MISO to work with the Market Monitor to file necessary Tariff revisions to implement this recommendation on compliance within 30 days of the date of the December 31 Order, to be implemented in time for the 2016/17 Auction. The Commission stated that if MISO had concerns that this directive may result in adverse impacts on reliability, MISO could submit in its compliance filing a demonstration of these concerns and any recommended alternative proposal to the Commission's directive, to be implemented

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<sup>17</sup> MISO Market Monitor Post-Technical Conference Comments at 8.

<sup>18</sup> The Market Monitor notes the possibility of this result by explaining that, under the current approach, the Base Power Transfer may cause the Capacity Import Limit to be higher or *lower*, depending on which constraints it affects. MISO Market Monitor Post-Technical Conference Comments at 9.

<sup>19</sup> December 31 Order, 153 FERC ¶ 61,385 at PP 145-147.

<sup>20</sup> The Market Monitor explained that this recommendation "would be moving towards having the [Capacity Import Limit] reflect where you would not be deducting the export, you would be treating the export as if it's going to facilitate the ability to import more, so in that case you have a bigger [Capacity Import Limit] because the capacity export is scheduled." Technical Conference, Dr. Patton, Tr. 146:9-14.

prior to the 2016/17 Auction. Finally, although the Commission declined to require MISO to make any additional changes to its methodology for calculating Capacity Import Limits and Local Clearing Requirements, it encouraged MISO and its stakeholders to continue to examine the methodologies it uses to calculate these and other parameters and to make a subsequent filing, if appropriate, to implement any future changes.<sup>21</sup>

## **II. Notice of Filing and Responsive Pleadings**

13. Notice of the Compliance Filing was published in the *Federal Register*, 81 Fed. Reg. 6252 (2016), with protests and interventions due on or before February 19, 2016. Timely motions to intervene were filed by Sierra Club, Alliant Energy Corporate Services, Inc., Industrial Consumers, Wabash Valley Power Association, Inc., NRG Companies,<sup>22</sup> MidAmerican Energy Company, Illinois Commerce Commission, Consumers Energy Company, Electric Power Supply Association, American Municipal Power, Inc., Entergy Services, Inc.,<sup>23</sup> Ameren Services Company,<sup>24</sup> and Illinois Attorney General. Arkansas Public Service Commission, Council of the City of New Orleans, Louisiana, and the Public Service Commission of Wisconsin filed notices of intervention. Industrial Consumers and Illinois Attorney General filed a joint protest and request for expedited action. Sierra Club filed a protest and request for expedited action. Wisconsin Electric Power Company (Wisconsin Electric) and Wisconsin Public Service Corporation, Wisconsin TDUs,<sup>25</sup> and Southwestern each filed a motion to intervene, protest, and request for expedited action.

14. Sierra Club filed an answer to MISO's request for clarification in which it incorporates by reference the arguments it raised in its protest to the Compliance Filing

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<sup>21</sup> December 31 Order, 153 FERC ¶ 61,385 at PP 148-151.

<sup>22</sup> For purposes of this filing, NRG Companies are NRG Power Marketing LLC and GenOn Energy Management, LLC.

<sup>23</sup> Entergy Services, Inc. moves to intervene in this proceeding on behalf of Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc.

<sup>24</sup> Ameren Services Company is filing on behalf of Ameren Illinois Company, Ameren Transmission Company of Illinois, and Union Electric Company d/b/a Ameren Missouri.

<sup>25</sup> Wisconsin TDUs are Madison Gas and Electric Company and WPPI Energy.

and requests that the Commission deny MISO's request for clarification.<sup>26</sup> MISO filed a motion for leave to answer and answer to protests of its Compliance Filing and to the request for the Commission to adopt alternative Tariff changes.

### **III. Discussion**

#### **A. Procedural Matters**

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), notices of intervention and timely, unopposed motions to intervene in Docket No. ER16-833-000 serve to make the entities that filed them parties to that proceeding.

16. Pursuant to Rule 213 (a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.213(a)(2) (2015), we will accept the answers of Sierra Club and MISO because they have provided information that assisted us in our decision-making process.

#### **B. Substantive Matters**

##### **1. Compliance Issues**

##### **a. Market Mitigation**

##### **i. MISO's Compliance Filing**

17. MISO states that it has complied with the Commission's directives by revising the Tariff in the four areas as required by the Commission. First, MISO states that it struck the language in section 64.1.4.e, as directed by the Commission, removed sections 64.1.4.e.i and 64.1.4.e.ii, and replaced language establishing that the Initial Reference Level for capacity is "based on the estimated opportunity cost of exporting capacity to a neighboring region" with language establishing that it is "set at \$0/mw-day." Second, MISO states that it addressed the Commission's directive to reduce the Impact Threshold to \$0/MW-day where constraints are binding by adding new language to section 64.2.1.e to make the Impact Threshold in Local Resource Zones where the import constraint binds "equal to \$0/MW-day." Third, MISO states that it revised section 64.1.2.d to add the following language regarding Generation Resources with facility-specific reference levels: "If the Zonal Resource Credit Offer is associated with a Generation Resource that has a facility-specific reference level pursuant to section 64.1.4.f, the IMM shall use a threshold of \$0/MW-day above the facility-specific

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<sup>26</sup> Sierra Club Answer at 1-2.

reference level.” Finally, MISO states that it revised section 64.1.4.f.i(b) to include the following language effectuating the Commission’s directive regarding this section:

the net opportunity costs of foregone sales outside of MISO, net of costs that would have been incurred as a result of the foregone sale if it had taken place. To verify the opportunity costs of foregone sales outside of MISO, a Market Participant must provide documentation demonstrating the availability of a specific external opportunity, including any counter-party, as well as a demonstration of adequate transmission service. The IMM shall respect the limits of such an external opportunity, such as the amount of available transmission service.<sup>27</sup>

## ii. Protests

18. Industrial Consumers and Illinois Attorney General argue that although the Compliance Filing specifies that the Market Monitor must take certain circumstances into account in determining facility-specific opportunity costs, the Compliance Filing is deficient because it does not specify any procedures for how the Market Monitor will calculate those costs. According to Industrial Consumers and Illinois Attorney General, the proposed Tariff revisions could be interpreted as giving the Market Monitor discretion in how to apply the Tariff criteria related to those costs, which they say would effectively give the Market Monitor authority to set rates.<sup>28</sup>

19. Industrial Consumers and Illinois Attorney General assert that the Commission should require MISO to revise the Tariff to include the processes that the Market Monitor must follow to ensure that any external sales opportunities that a capacity supplier uses as the basis for establishing facility-specific reference levels are legitimate lost opportunities. Specifically, Industrial Consumers and Illinois Attorney General argue that the Market Monitor should be required to evaluate such external sales opportunities on a competitive basis, by stacking them starting with the highest level of opportunity costs requested by a supplier until the maximum level of exports from MISO is reached, given actual transmission constraints between MISO and the relevant external market. To effectively recognize transmission constraints, Industrial Consumers and Illinois Attorney General maintain that the Market Monitor should terminate the consideration of export opportunities in the calculation of facility-specific reference levels once the volume of export opportunities exceeds the available transmission export capacity from MISO to the relevant market or the available transmission import capacity of the relevant

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<sup>27</sup> Compliance Filing at 3-4.

<sup>28</sup> Industrial Consumers and Illinois Attorney General Protest at 7-8.

export market.<sup>29</sup> According to Industrial Consumers and Illinois Attorney General, their proposed modifications are consistent with the procedures contained in Attachment DD.6 of the PJM Open Access Transmission Tariff (OATT), and the Commission should require MISO to reflect a comparable level of detail in the Tariff in a revised compliance filing.<sup>30</sup>

20. Sierra Club adopts and incorporates by reference certain arguments raised by Industrial Consumers and Illinois Attorney General, and urges the Commission to grant their requested relief on this issue.<sup>31</sup> Southwestern adopts and incorporates by reference the arguments raised by Industrial Consumers and Illinois Attorney General, and urges the Commission to grant their requested relief on this issue.<sup>32</sup>

**iii. Answer**

21. With respect to assertions from Industrial Consumers and Illinois Attorney General that MISO's Compliance Filing is deficient because it fails to specify how the Market Monitor should calculate facility-specific opportunity costs, MISO states that the following proposed revisions to section 64.1.4.f.i(b) of the Tariff already address this concern to some extent:

To verify the opportunity costs of foregone sales outside of MISO, a Market Participant must provide documentation demonstrating the availability of a specific external opportunity, including any counter-party, as well as a demonstration of adequate transmission service. The IMM shall respect the limits of such an external opportunity, such as the amount of available transmission service.<sup>33</sup>

According to MISO, its Compliance Filing fully implements the Commission's directive that MISO revise section 64.1.4.f.i(b) of the Tariff to require market participants to

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<sup>29</sup> *Id.* at 8.

<sup>30</sup> *Id.* at 8-10 (citing PJM, Intra-PJM Tariffs, OATT, Attachment DD, § 6.7(d)(ii) (11.0.0)).

<sup>31</sup> Sierra Club Protest at 17 (citing Industrial Consumers and Illinois Attorney General Protest at 7-10).

<sup>32</sup> Southwestern Protest at 6-7.

<sup>33</sup> Compliance Filing at 3-4.

provide documentation demonstrating the legitimacy of a lost sales opportunity, and to demonstrate adequate transmission capacity to complete the transaction. MISO adds that, in order to meet those requirements, the Market Monitor will have to verify the legitimacy of an opportunity by requiring documentation.<sup>34</sup>

22. With respect to arguments raised by Industrial Consumers and Illinois Attorney General that MISO should be directed to modify its Tariff to require a competitive process for evaluating forgone sales opportunities, MISO asserts that such a process is unsupported, beyond the Commission's directives, and should be rejected. In addition, MISO states that it is unclear what the parameters would be for such a competitive process and how the Market Monitor would evaluate the opportunity costs on a comparative basis. MISO adds that the Market Monitor has authorized MISO to state that he recommends rejecting this because, depending upon market participant behavior, such a process can lead to inefficiencies, and it would be better to rely on the Market Monitor to proceed with a reasonable implementation that avoids unintended consequences. MISO concludes that because neither the Commission nor stakeholders have considered the merits and potential unintended consequences of such a process in this proceeding, the Commission should require Industrial Consumers and Illinois Attorney General to make any such proposal through MISO's stakeholder process.<sup>35</sup>

#### iv. Commission Determination

23. We accept MISO's Compliance Filing with respect to its Tariff revisions addressing the Commission's directives regarding market mitigation, subject to a further compliance filing. We find that MISO has complied with the Commission's directives to revise section 64.1.4.e of the Tariff to: (1) set the Initial Reference Level in the Auction

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<sup>34</sup> MISO Answer at 14-15.

<sup>35</sup> MISO Answer at 15-17 (citing *Consolidated Edison Company of New York, Inc.*, 95 FERC ¶ 61,216, at 61,719 (2001) ("We strongly encourage market participants to use the stakeholder process, especially in this type of situation, i.e., where a market participant seeks to modify market measures that impact all market participants"); *New England Power Pool*, 107 FERC ¶ 61,135, at PP 20, 24 (2004) (declining to accept changes proposed for the first time in a FERC proceeding by an entity that participated in the stakeholder process because the "suggested revisions have not been vetted through the stakeholder process and could impact various participants"); *N.Y. Indep. Sys. Operator, Inc.*, 126 FERC ¶ 61,046, at PP 53-54 (2009) (directing that a proposal be "presented to and discussed among ... stakeholders and filed as a section 205 proposal, not unilaterally presented to the Commission"))).

to \$0/MW-day; and (2) remove sections 64.1.4.e.i and 64.1.4.e.ii. We also find that MISO has complied with the Commission's directive to revise section 64.2.1.e of the Tariff to set the Impact Threshold for mitigation of capacity offers to \$0/MW-day in Zones where the import constraint binds. Additionally, we find that MISO has complied with the Commission's directive to revise section 64.1.2.d of the Tariff to set the Conduct Threshold for resources that use facility-specific reference levels to \$0/MW-day.

24. Finally, we find that MISO has generally complied with the Commission's directives to revise section 64.1.4.f.i of the Tariff to: (1) require that market participants provide documentation demonstrating both the availability of a specific external opportunity (including any counter-party) as well as the fact that adequate transmission capacity is available; and (2) specify that the Market Monitor must respect the limits of that opportunity, such as the amount of available transmission service.

25. With respect to the first directive related to section 64.1.4.f.i, we find that MISO's proposed Tariff revisions ensure that the Market Monitor has the necessary documentation to verify the legitimacy of the cost data or other information submitted by a market participant to support external opportunities, pursuant to section 64.1.4.h of the Tariff. However, to make it clearer that it is the Market Monitor's responsibility to verify opportunity costs used in facility-specific reference levels, we direct MISO to make the following revisions to one sentence of MISO's proposed language in section 64.1.4.f.i, in a compliance filing due within 30 days of the date of this order:

To allow the Market Monitor to verify the opportunity costs of foregone sales outside of MISO, a Market Participant must provide the Market Monitor with documentation demonstrating the availability of a specific external opportunity, including any counter-party, as well as a demonstration of adequate transmission service.

With respect to the second directive, we find that MISO's proposed revisions comply with the Commission's directives requiring the Market Monitor to respect the limits of such an opportunity, including the amount of available transmission service.

26. We disagree with Industrial Customers and Illinois Attorney General's argument that the Compliance Filing is deficient because it does not specify the procedures by which the Market Monitor will determine lost opportunities for purposes of calculating facility-specific reference levels. Industrial Consumers and Illinois Attorney General do not argue that the Commission's directives were unjust and unreasonable. Rather, they assert that the Commission should require MISO to go beyond the Commission's directives and institute more detailed procedures than the Commission found to be necessary to ensure that facility-specific opportunity costs would be evaluated in a just and reasonable manner. Specifically, the Commission required only that MISO establish a requirement that market participants provide documentation demonstrating both the availability of a specific external opportunity, that adequate transmission capacity is

available, and that the Market Monitor must respect the limits of that opportunity.<sup>36</sup> The Commission did not require MISO to specify the procedures by which it will determine the lost opportunities.

27. As discussed below, we deny the request of Industrial Consumers and Illinois Attorney General that we clarify that the December 31 Order required MISO to propose more detailed procedures.<sup>37</sup> Therefore, we find that the Compliance Filing is not deficient in this regard. In any event, we affirm that the Tariff revisions directed in the December 31 Order contain an appropriate level of detail regarding the Market Monitor's review of lost opportunity costs and decline to require additional Tariff revisions. We also agree with MISO that the Tariff language it proposed requiring the Market Monitor to respect the limits of external opportunities, including the amount of available transmission service, addresses Industrial Consumers and Illinois Attorney General's underlying concern that the sum of the individual opportunities granted by the Market Monitor might exceed the total size of the available opportunity.

28. Finally, we disagree that the Market Monitor would effectively be setting rates when it evaluates opportunity costs in the context of developing facility-specific reference levels. The Tariff language is clear as to what the Market Monitor must consider when evaluating the legitimacy of a lost opportunity in the development of a facility-specific reference level. Such reference levels reflect the cost of such an opportunity, and are not rates in and of themselves, but are rather components of MISO's market power mitigation process in the Auction.

**b. Local Requirements**

**i. MISO's Compliance Filing**

29. MISO states that it has complied with the Commission's directive by working with the Market Monitor to develop processes and Tariff revisions that implement the Market Monitor's recommendation with respect to local requirements without creating reliability issues. MISO states that simply adding the exports in Base Power Transfer to the Capacity Import Limit could allow a single export to increase the Capacity Import Limit past the actual transfer limit of the system. MISO therefore proposes to amend its processes by revising: (1) the Capacity Import Limit calculation to remove the impacts of exports; and (2) the Local Clearing Requirement calculation to include the benefits of

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<sup>36</sup> December 31 Order, 153 FERC ¶ 61,385 at P 100.

<sup>37</sup> *Infra* P 87.

exporting units under MISO's functional control in supporting local resource requirements.<sup>38</sup>

30. First, MISO explains that it has revised the calculation of Capacity Import Limits to remove the impact of capacity exports from MISO that serve non-MISO capacity commitments. MISO states that Capacity Import Limits are calculated by adding "the base interchange, or the net amount of firm long term transmission service imports and exports into the MISO region, and an incremental transfer capability."<sup>39</sup> Under that formulation, MISO states that exports decrease the base interchange "on a one-to-one basis...[and] [e]xport transactions also tend to increase the incremental transfer capability, although the amount of the impact on the incremental transfer capability will depend on the impact of a given export on the constrained element for the transfer."<sup>40</sup> Therefore, MISO proposes to remove the impacts of exports from the Capacity Import Limit as noted in the following formula:

$$CIL_{new}: CIL_{original} + Exports - Impact\ on\ incremental\ transfer\ capability$$

The Market Monitor does not oppose MISO's proposed adjustment to the Capacity Import Limit and states that MISO would ideally calculate the Capacity Import Limit from a Base Power Flow model with no imports or exports to neighboring control areas. The Market Monitor explains that MISO's proposed adjustment to the Capacity Import Limit attempts to achieve this for the upcoming 2016/17 Auction without rerunning its prior power flow analysis. The Market Monitor states that MISO's proposed adjustment to the Capacity Import Limit is reasonable and that, in future years, the adjustment should not be necessary because the Base Power Flow model can be developed without capacity exports.<sup>41</sup>

31. Second, to recognize the contribution capacity exports can make in terms of satisfying local or regional reliability requirements, MISO proposes to reduce each Zone's Local Clearing Requirement by the amount of capacity under MISO's functional control that is exported outside of MISO's footprint (i.e., non-pseudo-tied exports). According to MISO, the formula noted below properly accounts for the contribution exports can make to the Local Clearing Requirement because "[t]he key component to

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<sup>38</sup> Compliance Filing at 4-6.

<sup>39</sup> *Id.* at 5 (citing Rauch Aff. at 5).

<sup>40</sup> *Id.* at 5 (citing Rauch Aff. at 6).

<sup>41</sup> *Id.*, Patton Aff. ¶ 10.

[Local Clearing Requirements] is not where resources are committed but their location. As such, a resource that is exporting outside the system can still support local resource needs to the extent that MISO has dispatch control over the resource, which will allow the use of that resource to meet the peak load needs of the [Local Resource Zone].”<sup>42</sup> MISO proposes the following formula to calculate Local Clearing Requirements:<sup>43</sup>

$$LCR = LRR - CIL - \text{non-pseudo-tied exports}$$

32. The Market Monitor states that MISO appropriately limits its proposed adjustment to the Local Clearing Requirement to non-pseudo tied exports because MISO does not have dispatch control over pseudo-tied exports. The Market Monitor states that MISO’s proposal to change the Local Clearing Requirement formula fully addresses the Market Monitor’s recommendation.<sup>44</sup> MISO’s proposed Local Clearing Requirement formula includes a reduction of non-pseudo-tied exports. MISO asserts that it loses functional control of a resource located within MISO when the exporting resource makes a pseudo-tie arrangement with other RTOs/ISOs, such as PJM. MISO states that the Commission directed MISO to adopt the Market Monitor’s recommendation with respect to local requirement calculations because exporting resources “will be under MISO’s dispatch control and can be committed in instances of capacity constraints.”<sup>45</sup> However, since MISO does not have dispatch control over pseudo-tied resources, MISO states that such resources “should be excluded from consideration in supporting resource adequacy needs.”<sup>46</sup> MISO explains that decreasing a Zone’s Local Clearing Requirement by all exporting resources without adjusting for these pseudo-tied resources would overstate system capabilities and create a reliability issue. MISO adds that the issue of pseudo-tie arrangements has been the subject of broader stakeholder discussions, and that MISO is currently in discussions with PJM to obtain limited dispatch and commitment control over pseudo-tied resources in certain limited circumstances.<sup>47</sup>

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<sup>42</sup> *Id.* at 5 (citing Rauch Aff. at 10).

<sup>43</sup> *Id.* at 5. The Local Clearing Requirement values will be updated prior to the Auction to include the finalized Capacity Import Limits.

<sup>44</sup> *Id.*, Patton Aff. ¶ 7.

<sup>45</sup> *Id.* at 6 (citing December 31 Order, 153 FERC ¶ 61,385 at P 134).

<sup>46</sup> *Id.* at 6 (citing Rauch Aff. at 11).

<sup>47</sup> *Id.* at 6.

33. MISO states that, as directed by the Commission, the revised Capacity Import Limit and Local Clearing Requirement values will be shared with stakeholders no less than 30 days prior to the 2016/17 Auction.<sup>48</sup> Additionally, MISO states that these values may be further updated, as required, based on the results of new pseudo-tied units or capacity exports from the PJM third incremental auction.<sup>49</sup> MISO adds that any update to these values may drive subsequent revisions to market participant offers, including revisions to Fixed Resource Adequacy Plans.<sup>50</sup>

**ii. Protests**

34. As an initial matter, Industrial Consumers and Illinois Attorney General and Sierra Club argue that the issue of pseudo-tied generation resources raised in the Compliance Filing came too late in this proceeding because neither MISO nor the Market Monitor raised it as a reliability issue with respect to the Capacity Import Limits and Local Clearing Requirements issues in any pleadings or testimony in these proceedings.<sup>51</sup> Industrial Consumers and Illinois Attorney General state that, although the Compliance Filing relies upon the fact that the December 31 Order notes that Dr. Patton had stated that “an exported resource...will be under MISO’s dispatch control and can be committed in instances of capacity constraints,” this statement is merely the Commission’s summary of the Post-Technical Conference Comments.<sup>52</sup> Industrial Consumers and Illinois Attorney General and Sierra Club argue that the determination section of the December 31 Order does not mention MISO dispatch control over exported capacity resources and instead focuses on the counter-flow provided from capacity exports and the proper reflection of that counter-flow in Capacity Import Limit values.<sup>53</sup> Industrial Consumers and Illinois Attorney General and Sierra Club maintain that nowhere in MISO’s pleadings does MISO rely on dispatch control over generation resources that are

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<sup>48</sup> *Id.* at 7 (citing December 31 Order, 153 FERC ¶ 61,385 at P 149).

<sup>49</sup> *Id.* at 7 (citing Rauch Aff. at 12).

<sup>50</sup> *Id.* at 7.

<sup>51</sup> Industrial Consumers and Illinois Attorney General Protest at 5; Sierra Club Protest at 9.

<sup>52</sup> Industrial Consumers and Illinois Attorney General Protest at 5 (citing December 31 Order, 153 FERC ¶ 61,385 at P 134).

<sup>53</sup> *Id.* at 6; Sierra Club Protest at 9 (both citing December 31 Order, 153 FERC ¶ 61,385 at PP 145-148).

exporting capacity as a prerequisite to reflecting the counter-flow from such exports in either Capacity Import Limit or Local Clearing Requirement values.<sup>54</sup> Sierra Club adds that MISO and the Market Monitor should therefore be precluded from raising these issues now.<sup>55</sup>

35. Industrial Consumers and Illinois Attorney General argue that the Compliance Filing is deficient because it does not contain any Tariff changes to reflect export-related counter-flow in Capacity Import Limit calculations as required by the Commission. Rather, Industrial Consumers and Illinois Attorney General assert that MISO focused on refining Capacity Import Limits as a total transfer capability value and modifying its Local Clearing Requirement calculations. Industrial Consumers and Illinois Attorney General assert that the Commission's directive required that the Compliance Filing must address the Capacity Import Limit calculation, but that it may include an alternative if MISO identifies a reliability issue.

36. With respect to reliability issues, Industrial Consumers and Illinois Attorney General argue that MISO has no basis for assuming that all pseudo-tied generation in the MISO region will not be operating during MISO's peak load periods, and MISO's conclusion that it cannot assume any counter-flow benefit from any pseudo-tied generation in the MISO region is unjust and unreasonable.<sup>56</sup> According to Industrial Consumers and Illinois Attorney General, of the 2,320 MW of capacity committed to be exported from MISO to PJM as of the beginning of the 2016/17 Planning Year, 2,061 MW will be pseudo-tied to PJM. Industrial Consumers and Illinois Attorney General assert that when MISO experiences its annual peak system demand, PJM is likely to at least be experiencing very high system demand conditions.<sup>57</sup> Sierra Club states that in the last three years, the MISO system coincident peak and the PJM system coincident peaks occurred on the same day.<sup>58</sup> Sierra Club also asserts that from 2009 through 2014, at the time of MISO's three highest peak hours of the year, PJM's system demand was on

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<sup>54</sup> Industrial Consumers and Illinois Attorney General Protest at 6; Sierra Club Protest at 9-10.

<sup>55</sup> Sierra Club Protest at 10.

<sup>56</sup> Industrial Consumers and Illinois Attorney General Protest at 4-5.

<sup>57</sup> *See Id.*, Exhibit No. IIEC-1 at 12-14 (citing Attachments 3-5).

<sup>58</sup> Sierra Club Protest at 14 (citing Fagan Aff. ¶ 25).

average approximately 94 percent of the PJM annual peak and never less than approximately 85 percent of the PJM system's annual peak demand.<sup>59</sup>

37. Industrial Consumers and Illinois Attorney General observe that, according to Mr. Dauphinais, MISO incorrectly concludes that MISO's Capacity Import Limit values will be overstated if it complied with the Commission's directive. According to Mr. Dauphinais, MISO's Capacity Import Limit values should be calculated as first contingency *incremental* total transfer capability with respect to capacity exports as the Commission required, not as the first contingency *total* transfer capability. Further, Mr. Dauphinais argues that MISO's alleged reliability problem is overstated and that MISO's alternative proposal, which only counts non-pseudo tied capacity exports toward reducing Local Clearing Requirement values, unnecessarily derates pseudo-tied capacity exports to zero.<sup>60</sup>

38. Industrial Consumers and Illinois Attorney General assert that the Commission should reject the Compliance Filing and instead adopt revisions to section 68A.4 of the Tariff to state that the Capacity Import Limit values will be calculated as incremental transfer capability plus base interchange plus the capacity exports that are included in base interchange, and that the Capacity Import Limit values will be updated if needed prior to the Auction due to changes to firm capacity commitments from MISO resources to neighboring regions.<sup>61</sup> Alternatively, Industrial Consumers and Illinois Attorney General state that the Commission should adopt revisions to sections 68A.4 and 68A.6 of the Tariff to read that the Capacity Import Limit values and Local Clearing Requirement values will be updated if needed prior to the Auction due to changes to firm capacity commitments from MISO resources to neighboring regions, and that the Local Clearing Requirements formula should be updated to include an adjustment to reflect pseudo-tied capacity exports.<sup>62</sup>

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<sup>59</sup> *Id.* at 14.

<sup>60</sup> Industrial Consumers and Illinois Attorney General Protest at 6-7 (citing Dauphinais Aff.).

<sup>61</sup> *Id.* at 7 (citing Exhibit No. IIEC-1 (Attachment 1)).

<sup>62</sup> *Id.* at 7 (citing Exhibit No. IIEC-1 (Attachment 6)).

39. Southwestern adopts and incorporates by reference the arguments raised by Industrial Consumers and Illinois Attorney General, and urges the Commission to grant their requested relief on this issue.<sup>63</sup>

40. Similarly, Sierra Club argues that MISO should be ordered to follow the Commission's directives from the December 31 Order and make changes to the Capacity Import Limit calculation that recognize counter-flow from exports on a one-to-one basis. Sierra Club argues that although MISO claims that a stand-alone adjustment to the Capacity Import Limit calculation, as directed by the Commission, would create a reliability issue, MISO has not established that there could be a reliability issue if the December 31 Order is implemented.<sup>64</sup>

41. Sierra Club asserts that, with respect to MISO's proposed revision to the Capacity Import Limit formula, there is no need to subtract the impact on incremental transfer capability because the December 31 Order should be implemented as written. If the Commission finds that such an adjustment is necessary, Sierra Club states that it does not object in principle to the Capacity Import Limit changes for the upcoming Auction because they at least partially comply with the December 31 Order by factoring some of the counter-flow from exports into the Capacity Import Limit calculation while also maintaining reliability.<sup>65</sup>

42. According to Sierra Club, the proposed revisions to the Capacity Import Limit would be undermined by MISO's claim that it must also adjust the Local Clearing Requirement to completely exclude counter-flow from pseudo-tied generators. Sierra Club explains that Capacity Import Limits and Local Clearing Requirements have an inverse relationship with each other.<sup>66</sup> Sierra Club states that the net effect of MISO's proposal will be to increase the Capacity Import Limit while retaining what it says are unnecessarily high Local Clearing Requirements numbers, thereby defeating the purpose of increasing the Capacity Import Limit in the first place. Sierra Club argues that unless the Local Clearing Requirements are also reduced, MISO will still be requiring too much generation to be physically located in each Zone, causing unjust and unreasonable Auction Clearing Prices. As a solution, Sierra Club proposes requiring MISO to use its

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<sup>63</sup> Southwestern Protest at 6-7.

<sup>64</sup> Sierra Club Protest at 5-6 (citing Compliance Filing, Rauch Aff. at 8-10; Industrial Consumers and Illinois Attorney General Protest, Dauphinais Aff. at 7-10).

<sup>65</sup> *Id.* at 7-8 (citing Fagan Aff. ¶ 11).

<sup>66</sup> *Id.* at 8 (citing Fagan Aff. ¶ 9).

new Capacity Import Limit methodology, and use the new Capacity Import Limit number in the current Local Clearing Requirement calculation.<sup>67</sup>

43. Sierra Club further asserts that MISO can rely upon pseudo-tied units located within a Zone to satisfy the Zone's Local Clearing Requirement because resources do not need to be under MISO's direct dispatch control to contribute to resource adequacy or system needs.<sup>68</sup> According to Sierra Club, these resources will likely be running when MISO needs resources, but even if they are not, PJM could direct operation of a capacity resource physically located in a MISO Zone in response to a reliability request from MISO.<sup>69</sup> Sierra Club argues that this is a simple matter of coordination across RTO seams. Sierra Club maintains that both MISO and the Market Monitor acknowledge that such capability could be possible if the proper agreements were in place, and MISO and PJM are currently working toward coordination in this area.<sup>70</sup> Sierra Club requests that the Commission direct MISO to resolve this administrative barrier prior to the 2016/17 Planning Year, and if final, formal agreements between MISO and PJM cannot be executed in time for the 2016/17 Auction, the Commission should direct MISO to reach preliminary agreements that would allow pseudo-tied resources in MISO that clear in the PJM RPM markets to be available for operation upon a request by MISO if needed for reliability purposes.<sup>71</sup>

44. Sierra Club also argues that MISO's claim that pseudo-tied resources should be ignored when determining Local Clearing Requirements implies that none of these resources will be operating at times of high demand. According to Sierra Club, however, even without an inter-RTO agreement, the resources in question will likely be operational during peak load hours due to the relative coincidence of MISO and PJM system needs and the likelihood that capacity resources will be available to support reliability requirements on the region's peak load days.<sup>72</sup> To the extent PJM's and MISO's resource

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<sup>67</sup> *Id.* at 8, 10-11.

<sup>68</sup> *Id.* at 11 (citing Compliance Filing, Rauch Aff. at 10-11).

<sup>69</sup> *Id.* at 11-12 (citing Fagan Aff. ¶ 23).

<sup>70</sup> *Id.* at 12 (citing Compliance Filing, Rauch Aff. at 11, Patton Aff. ¶ 8).

<sup>71</sup> *Id.* at 12-13.

<sup>72</sup> *Id.* at 13-14 (citing Fagan Aff. ¶¶ 24-25). Sierra Club states that in the summer of 2015, 2014, and 2013, MISO and PJM coincident peak load hour (summer afternoon) occurred on the same day, and in eight of the last 11 years, MISO and PJM coincident

(continued...)

needs are not perfectly aligned, Sierra Club states that MISO's proposed new Capacity Import Limit calculation will already reduce the Capacity Import Limit for each Zone to reflect some counter-flow from exports while still ensuring reliability. Sierra Club explains that, because the Capacity Import Limit is being reduced by less than the total amount of exports, the calculation is already subtracting out some pseudo-tied resources, lessening concerns that pseudo-tied resources may not all be running when needed.<sup>73</sup>

45. Sierra Club states that MISO should set each Zone's Local Clearing Requirement as low as reasonably possible to ensure that prices remain competitive. According to Sierra Club, most of the capacity exporting out of Zone 4 (approximately 2,150 MW) for the 2016/17 Auction is pseudo-tied to PJM,<sup>74</sup> and if MISO ignores all counter-flow from the approximately 2,150 MW of pseudo-tied generation in Zone 4 in its Local Clearing Requirement calculation, MISO will be overstating the amount of local capacity needed. Sierra Club states that this would create a situation where pivotal suppliers can set unjust and unreasonable Auction Clearing Prices.<sup>75</sup>

46. Finally, Sierra Club asserts that the Compliance Filing does not include any proposed Tariff revisions to effectuate Capacity Import Limit calculation changes over the long term, and MISO instead states that it will make "comparable" revisions to exclude exports from the Capacity Import Limit in subsequent loss of load expectation studies.<sup>76</sup> Sierra Club argues that this fails to comply with the December 31 Order and requests that the Commission issue a deficiency letter requiring MISO to file revised Tariff provisions to implement the required longer-term Capacity Import Limit changes before future Auctions.<sup>77</sup>

47. Wisconsin TDUs assert that MISO is correct to add the expected quantity of exports to its originally calculated Capacity Import Limits because it correctly reverses

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peak load occurred either on or within one day of each other. *Id.* at 14 (citing Fagan Aff. ¶ 25).

<sup>73</sup> *Id.* at 14-15.

<sup>74</sup> *Id.* at 15 (citing "Estimated Firm External Exports" (Exhibit B) and Fagan Aff. ¶¶ 24-25).

<sup>75</sup> *Id.* at 15-16 (citing Fagan Aff. ¶ 21).

<sup>76</sup> *Id.* at 16-17 (citing Rauch Aff. at 7).

<sup>77</sup> *Id.* at 16-17.

MISO's current downward adjustment to the modeled import capability for each Zone, thereby setting the Capacity Import Limit equal to the import capability produced by MISO's own modeling of expected system conditions. However, Wisconsin TDUs state that MISO's additional adjustment that reduces the modeled import capability by an incompletely specified impact of capacity exports on incremental transfer capability is not adequately described and has not been shown to be just and reasonable. Specifically, Wisconsin TDUs observe that MISO's proposed Tariff language does not mention this adjustment, and MISO has provided no details on how this impact of capacity exports on incremental transfer capability will be modeled and calculated. Based on the example provided by MISO in the Compliance Filing, Wisconsin TDUs state that MISO's proposed adjustment to remove the impact that capacity exports have on incremental transfer capability decreases the Capacity Import Limit down to the import capability that could be achieved if the exporting units were not dispatched, thereby improperly ignoring the ability of exports to increase import capability by producing counter-flow. According to Wisconsin TDUs, MISO's proposal therefore contradicts the Commission's directive in the December 31 Order stating that the Capacity Import Limit should include an accurate estimate of the impact of counter-flows created by capacity exports to neighboring regions, and it should be rejected.<sup>78</sup>

48. Wisconsin TDUs further state that MISO has not identified adverse impacts on reliability associated with the implementation of the Commission's directive. Wisconsin TDUs assert that the Commission's directive sets the Capacity Import Limit equal to the import capability produced by MISO's modeling of expected system conditions. Wisconsin TDUs state that although actual future system conditions might vary from those assumed in the model, for purposes of setting the Capacity Import Limit applicable to planning reserves, MISO should be required to use the results of its best projection of expected system conditions and not highly unlikely worst-case scenarios that assume no exports will occur. Wisconsin TDUs therefore assert that MISO should be directed to correct its original calculation of the Capacity Import Limit for each Zone by adding the full amount of the expected exports from the Zone to serve non-MISO capacity commitments, and by eliminating the unspecified "Impact on incremental transfer capability" adjustment that MISO included in its Compliance Filing.<sup>79</sup>

49. Wisconsin TDUs next argue that MISO's proposed modification to the definition of Local Clearing Requirement is unnecessary if the Capacity Import Limit is correctly calculated as directed by the Commission. According to Wisconsin TDUs, if the Capacity Import Limit is increased to properly reflect the impact of exports on the ability

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<sup>78</sup> Wisconsin TDUs Protest at 4-7.

<sup>79</sup> *Id.* at 7-8.

to import Planning Resources into the zone, the Local Clearing Requirement will automatically decrease to the correct level without the need for MISO's proposed additional adjustment for non-pseudo-tied exports. Wisconsin TDUs add that MISO's proposed change to the Local Clearing Requirement is not a reasonable substitute for correcting the Capacity Import Limit. Wisconsin TDUs state MISO has proposed to set the Capacity Import Limit too low, which increases the likelihood that the constraint will bind, forcing load-serving entities to acquire additional Planning Resources from within the Zone where prices may be significantly higher, even when those entities have already satisfied the Local Clearing Requirement.<sup>80</sup>

50. Wisconsin TDUs argue that MISO's proposed adjustment to the Local Clearing Requirement does not adequately recognize the value of pseudo-tied exporting units. Wisconsin TDUs believe that the impact of capacity exports should be fully reflected through an adjustment to the Zone's Capacity Import Limit and not a separate adjustment to the Local Clearing Requirement. However, to the extent that the Commission chooses to accept MISO's proposed adjustment to the Local Clearing Requirement, Wisconsin TDUs maintain that the Commission should, at minimum, direct MISO to modify its proposed Local Clearing Requirement adjustment so that it appropriately recognizes the impacts of pseudo-tied exports. According to Wisconsin TDUs, excluding 100 percent of pseudo-tied exports from its proposed adjustment to the Local Clearing Requirement is overly conservative, incorrect, and unjust and unreasonable. Wisconsin TDUs add that limiting the adjustment to only non-pseudo-tied exports may exclude the bulk of expected exports, especially given new PJM requirements calling for externally located generation resources that want to be Capacity Performance Resources in the PJM capacity market to be pseudo-tied back to PJM.<sup>81</sup> Citing to Mr. Dauphinais' affidavit, Wisconsin TDUs assert that the relevant issue is not whether MISO can dispatch a specific exporting resource to provide local load support, but rather "whether there is sufficient basis to conclude that the counter-flow created by these capacity exports is actually present at the times of the year when resource adequacy on the MISO system is being stressed."<sup>82</sup>

51. Wisconsin TDUs assert that it is unrealistic for MISO to effectively assume that all pseudo-tied generation in MISO will be operating at zero output during MISO peak load periods because MISO and its neighboring Balancing Authority Areas generally

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<sup>80</sup> *Id.* at 9.

<sup>81</sup> *Id.* at 9-10 (citing Capacity Performance Order, 151 FERC ¶ 61,208 at PP 96-97).

<sup>82</sup> *Id.* at 10-11 (citing Industrial Consumers and Illinois Attorney General Protest, Dauphinais Aff. at 13).

peak around the same time, meaning that capacity resources physically located in MISO, but pseudo-tied to a different Balancing Authority Area, typically operate during those periods. According to Wisconsin TDUs, the expected exports used in MISO's First Contingency Incremental Transfer Capability analysis are the best projection of the exports that will actually occur. Wisconsin TDUs add that, to the extent that such resources are expected to be operating and enabling additional imports into MISO, the Local Clearing Requirement should be reduced since it should be possible to meet a larger share of Planning Reserve Margin Requirements from imports.<sup>83</sup>

52. Finally, Wisconsin TDUs argue that the Commission should direct MISO to resolve the dispatch control issue with respect to pseudo-tied capacity exports. Wisconsin TDUs observe that MISO and PJM already have a Joint Operating Agreement and that each RTO's operating procedures provide for coordinated dispatch not only under declared emergencies but also under abnormal conditions.<sup>84</sup> To the extent MISO believes it needs additional rights with respect to resources pseudo-tied with PJM in order to recognize those units' impacts on MISO's own Planning Resource Auction, Wisconsin TDUs assert that MISO should be directed to obtain those rights prior to June 2016, rather than assuming that those resources do not exist for purposes of the next Planning Year. Wisconsin TDUs argue that if the Commission directs MISO to correct its calculation of the Capacity Import Limit as directed by the Commission, MISO's proposed change to the Local Clearing Requirement should be rejected in its entirety. Wisconsin TDUs further argue that should the Commission decide not to require MISO to change its new proposed Capacity Import Limit calculation, MISO should, at minimum, be directed to modify its proposed adjustment to the Local Clearing Requirement to appropriately recognize the impacts of pseudo-tied exports.<sup>85</sup>

53. Wisconsin Electric and Wisconsin Public Service Corporation argue that MISO's Compliance Filing does not address the Commission's mandates in the December 31 Order with respect to the Capacity Import Limit because it fails to explain how MISO will properly account for capacity exports to neighboring regions, and thus lacks the specificity required by the Commission. Wisconsin Electric and Wisconsin Public

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<sup>83</sup> *Id.* at 11.

<sup>84</sup> *Id.* at 11-12 (citing MISO, *Safe Operating Mode with PJM Procedure* (eff. Feb. 27, 2015), available at <https://www.misoenergy.org/Library/Repository/Procedure/RTO-AOP-012-r8%20Safe%20Operating%20Mode%20with%20PJM%20Procedure.pdf>) (Safe Operating Mode with PJM Procedure).

<sup>85</sup> *Id.* at 11-12.

Service Corporation ask the Commission to require MISO to immediately comply with the December 31 Order and develop Tariff language (including adjustments to the Capacity Import Limit) that applies to the current and subsequent Auctions to ensure greater year-to-year stability in the Auction process.<sup>86</sup>

54. Wisconsin Electric and Wisconsin Public Service Corporation assert that MISO's proposed change to Local Clearing Requirements is deficient because the Commission only required changes to the Capacity Import Limit, but did not require changes to the Local Clearing Requirement, and because MISO has not adequately described why such changes to the Local Clearing Requirement are necessary. Wisconsin Electric and Wisconsin Public Service Corporation argue that, contrary to the December 31 Order, MISO proposes to remove the impact of counterflows from exports out of MISO from the Capacity Import Limit.<sup>87</sup> Wisconsin Electric and Wisconsin Public Service Corporation assert that MISO should add the capacity exports to neighboring regions back to the Capacity Import Limit as required by the December 31 Order. According to Wisconsin Electric and Wisconsin Public Service Corporation, the changes MISO recommends to the calculation of Local Clearing Requirements are not needed because that calculation is appropriately defined as the Local Resource Requirement minus the Capacity Import Limit. Wisconsin Electric and Wisconsin Public Service Corporation assert that increasing the Capacity Import Limit by the amount of capacity exports to neighboring regions results in a reduction in the Local Clearing Requirement by the same amount.<sup>88</sup>

55. Further, Wisconsin Electric and Wisconsin Public Service Corporation argue that the December 31 Order did not require MISO to distinguish between pseudo and non-pseudo-tied capacity exports to neighboring regions when adjusting the Capacity Import Limit, and that the Commission should order MISO to remove such disparate treatment. According to Wisconsin Electric and Wisconsin Public Service Corporation, MISO's assertions that it must exclude pseudo-tied external exports due to lack of dispatch control and availability are contrary to MISO's own operating procedures.<sup>89</sup> Wisconsin

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<sup>86</sup> Wisconsin Electric and Wisconsin Public Service Corporation Protest at 4-5.

<sup>87</sup> *Id.* at 6 (citing Compliance Filing at 5).

<sup>88</sup> *Id.* at 5-7.

<sup>89</sup> For example, Wisconsin Electric and Wisconsin Public Service Corporation observe that Procedure AOP-012 requires that "MISO and PJM operators to work together and take actions to prevent the emergency condition as if MISO and PJM were in the same Regional Transmission Organization (RTO), operating under the same management and using the same procedures." *Id.* at 7 (citing Safe Operating Mode with PJM Procedure).

Electric and Wisconsin Public Service Corporation assert that even without such procedures, to suggest that a neighboring RTO/ISO would refuse to dispatch generation under its control to help resolve a capacity deficiency in another RTO/ISO is antithetical to the existence of the interconnected network. Wisconsin Electric and Wisconsin Public Service Corporation add that even if MISO and a neighboring RTO/ISO experienced simultaneous capacity deficiencies, dispatch of the pseudo-tied generator by the neighboring entity is nearly guaranteed because the generation is needed by the neighbor to address its capacity deficiency; the dispatch of the pseudo-tied resource will create counterflow and increase import capability into MISO's Zones.<sup>90</sup>

**iii. Answer**

56. MISO argues that the Commission should disregard the alternative Tariff language provided by Industrial Consumers and Illinois Attorney General because, since MISO's Compliance Filing is just and reasonable, such alternative proposals are immaterial to the Commission's analysis in the context of a proceeding under section 205 of the Federal Power Act (FPA). According to MISO, section 205 of the FPA only requires that MISO's proposal be just and reasonable, not that the proposal be perfect, the best alternative offered, or the most reasonable out of all potentially available options.<sup>91</sup> MISO also states that under section 205 of the FPA, the Commission "can reject [MISO's filing] only if it finds that the changes proposed by the [MISO] are not 'just and reasonable.'"<sup>92</sup>

57. MISO asserts that arguments claiming that the Compliance Filing does not reflect export-based counter-flow in the calculation of locational resource requirements as was required in the December 31 Order are wrong and should be disregarded. MISO states that the December 31 Order adopted the Market Monitor's recommendation, but the Commission did not direct MISO to use a specific equation or formulation to implement the Market Monitor's proposal. Instead, the Commission directed MISO to work with the Market Monitor to develop an approach to implement his recommendation. MISO states that, in following this directive, it implemented the Market Monitor's proposal by adjusting the calculation of the Capacity Import Limit to remove the impacts of exporting resources and by subtracting non-pseudo tied exports from the Local Clearing

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<sup>90</sup> *Id.* at 7-8.

<sup>91</sup> MISO Answer at 5-6 (citing *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995)).

<sup>92</sup> *Id.* at 6 (quoting *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 9 (D.C. Cir. 2002)).

Requirement. MISO explains that its proposal treats exports as if they will facilitate the ability to import more capacity without creating a reliability problem.<sup>93</sup>

58. MISO also maintains that the December 31 Order specifically acknowledged that there is not a one-to-one relationship between First Contingency Incremental Transfer Capability and Base Power Transfer,<sup>94</sup> and this is also affirmed in Ms. Rauch's affidavit.<sup>95</sup> MISO also argues that protestors fail to identify language in the December 31 Order that prohibited MISO from adjusting both the Local Clearing Requirement and the Capacity Import Limit.<sup>96</sup>

59. MISO observes that the Market Monitor stated that the Compliance Filing "implement[s] my recommendation to more accurately account for the impact that counter-flows from capacity exports."<sup>97</sup> According to MISO, this statement refutes the allegation that the Compliance Filing fails to address the December 31 Order's directive that MISO should better reflect the value of export-based counter-flows.

60. MISO also argues that protestors err in contending that the Compliance Filing understates counter-flow values by excluding from counter-flow totals generation resources that are located in the MISO footprint but are pseudo-tied to another region. MISO observes that in the December 31 Order, the Commission noted that, according to the Market Monitor, MISO's "current approach effectively assumes that exported resources are unavailable to serve the needs of the Zone, which the MISO Market Monitor asserts is inaccurate because an exported resource: (1) will be under MISO's dispatch control and can be committed in instances of capacity constraints . . . ."<sup>98</sup>

61. According to MISO, since the Commission is aware that MISO does not have direct dispatch control over resources that are located in MISO but are pseudo-tied to

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<sup>93</sup> *Id.* at 7-8 (citing MISO Request for Clarification at 8; December 31 Order, 153 FERC ¶ 61,385 at P 148).

<sup>94</sup> *Id.* at 8 (citing December 31 Order, 153 FERC ¶ 61,385 at P 147 (citing MISO Answer, Furnish Aff. ¶¶ 9-10, Docket No. EL15-82-000 (filed July 20, 2015))).

<sup>95</sup> *Id.* at 8 (citing Rauch Answering Aff. ¶ 13).

<sup>96</sup> *Id.* at 8.

<sup>97</sup> *Id.* at 9 (citing Compliance Filing, Patton Aff. ¶ 7).

<sup>98</sup> *Id.* at 10 (citing December 31 Order, 153 FERC ¶ 61,385 at P 134).

other regions, the Commission's directive in the December 31 Order required that the inclusion of exports applied to non-pseudo-tied exports only. MISO adds that the Market Monitor has also stated that the implication of his recommendation was that the change to the Capacity Import Limit applied to only non-pseudo-tied capacity resources, and that adding back the amount of non-pseudo-tied capacity exports in determining the Local Clearing Requirement addresses his recommendation.<sup>99</sup>

62. In addition, MISO asserts that Mr. Dauphinais' analysis is incorrect because it ignores the impact of the changes to the Capacity Import Limit calculation in the Compliance Filing and their role in lowering Local Clearing Requirement. MISO notes that, according to Ms. Rauch, the Compliance Filing captures the varied impacts of capacity exports through adjustments to the Capacity Import Limit and Local Clearing Requirements, and it also generally results in higher Capacity Import Limit and lower Local Clearing Requirement values as compared to the previous MISO process.<sup>100</sup>

63. MISO further asserts that Industrial Consumer and Illinois Attorney General's argument that MISO belatedly introduced reliability issues related to pseudo-tied generation resources is wrong and should be rejected. According to MISO, the Market Monitor's Post-Technical Conference Comments referred to resources physically located within MISO and not pseudo-tied to other regions when explaining that MISO's failure to account for exports under its dispatch control in its calculations of the Capacity Import Limit was an error, though these comments did not explicitly use the term "pseudo-tied."<sup>101</sup> As a result, MISO concludes that the distinction between pseudo-tied and non-pseudo-tied resources was always an inherent part of the Market Monitor's recommendation. Finally, MISO argues that statements that MISO and PJM operating procedures are sufficient for pseudo-tied units are mistaken because, among other things, if MISO declares an emergency, the unit pseudo-tied into PJM will not move into its emergency range, and although MISO can request emergency power from PJM, the emergency power may be provided by various units in PJM.<sup>102</sup>

64. MISO also argues that Wisconsin TDUs incorrectly assert that MISO's decision to remove the impact of exports on incremental transfer capability is designed to ignore the

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<sup>99</sup> *Id.* at 10-11 (citing Compliance Filing, Patton Aff. ¶¶6-7).

<sup>100</sup> *Id.* at 11 (citing Rauch Answering Aff. ¶ 7).

<sup>101</sup> *Id.* at 11-12 (citing December 31 Order, 153 FERC ¶ 61,385 at P 134 and n.216).

<sup>102</sup> *Id.* at 12 (citing Rauch Answering Aff. ¶ 10).

ability of exports to increase import capability by producing counter-flow. According to MISO, Wisconsin TDUs ignore the fact that the ultimate goal of MISO's proposal is to create rational locational signals for local capacity requirements, as represented by both the Capacity Import Limit and the Local Clearing Requirement values. Further, MISO states that it did not ignore the ability of exports to increase import capability by producing counter-flow because MISO included the benefits of exports in its proposed calculation of Local Clearing Requirements.<sup>103</sup> MISO maintains that its proposal appropriately implements the Commission's directive because Capacity Import Limits and Local Clearing Requirements must be considered together to properly determine resource availability and adequacy for a Zone.<sup>104</sup>

65. MISO also argues that its proposed adjustments appropriately capture the value of exporting capacity, noting that changes in Capacity Import Limit and Local Clearing Requirement in one zone can affect the calculation of those parameters in other Zones. MISO provides data demonstrating how MISO's proposal changed these values for the upcoming 2016/17 Planning Year, including an increase in the Zone 4 Capacity Import Limit from 4,328 MW to 6,425 MW and a reduction of the Zone 4 Local Clearing Requirement from 7,551 MW to 5,060 MW.<sup>105</sup>

#### iv. Commission Determination

66. As discussed below, we accept MISO's proposed revisions to section 68A.6 of the Tariff, which modifies the formula MISO uses to calculate Local Clearing Requirements. Although MISO has not proposed the specific implementation directive that the Commission required, it has proposed an alternative that it asserts will not adversely impact reliability. In the December 31 Order, the Commission stated that if MISO had concerns that the Commission's directive may result in adverse impacts on reliability, MISO could submit in its compliance filing a demonstration of these concerns and any recommended alternative proposal to the Commission's directive, to be implemented in the 2016/17 Auction. We find that MISO has demonstrated that the Commission's specific directive to add exports to the Base Power Transfer component of the Capacity Import Limit calculation could result in adverse impacts on reliability because it might overstate system capability. MISO states that, if the exports in Base Power Transfer are added to the Capacity Import Limit to calculate a revised Capacity Import Limit, as directed by the Commission, the revised Capacity Import Limit may exceed the actual

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<sup>103</sup> *Id.* at 13 (citing Compliance Filing, Rauch Aff. at 6-7, 10).

<sup>104</sup> *Id.* at 13.

<sup>105</sup> *Id.*, Rauch Answering Aff. at 5-7.

transfer limit of the system thereby reducing system reliability. We find this explanation reasonable so as to give deference to MISO's asserted reliability concerns as MISO is responsible for assessing the reliability needs of the region.

67. We find that MISO's proposed adjustments to the Capacity Import Limit and Local Clearing Requirement are just and reasonable for purposes of recognizing the effect of exports on the MISO footprint. In addition to what the Commission specifically directed, MISO's alternative proposal: (1) removes the impact that capacity exports have on incremental transfer capability from the Capacity Import Limit calculation; and (2) subtracts non-pseudo-tied exports from the Local Clearing Requirement calculation. Given the close relationship between these parameters, we find that it is reasonable for MISO to include changes to the Local Clearing Requirement as a part of its alternative proposal.

68. While Mr. Dauphinais argues that MISO's proposal ignores the counter-flow created by capacity exports when it refers to the actual transfer limit of the system and that the revised Capacity Import Limit would not exceed the actual transfer limit of the system if MISO did consider the counter-flows created by capacity exports, we find that the counter-flow created by capacity exports will only occur, and thus can only be relied upon, when the capacity resource that is exported is operational. We recognize the operational challenges that could be created by directing MISO to establish Capacity Import Limits that exceed its transmission system's physical limitations, given that a significant amount of capacity exports from MISO to neighboring regions are not under MISO's functional control. We disagree with Industrial Consumers and Illinois Attorney General, Sierra Club, Wisconsin Electric and Wisconsin Public Service Corporation, Southwestern, and Wisconsin TDUs that MISO's proposal to only reduce the Local Clearing Requirement by non-pseudo-tied exports is unjust and unreasonable. We find that it is reasonable to exclude pseudo-tied capacity exports from its proposed Local Clearing Requirements formula on the basis that MISO does not have functional control over those exported resources.

69. While intervenors demonstrate that there is a high degree of correlation between MISO and PJM peak demands, they have not demonstrated that resources exported out of MISO have been or necessarily will be dispatched when MISO is experiencing a peak load day. Even when MISO and PJM are experiencing peak loads simultaneously, specific pseudo-tied resources residing in MISO and controlled by PJM may not be called upon due to a variety of factors. MISO's proposal to revise the Local Clearing Requirement formula by subtracting only non-pseudo-tied resources is just and reasonable because it only considers capacity exports over which MISO has functional control and upon which MISO can rely to support the local resource needs of a Zone.

70. Ms. Rauch states that there could be a basis to modify MISO's treatment of pseudo-tied exports if and when MISO is able to obtain the necessary agreements with PJM regarding the dispatch and control of these resources in certain limited

circumstances.<sup>106</sup> While Wisconsin Electric and Wisconsin Public Service Corporation note that MISO's Safe Operating Mode with PJM Procedure outlines the steps MISO and PJM agreed to take to prevent an abnormal operating condition from degrading into an emergency condition until more formal procedures are established,<sup>107</sup> we disagree with the underlying argument that MISO must rely on Safe Operating Mode procedures designed to prevent emergencies as a basis for resource adequacy considerations. To the extent that MISO in fact obtains limited functional control over pseudo-tied capacity exports from MISO to PJM, we encourage MISO to consider measures that can be implemented to account for the impact that such capacity exports have on the MISO system. However, we note that, while the vast majority of MISO capacity exports currently export to PJM, there are resources in MISO that are exported to non-PJM regions. Pseudo-tied resources exported from MISO to these other regions cannot be depended on to provide counter-flows based on agreements between MISO and PJM. We also note that the magnitude and direction of exports could change in the future based on transmission availability, market rules, and changes in relative prices between regions.

71. We also accept MISO's proposed revisions to sections 68A.4 and 69A of the Tariff. These revisions are necessary to clarify that the Capacity Import Limit values posted by MISO on November 1 of each year shall be considered preliminary and subject to change. However, to ensure that all market participants are informed of the finalized market parameter values prior to the Auction, we direct MISO to further revise section 68A.4 of its Tariff, in a compliance filing due within 30 days of the date of this order, to provide a deadline by which MISO will determine and make available the final Capacity Import Limit values, which are used to calculate the Local Clearing Requirement values.

72. We also direct MISO to further revise section 68A.4 of its Tariff to reflect the revised Capacity Import Limit methodology that we are accepting herein.<sup>108</sup> Noting that MISO has represented that it will implement the revised Capacity Import Limit methodology for the 2016/17 Auction, we direct MISO to make the necessary Tariff revisions to reflect this revised methodology in a compliance filing due within 30 days of the date of this order. Such Tariff provisions materially affect rates and should thus be included in the Tariff.

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<sup>106</sup> Compliance Filing, Rauch Aff. at 11.

<sup>107</sup> See Wisconsin Electric and Wisconsin Public Service Corporation Protest at 6-7.

<sup>108</sup> See Industrial Consumers and Illinois Attorney General Protest, Exhibit No. IIEC-1 (Attachment 1).

## 2. Requests for Clarification and/or Rehearing

### a. Market Mitigation

#### i. Requests for Clarification and/or Rehearing

73. Industrial Consumers and Illinois Attorney General argue that sections 205 and 206 of the FPA require the Commission to clarify that facility-specific reference levels must be based on going-forward costs that do not include sunk costs. Industrial Consumers and Illinois Attorney General assert that the Commission's directive to revise the Tariff to limit capacity offers in the Auction to facility-specific reference levels that reflect going-forward costs creates ambiguity by failing to explicitly define the costs that may be properly characterized as going-forward costs.<sup>109</sup>

74. According to Industrial Consumers and Illinois Attorney General, costs that have already been incurred by a facility, such as its initial capital investment, should not be included among going-forward costs. Industrial Consumers and Illinois Attorney General argue that this interpretation appears to be consistent with language in section 64.1.4.f.i of the Tariff which states:

For purposes of this section, "Going-Forward Costs" shall mean either: (a) the annual costs, including but not limited to mandatory capital expenditures necessary to comply with federal or state environmental, safety or reliability requirements that must be met in order to supply Planning Resources, for each of the following instances, as applicable, of supplying Planning Resources that could be avoided if a supplier otherwise capable of supplying Planning Resources were either (1) to cease supplying Planning Resources and Energy for a period of one year or more while retaining the ability to re-enter such markets, or (2) to retire permanently from supplying Planning Resources and Energy; or (b) the net opportunity costs of foregone sales outside of MISO, net of costs that would have been incurred as a result of the foregone sale if it had taken place.<sup>110</sup>

75. According to Industrial Consumers and Illinois Attorney General, going-forward costs would not include sunk costs, such as depreciation expense or a return associated with any capital investments undertaken by a generator prior to its decision to participate

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<sup>109</sup> Industrial Consumers and Illinois Attorney General Request for Rehearing at 6.

<sup>110</sup> *Id.* at 6-7 (citing MISO, FERC Electric Tariff, Module D, § 64.1.4.f.i (30.0.0)).

in a given Auction or any other costs incurred by the generator prior to such decision.<sup>111</sup> Industrial Consumers and Illinois Attorney General argue that the exclusion of sunk costs from going-forward costs is consistent with sound economic principles holding that a rational supplier will continue to operate in a competitive market if it can recover, at a minimum, its marginal costs. According to Industrial Consumers and Illinois Attorney General, a supplier cannot sustain operations in a market if it sells at a loss for an extended period of time, and sunk costs are not relevant because such costs cannot be avoided by ceasing operations.<sup>112</sup>

76. Industrial Consumers and Illinois Attorney General recognize that, although the Commission recently clarified that System Support Resources (SSR) may seek SSR cost recovery based on a full cost-of-service rate that would include sunk costs, the Commission did not redefine “going-forward costs” to include sunk costs.<sup>113</sup> Industrial Consumers and Illinois Attorney General argue that the exclusion of sunk costs from going-forward costs is consistent with a recent Commission decision regarding PJM’s minimum offer price rule because they both contain the same core issue of how to mitigate market power associated with capacity market offers when the seller might otherwise exercise market power. Industrial Consumers and Illinois Attorney General state that the Commission found that sunk costs (e.g., construction costs) should not be included as going-forward costs because, among other things, construction costs “are not part of its going-forward costs that will affect its future decisions because competitive offers are based on going-forward costs, not sunk costs.”<sup>114</sup>

77. Based on the foregoing, Industrial Consumers and Illinois Attorney General argue that, to eliminate any ambiguity or confusion, the Commission should clarify that, for purposes of calculating facility-specific reference levels, going-forward costs may not include any sunk costs. Industrial Consumers and Illinois Attorney General further assert that sunk costs should be defined to encompass depreciation and return associated with all capital investments incurred when the decision to make such an investment was taken prior to the facility’s decision to participate in a given Auction. Industrial Consumers and Illinois Attorney General add that the exclusion of sunk costs should also apply to the

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<sup>111</sup> *Id.* at 7.

<sup>112</sup> *Id.* at 7-8.

<sup>113</sup> *Id.* at 5 (citing *Ameren Resources Generating Company v. Midcontinent Independent System Operator, Inc.* 153 FERC ¶ 61,062, at P 37 (2015)).

<sup>114</sup> *Id.* at 8 (citing *PJM Interconnection, L.L.C.*, 153 FERC ¶ 61,066, at P 77 (2015)).

default, technology-specific, non-fuel avoidable costs, as the Commission required in the December 31 Order. Industrial Consumers and Illinois Attorney General state that if the Commission does not grant this clarification, the Commission should grant rehearing to ensure that going-forward costs do not include sunk costs for the purpose of calculating facility-specific reference levels to ensure that it is not departing from Commission precedent.<sup>115</sup>

78. Industrial Consumers and Illinois Attorney General also assert that the Commission should clarify the procedures the Market Monitor will use for determining lost opportunities that may be reflected in facility-specific reference levels. Specifically, Industrial Consumers and Illinois Attorney General argue that the Market Monitor should be required to evaluate such opportunities on a competitive basis, by stacking them starting with the highest level of opportunity costs requested by a supplier until the maximum level of exports from MISO is reached, given actual transmission constraints between MISO and the relevant external market. To effectively recognize transmission constraints, Industrial Consumers and Illinois Attorney General maintain that the Market Monitor should terminate the consideration of export opportunities in the calculation of facility-specific reference levels once the volume of export opportunities exceeds the available transmission export capacity from MISO to the relevant market or the available transmission import capacity of the relevant export market. According to Industrial Consumers and Illinois Attorney General, these procedures are consistent with the procedures contained in Attachment DD.6 of the PJM OATT.<sup>116</sup>

79. Southwestern states that the December 31 Order increases the importance of facility-specific reference levels. Southwestern explains that the Commission noted that the vast majority of offers in the 2015/16 Auction were below the Conduct Threshold of \$25/MW-day,<sup>117</sup> indicating that the vast majority of capacity suppliers were content to sell their capacity below the Conduct Threshold in the 2015/16 Auction. Southwestern hypothesizes a situation where Dynegy could obtain a facility-specific reference level at approximately \$150/MW-day, which would allow a single Dynegy bid based on a facility-specific reference level to compensate the capacity suppliers at \$150/MW-day that would otherwise be content selling their capacity at below \$25/MW-day.<sup>118</sup>

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<sup>115</sup> *Id.* at 9.

<sup>116</sup> *Id.* at 10 (citing PJM, Intra-PJM Tariffs, OATT, Attachment DD, § 6 (11.0.0)).

<sup>117</sup> Southwestern Request for Rehearing at 9 (citing December 31 Order, 153 FERC ¶ 61,385 at P 94).

<sup>118</sup> *Id.* at 10.

Southwestern argues that a pivotal supplier could establish an uneconomically high price for capacity in a zone based on an offer allowed with its facility-specific reference level (as opposed to offers that would be allowed if the Initial Reference Level were used).<sup>119</sup> Southwestern states that these circumstances would result in extreme prices to customers based on no economic theory or justification, and that these prices would amount to a windfall for those capacity suppliers.<sup>120</sup>

80. Southwestern argues that the Commission should direct MISO to develop Tariff provisions that would not permit an offer from a pivotal supplier in a constrained zone with a facility-specific reference level to set the Auction Clearing Price when that supplier's offer exceeds the generally applicable Initial Reference Level. Southwestern argues that such an offer should be treated as an out-of-market bid, which is unconstrained by competitive market forces. Southwestern states that, under this scenario, such offers should be accepted by MISO only to cover the incremental capacity needed beyond the capacity procured at the Auction Clearing Price up to the Local Clearing Requirement. Southwestern states that pivotal suppliers in constrained Zones should be compensated for the amount of incremental capacity obtained by MISO at their facility-specific reference level-based offers. Southwestern adds that capacity suppliers whose bids are subject to the Initial Reference Level would attain a market-based price subject to market forces. Southwestern argues that this approach will allow cost recovery for generators but prevent load-serving entities from being exposed to the risk of having compensation for all generators being established by the facility-specific reference level of a high-priced generator. Southwestern asserts that this treatment is consistent with the treatment of mitigation in Narrow Constrained Areas in MISO, where it states that offer mitigation is more stringent because there is a pivotal supplier in an area with competition limited by a lack of transmission.<sup>121</sup>

81. Southwestern maintains that consumers should not have to pay all generators the cost-based bid of a single capacity supplier when that capacity supplier's offer exceeds the Initial Reference Level.<sup>122</sup> Southwestern states that the Auction is intended to produce a competitive price for capacity, but a facility-specific reference level-based offer is based on cost rather than competition; and argues that therefore, if a pivotal supplier's facility-specific reference level-based offer sets the market price, the public

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<sup>119</sup> *Id.* at 9.

<sup>120</sup> *Id.* at 10-11.

<sup>121</sup> *Id.* at 11-12.

<sup>122</sup> *Id.* at 12.

will lose the benefit of a competitive price. Southwestern argues that having such a facility-specific reference level-based offer set the Auction Clearing Price will create unreasonable capacity prices, over-compensate generators, and deny customers the benefit of competition.<sup>123</sup>

82. Southwestern also asks the Commission to consider requiring increased transparency and oversight in the process of establishing facility-specific reference levels. Southwestern observes that the Tariff does not provide rights to third parties other than the Market Monitor to review requests for facility-specific reference levels. Further, Southwestern argues that customers do not have the right to review the cost-based justification of a facility-specific reference level that is proposed by the capacity supplier or the basis of the Market Monitor's determination of facility-specific reference levels.<sup>124</sup> According to Southwestern, the Market Monitor's determination of facility-specific reference levels should be subject to review by other customers, and such review should either include: (1) cost justifications that mirror cost-of-service ratemaking; or (2) substantiation of legitimate and verifiable opportunity costs of potential sales outside of MISO that are foregone.<sup>125</sup>

83. Southwestern notes that in other contexts within MISO, customers are afforded the opportunity to review cost-based rates, even when customers are not a party to the transaction and the energy product is being procured on their behalf. Southwestern states that within the SSR context, MISO negotiates directly with the SSR owner over compensation for its continued operation, and once the final costs are submitted to the Commission for approval under section 205 of the FPA in an SSR agreement, third party customers have the right to review, examine, and ultimately challenge the rate negotiated between MISO and the SSR owner.<sup>126</sup>

84. Moreover, Southwestern argues that, as previously noted by MISO, the Auction construct could be considered a type of formula rate.<sup>127</sup> With respect to MISO's

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<sup>123</sup> *Id.* at 11-13.

<sup>124</sup> *Id.* at 14 (citing MISO, FERC Electric Tariff, Module D, § 64.1.4.h (30.0.0)).

<sup>125</sup> *Id.* at 14, 18.

<sup>126</sup> *Id.* at 15.

<sup>127</sup> *Id.* (citing MISO, Answer, Docket Nos. EL15-70-000, EL15-71-000, EL15-72-000, at 31-32 (filed July 2, 2015) (“[T]he market-based rate on file could be analogized to a formula rate, i.e., the ‘formula’ is that market forces will set the specific level of prices at any given point in time, and buyers are on notice of that ‘formula’ on file with the

(continued...)

Attachment O rate formula which is used to establish transmission rates on an annual basis, Southwestern states that the Commission has found that: (1) a base level of transparency is required for the formula to operate in a just and reasonable manner; and (2) the formula be taken from or reconcilable with publicly available data such that interested parties should be able to understand and evaluate the formula rate.<sup>128</sup>

Southwestern argues that customers must be provided similar rights with respect to understanding and evaluating inputs into the Auction. In addition, Southwestern asserts that the Commission indirectly acknowledged a lack of transparency of the process for establishing facility-specific reference levels when it stated that technology-specific avoided costs would “provide more transparency” than the existing process.<sup>129</sup>

85. According to Southwestern, customers should be able to review and challenge the accuracy of a capacity supplier’s claimed going-forward costs in order to be able to fully protect their interests against unjust and unreasonable charges.<sup>130</sup> Further, Southwestern argues that the Market Monitor’s determination of a facility-specific reference level should be subject to similar review and challenge by customers as occurs for SSRs. It states that when there is a pivotal supplier, it is appropriate for the Market Monitor to provide its determination of the facility-specific reference level for that supplier to the Commission for review. Since customers are unable to review or challenge a facility-specific reference level, Southwestern asserts that a change to the regime is needed to bring it within the just and reasonable ambit of the FPA. If the Commission does not make the changes Southwestern seeks, Southwestern states that the Commission should

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Commission. Similarly in this instance, the provisions for conducting and determining the results of an Auction equate to the ‘formula,’ i.e., the Tariff provisions describing the PRA procedures are the rate on file with the Commission.”)).

<sup>128</sup> *Id.* at 15-16 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,149, at P 83 (2013) and *Pub. Serv. Elec. & Gas Co.*, 124 FERC ¶ 61,303, at P 11 (2008) (explaining that a fundamental process of formula rates is the provision to customers of sufficient time to review and challenge rates before they are implemented)).

<sup>129</sup> *Id.* at 16-17 (citing December 31 Order, 153 FERC ¶ 61,385 at P 96).

<sup>130</sup> *Id.* at 18 (citing *Sw. Power Pool, Inc.*, 114 FERC ¶ 61,222, at PP 87-89 (2006) (denying customer arguments that they were entitled to the Southwest Power Pool, Inc.’s (SPP) disclosure of information used to determine their creditworthiness, but only because SPP’s Tariff already provided that customers were entitled to explanations of how SPP determined their creditworthiness and to dispute resolution procedures to dispute such explanations)).

automatically undertake such a review of facility-specific reference levels.<sup>131</sup> While Southwestern acknowledges that the default technology-specific avoidable costs that will be developed beginning with the 2017/18 Auction may partially alleviate these concerns, it states that this would only apply to capacity suppliers that seek facility-specific reference levels on this basis and not on the basis of their own unit's individual costs or on the basis of forgone sales outside of MISO.<sup>132</sup>

**ii. Commission Determination**

86. We grant clarification with respect to concerns raised by Industrial Consumers and Illinois Attorney General regarding whether sunk costs are included in going-forward costs. Specifically, we clarify that, for purposes of calculating facility-specific reference levels, going-forward costs do not include sunk costs. This is consistent with the description of going-forward costs in section 64.1.4.f.i(a) of the Tariff, which limits going-forward costs to the annual, avoidable costs of supplying Planning Resources. We further clarify that this definition of going-forward costs also applies to the technology-specific, non-fuel avoidable costs that MISO is required to calculate pursuant to the December 31 Order. Because we grant this clarification, we need not address Industrial Consumers and Illinois Attorney General's request for rehearing on this issue.

87. We deny Industrial Consumers and Illinois Attorney General's request for clarification of the procedures the Market Monitor will use for determining lost opportunities that may be reflected in facility-specific reference levels. Industrial Consumers and Illinois Attorney General provides no evidence and identifies nothing in the record to support its proposal to require the Market Monitor to evaluate lost opportunities on a competitive basis. Further, as stated above, we find that the Tariff language MISO proposed requiring the Market Monitor to respect the limits of external opportunities addresses Industrial Consumers and Illinois Attorney General regarding whether the sum of the individual opportunities granted by the Market Monitor might exceed the total size of the available opportunity.<sup>133</sup>

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<sup>131</sup> *Id.* at 18 (citing 16 U.S.C. §§ 825, 825h (2012) (providing that under the FPA public utility books and records shall be kept as the Commission prescribes, and that the Commission shall at all times have access and the right to inspect and examine them, and also providing that the Commission may prescribe the form of all statements and reports to be filed with the Commission and the information which they shall contain as well as their timing)).

<sup>132</sup> *Id.* at 17-18.

<sup>133</sup> *See supra* P 27.

88. We disagree with Southwestern's arguments that it is contrary to economic theory for a resource with a facility-specific reference level in a constrained Zone to be eligible to set the Auction Clearing Price and that it would be unjust and unreasonable for other resources in the Auction to be paid the resulting Auction Clearing Price. Uniform price auctions are used throughout RTO/ISO energy and ancillary service markets to establish market clearing prices, irrespective of whether there is a pivotal capacity supplier in a constrained zone. We continue to find that the use of a uniform price auction mechanism in the Auction is just and reasonable, including in instances where there is a pivotal capacity supplier in a constrained Zone.<sup>134</sup> By paying all resources that clear in a given market the price offered by the marginal resource, resources are given the incentive to submit offers equal to their own marginal cost so that they will be selected when the clearing price equals or exceeds their cost. In contrast, Southwestern's proposal to compensate pivotal resources in constrained Zones, which clear resources that submit offers based on facility-specific reference levels, through make-whole payments outside of the Auction would impair price formation and dampen the signals that Auction Clearing Prices send to market participants about the value of capacity in MISO.

89. With respect to Southwestern's arguments that facility-based reference levels are based on going-forward costs rather than competition and that offers from pivotal resources with facility-specific reference levels should not be allowed to set the Auction Clearing Price, we find that Southwestern's comments do not reflect how competitive prices are realized. It is optimal and consistent with the behavior of market participants in a competitive market to permit a market participant to offer capacity into the Auction according to that market participant's going-forward costs.<sup>135</sup> Such offers are

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<sup>134</sup> *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,331, at P 141 (2006); *Commonwealth Edison Company*, 113 FERC ¶ 61,278, at P 43 (2005) (citing *N.Y. Indep. Sys. Operator, Inc., order on reh'g*, 110 FERC ¶ 61,244, at P 65 n.76 (2005) (explaining that NYISO uses this method because "under this model, the generator has the proper incentive to bid the lowest price that covers its marginal cost, knowing that if the market produces a higher price it will receive the market price")); and *New England Power Pool*, 85 FERC ¶ 61,379 (1998), *reh'g denied*, 95 FERC ¶ 61,478, at 61,074 (2001) (approving market clearing prices in energy and ancillary services markets).

<sup>135</sup> The Commission has found that, in a competitive market "competitors are expected to produce at the point where prices exceed their short-run marginal costs." *PJM Interconnection LLC*, 110 FERC ¶ 61,053, at P 25 (2005). In this case, a market participant's going-forward costs represent its short-run marginal costs of providing capacity for a Planning Year.

competitive, and help establish efficient Auction Clearing Prices. The Tariff provides incentives and mitigation that elicit such behavior in the Auction.

90. We also disagree with Southwestern's argument that its proposed treatment of pivotal suppliers in constrained Zones is consistent with energy market mitigation in MISO's Narrow Constrained Areas. This is not the case. In the MISO energy market, when there is a transmission constraint, generators in Narrow Constrained Areas are subject to conduct and impact tests, just as in the Auction, and their mitigated offers can set the market clearing price, just as in the Auction.<sup>136</sup>

91. Further, mitigation applied to Planning Resources in constrained areas in MISO is even more stringent than for Narrow Constrained Areas in MISO's energy markets, and in no way would justify preventing such mitigated offers from setting the Auction Clearing Price.<sup>137</sup> Facility-specific reference level based mitigation with a Conduct Threshold of \$0/MW-day and an Impact Threshold of \$0/MW-day in the constrained areas will prevent pivotal suppliers from submitting uncompetitive offers and setting an uncompetitive Auction Clearing Price for all generators. This mitigation will instead hold those offers of pivotal suppliers to their respective facility-specific reference levels, which are based on the resource's going-forward costs. As we find above, if an offer of a pivotal supplier with such mitigation sets the Auction Clearing Price at an appropriately developed facility-specific reference level of the marginal resource, that price will be efficient. For all of these reasons, we find that offers from pivotal suppliers with facility-specific reference levels in constrained zones should be allowed to set the Auction Clearing Price.

92. In response to Southwestern's argument that offers which are associated with facility-specific reference levels should be accepted by MISO only to cover the incremental capacity that is needed beyond the capacity procured at the Auction Clearing Price and up to the Local Clearing Requirement, we find that this argument is misplaced.

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<sup>136</sup> In the case of the energy market, the price set is the Locational Marginal Price.

<sup>137</sup> The Narrow Constrained Area energy conduct threshold is equal to Net Annual Fixed Costs divided by constrained hours where constrained hours are capped at 2,000, while the Conduct Threshold for a facility-specific capacity offer in the Auction is \$0/MW-day. The Impact Threshold for Planning Resources is also different than for energy in Narrow Constrained Areas, and more stringent in constrained areas. In the case of energy it is equal to Net Annual Fixed Costs divided by constrained hours where constrained hours are capped at 2,000, while the Impact Threshold for a facility-specific capacity offer in the Auction is either \$0/MW-day or 10 percent of Cost of New Entry, depending on whether a Zone is constrained or not.

Lower price offers will be selected first in the Auction, except where there are constraints, such as a Capacity Import Limit, that restricts the availability of lower cost capacity that is deliverable to a given Zone. Like other capacity offers, offers for resources with facility-specific reference levels clear based on their economic merit order, and accordingly, such offers should not be treated as out-of-market. Furthermore, the Commission has expressed a preference for market-based solutions rather than out-of-market solutions.<sup>138</sup>

93. With respect to Southwestern's arguments requesting additional transparency in the development of facility-specific reference levels, we find that it would be inappropriate to allow third parties to see the costs of market participants. Such review likely would involve review of Confidential Information and thus would appear to conflict with MISO's confidentiality provisions, and could also reveal confidential information associated with counterparties to the opportunity.<sup>139</sup> While Southwestern points to the sharing of cost information associated with SSRs, unlike with SSRs, offers in the Auction are not associated with resources that have previously made the economic determination that existing market fundamentals no longer support commercial operation and would otherwise leave the market, but are required to continue to operate for reliability purposes. Thus, confidentiality concerns associated with the cost information of SSRs are irrelevant as they will not be operating as competitive market participants.

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<sup>138</sup> *ISO New England Inc., et al.*, 144 FERC ¶ 61,204, at P 42 (2013) (“We find that, as a general matter, market-based solutions are preferable to out-of-market solutions . . .”).

<sup>139</sup> The Tariff defines Confidential Information as “[a]ny proprietary or commercially or competitively sensitive information, trade secret or information regarding a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Transmission Customer, Market Participant, or other user, which is designated as confidential by the entity supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise, that is received by the Transmission Provider and is not disclosed except under the terms of a Confidential Information policy.” MISO, FERC Electric Tariff, Module A, § 1.C (36.0.0). The Tariff also provides that “[e]xcept as may be required by subpoena or other compulsory process, the [Market Monitor] shall not disclose Confidential Information to any person or entity without prior written consent of the affected parties, provided, however, that third parties requesting disclosure of information designated as ‘Confidential Information’ may challenge the designation pursuant to procedures specified in the Business Practices Manuals.” MISO, FERC Electric Tariff, Module D, § 54.4 (30.0.0).

Further, sharing of facility-specific cost data among market participants could facilitate collusive behavior, which could result in Auction Clearing Prices that are not competitive.

94. With respect to Southwestern's comparison of the Auction to Attachment O, we find that capacity offers based on facility-specific reference levels in the Auction are not the same as cost-based formula rates through which MISO transmission owners recover costs, but are comparable to the offers in auctions for energy and ancillary services. Indeed, MISO does not disclose unmasked individual energy and ancillary services offers, which are also subject to conduct and impact tests and can set the market clearing price. Furthermore, individual offers submitted at facility-specific reference levels, even if they share certain inputs with formula rates, are not rates like those derived under SSR agreements and MISO Attachment O formulas.

95. At this time, we are not persuaded by and thus reject arguments raised by Southwestern asserting that facility-specific reference levels established for the Auction should be open for review by other customers and that there should be automatic review of these by the Commission. The process of review by the Market Monitor of facility-specific reference levels for the Auction is inherently no different than the process the Market Monitor uses to review any facility-specific cost-based reference levels used in energy and ancillary services markets. In that instance, the Market Monitor has the responsibility for the determination of reference levels without either review by other third parties or automatic review by the Commission.

**b. Local Requirements**

**i. Requests for Clarification and/or Rehearing**

96. MISO states that the December 31 Order allowed MISO to propose an alternative recommendation regarding the calculation of Capacity Import Limits in time for the 2016/17 Auction if MISO demonstrates that the Commission's directive to implement the Market Monitor's recommendation may result in adverse impacts on reliability. MISO explains that the adjustment to the Capacity Import Limit directed by the Commission can result in a Capacity Import Limit that assumes an import capability in excess of the rating of a transmission line. Therefore, MISO proposes a new calculation, as discussed above, that reduces the Capacity Import Limit by the incremental transfer capability and reduces the Local Clearing Requirement by non-pseudo tied exports to treat the exports as if they will facilitate the ability to import more. MISO believes that its proposal is

consistent with the directive of the December 31 Order and requests the Commission to clarify that its interpretation of the Commission's directive is correct.<sup>140</sup>

97. MISO states that, if the Commission denies its requested clarification, MISO requests rehearing of the December 31 Order.<sup>141</sup> MISO asserts that the December 31 Order is in error to the extent that it does not permit an adjustment to the calculation of the Local Clearing Requirement. MISO explains that a stand-alone adjustment to the Capacity Import Limit may overstate system capabilities, which would create a reliability issue. MISO argues that, to fully implement the Market Monitor's proposal without overstating system capabilities, MISO must subtract non-pseudo tied exports from the Local Clearing Requirement.<sup>142</sup>

98. According to MISO, it is appropriate to include capacity located within a Zone that is under MISO's dispatch control when calculating the Local Clearing Requirement. MISO explains that capacity that is being exported outside MISO's system can still support local resource needs by operating when the Zone in which it is physically located experiences peak load so long as MISO has dispatch control over that capacity. MISO asserts, however, that MISO does not have operational control of resources that are pseudo-tied to other balancing authority areas and, therefore, such resources should be treated as if they are in the receiving balancing authority area. MISO notes that it is having discussions with PJM that could result in MISO obtaining dispatch control of units that are physically located in MISO but pseudo-tied to PJM in the event of a system emergency or if needed to relieve a constraint. MISO asserts that unless and until MISO obtains control of pseudo-tied resources in the event of a constraint or a system emergency, those resources should be entirely excluded from Local Clearing Requirement calculations.<sup>143</sup>

99. If the Commission denies MISO's request for clarification and request for rehearing, MISO asks the Commission to permit the use of the revised calculations described herein for the 2016/17 Auction and to do so without requiring resettlement of the 2016/17 Auction results.<sup>144</sup>

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<sup>140</sup> MISO Request for Clarification at 4-5.

<sup>141</sup> *Id.* at 5.

<sup>142</sup> *Id.* at 6-8.

<sup>143</sup> *Id.* at 8-9.

<sup>144</sup> *Id.* at 9-10.

100. EP SA argues that rehearing is necessary because the Commission's findings regarding Capacity Import Limits did not reflect reasoned decision-making and were not based on substantial evidence. EP SA asserts that MISO submitted substantial evidence demonstrating that its calculations already adequately account for the effect of capacity exports, and asserts that the Commission failed to address MISO's explanations regarding the modeling of counter-flows or to explain why such modeling is inadequate. EP SA claims that the Commission acknowledged that there is not a one-to-one relationship between capacity exports and counter-flows, but then still proceeded to direct MISO to simply add back exports to the Base Power Transfer, which would only make sense if there were such a one-to-one relationship.<sup>145</sup>

101. EP SA alleges that, instead of addressing the issues raised by MISO, the Commission relied on the Market Monitor's comments, which asserted that MISO's existing approach is flawed because it inaccurately assumes that exporting resources are unavailable to serve the needs of the Zone. EP SA asserts that the Commission failed to respond to its concern that it is incorrect to count within a Zone the capacity that has been committed to a Regional Transmission Organization or region external to that Zone.<sup>146</sup>

102. EP SA argues that the Commission did not identify substantial evidence in the record that would suggest that all exported capacity can be relied on by MISO. EP SA explains that pseudo-ties transfer dispatch control to another system operator and, therefore, there is no basis to assume that pseudo-tied capacity can be said to be under MISO's dispatch control and can be committed in instances of capacity constraints. EP SA contends that MISO's adoption of a model that assumes that capacity that is pseudo-tied to PJM can be relied on by MISO would amount to an error in the modeling and calculation of the Capacity Import Limit, which may jeopardize reliability by understating the amount of capacity that must be procured from each Zone.<sup>147</sup>

103. EP SA argues that the Commission directed MISO to determine revised Capacity Import Limits no less than 30 days prior to the 2016/17 Auction, despite the Tariff requirement that MISO must publicly post Capacity Import Limits for the 2016/17 Auction by November 1, 2015. EP SA contends that the Commission previously held that market participants should be considered bound by the parameters posted in advance of an auction in light of "the necessary reliance that market participants place on these

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<sup>145</sup> EP SA Request for Rehearing at 8-10.

<sup>146</sup> *Id.* at 11-13.

<sup>147</sup> *Id.* at 13-15.

public forecasts”<sup>148</sup> and that the Commission deviated from that precedent and upended market participants’ reasonable expectations without a reasoned explanation.<sup>149</sup>

104. EPSA asserts that a rushed approach to recalculating Capacity Import Limits is ill-advised because: (1) MISO and its stakeholders are currently working to refine the resource adequacy rules for its restructured, competitive markets; and (2) proper accounting for counter-flows in the Capacity Import Limit is a complex undertaking. EPSA argues that the Commission should not adopt a proposal in this proceeding without giving stakeholders the opportunity to consider the proposal. According to EPSA, giving MISO more time to work with the Market Monitor and stakeholders would allow for the development of a more robust model that properly accounts for counter-flows without relying on assumptions that can threaten reliability and the success of MISO’s capacity market.<sup>150</sup>

## ii. Commission Determination

105. MISO’s request for clarification is granted. In the December 31 Order, the Commission directed MISO to work with the Market Monitor to file necessary Tariff revisions to implement the Market Monitor’s recommendation, or to submit an alternative proposal if MISO can demonstrate that the implementation of the Market Monitor’s recommendation may result in adverse impacts on reliability. Consistent with the December 31 Order, MISO has demonstrated that the Market Monitor’s recommendation may result in adverse impacts on reliability and submitted an alternative proposal. We find that MISO’s alternative proposal is supported by its demonstration of potential adverse impacts of the specific measure directed by the Commission, and is therefore within the scope of the Commission’s directive. Given that we grant MISO’s request for clarification in this regard, we need not address its request for rehearing.

106. We disagree with EPSA’s assertion that the Commission’s findings in the December 31 Order did not reflect reasoned decision-making and that the Commission’s directive would only make sense if there was a one-to-one relationship between capacity exports and counter-flows. The Commission distinguished the impact that capacity exports have on Base Power Flow and the impact that capacity exports have on First

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<sup>148</sup> *Id.* at 16 (citing *Duquesne Light Co.*, 122 FERC ¶ 61,039, at P 92, *order on clarification*, 123 FERC ¶ 61,060, *clarification denied*, 125 FERC ¶ 61,141 (2008)).

<sup>149</sup> *Id.* at 16 (citing *Federal Communications Commission v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

<sup>150</sup> *Id.* at 16-17.

Contingency Incremental Transfer Capability. The Commission stated that there is a one-to-one relationship between capacity exports and Base Power Flow, and a high likelihood that the impact that capacity exports have on First Contingency Incremental Transfer Capability is in fact less than one-to-one. Given these impacts and the fact that a capacity export has a negative effect on Base Power Flow and a positive effect on First Contingency Incremental Transfer Capability, the Commission found that a capacity export could actually decrease the Capacity Import Limit. Therefore, the Commission concluded that the methodology used by MISO was unjust and unreasonable and should be revised going forward because it could underestimate the impact that counter-flows from capacity exports have on Capacity Import Limits.<sup>151</sup>

107. To address concerns about that methodology, the Commission directed MISO to implement the Market Monitor's recommendation, which would cancel the negative effect that capacity exports have on Base Power Flow, thereby limiting the effect that capacity exports have on the Capacity Import Limit to the positive, yet likely less than one-to-one impact on First Contingency Incremental Transfer Capability.

108. While EPSA argues that it is incorrect for MISO to rely on exported capacity to support local resource requirements, MISO explains that capacity that is being exported to a neighboring region can still support the local resource needs of the Zone in which it is physically located when that Zone experiences peak load so long as MISO has dispatch control over that capacity.<sup>152</sup> However, MISO explains that MISO loses functional control of an exported resource when that resource is pseudo-tied to a balancing authority area outside of MISO.<sup>153</sup> MISO also clarifies in its answer that the emergency operating procedures of MISO and PJM do not ensure that a unit pseudo-tied to PJM will move into its emergency range if MISO declares an emergency and states that if MISO requests emergency power from PJM during an emergency, that power may be provided by various units in PJM.<sup>154</sup> Therefore, we agree with MISO and the Market Monitor, and find it reasonable that MISO's proposed Local Clearing Requirement formula only accounts for capacity exports that are not pseudo-tied to a balancing authority area outside of MISO.

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<sup>151</sup> December 31 Order, 153 FERC ¶ 61,385 at P 147.

<sup>152</sup> MISO Request for Clarification at 8.

<sup>153</sup> Compliance Filing at 5-6.

<sup>154</sup> MISO Answer at 12 (citing Rauch Answering Aff. ¶ 10).

109. We also disagree with EPSA's assertion that the Commission should not have required MISO to revise its Capacity Import Limits for the 2016/17 Auction. As mentioned above, the Commission determined that the methodology used by MISO to calculate Capacity Import Limits was unjust and unreasonable and should be revised going forward to ensure that MISO's calculation of the Capacity Import Limits accurately reflects counter-flows resulting from capacity exports to neighboring regions. Therefore, the Commission was correct to direct MISO to revise its Capacity Import Limits prior to the upcoming Auction.

110. Furthermore, while EPSA argues that market participants rely on published market parameters such as Capacity Import Limits, the Commission, through the Technical Conference, put market participants on notice that the Commission was seeking more information related to the calculation of Capacity Import Limits. Moreover, the Commission directed MISO to determine revised Capacity Import Limits, which in of itself would impact Local Clearing Requirements, at least 30 days in advance of the Auction. MISO states that it explained the preliminary values to stakeholders during a February 19, 2016 Loss of Load Expectation Working Group meeting, and it provided these proposed revisions in its answer.<sup>155</sup> Therefore, we find that market participants have had sufficient notice of the revised Capacity Import Limits and Local Clearing Requirements.

111. We also disagree with EPSA's argument that it is ill-advised to direct MISO to recalculate Capacity Import Limits because MISO and its stakeholders are working to refine the resource adequacy rules for its restructured, competitive markets. Nothing in the December 31 Order precludes MISO and its stakeholders from continuing to look at these and other issues. On the contrary, the Commission stated in the December 31 Order that it encourages MISO and its stakeholders to continue to examine the methodologies it uses to calculate Capacity Import Limits, Local Clearing Requirements, and other parameters, and to make a subsequent filing, if appropriate, to implement any future changes.<sup>156</sup>

112. Finally, EPSA argues that a rushed approach to recalculating Capacity Import Limits is ill-advised because it is a complex undertaking. MISO has not indicated that it had insufficient time to implement the Commission's directive or its proposed alternative. In compliance with the December 31 Order, MISO identified possible adverse impacts on reliability and worked with the Market Monitor to develop and propose an alternative methodology that adjusts the calculation of Capacity Import Limits and Local Clearing

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<sup>155</sup> *Id.*, Rauch Answering Aff. ¶¶ 13-15.

<sup>156</sup> December 31 Order, 153 FERC ¶ 61,385 at P 151.

Requirements to better reflect the impact that capacity exports have on these market parameters.

The Commission orders:

(A) MISO's Compliance Filing is hereby accepted, subject to a compliance filing, as discussed in the body of this order.

(B) MISO is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

(C) MISO's request for clarification and Industrial Consumers and Illinois Attorney General's request for clarification with respect to going-forward costs are hereby granted, as discussed in the body of this order.

(D) All other requests for clarification and rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.