

155 FERC ¶ 61,036
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Consumers Energy Company

Docket No. ER15-435-001

ORDER DENYING REHEARING

(Issued April 15, 2016)

1. On February 20, 2015, the Commission issued an order granting Consumers Energy Company's (Consumers Energy) request for limited waiver of certain provisions of Midcontinent Independent System Operator, Inc.'s (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) in connection with Consumers Energy's suspension of seven coal-fired power plants (collectively, the Classic Seven) to comply with environmental requirements.¹

2. On March 20, 2015, the Dynegy Companies,² the NRG Companies,³ and Exelon Corporation (together, Suppliers), and MISO filed requests for rehearing of the February 20 Order. In this order, the Commission denies requests for rehearing of the February 20 Order, as discussed below.

I. Background

3. On February 16, 2012, the United States Environmental Protection Agency (EPA) issued a final rule, referred to as Mercury and Air Toxics Standards (MATS), establishing

¹ *Consumers Energy Co.*, 150 FERC ¶ 61,125 (2015) (February 20 Order).

² For purposes of this filing, the Dynegy Companies are Dynegy Marketing and Trade, LLC and Illinois Power Marketing Company.

³ For purposes of this filing, the NRG Companies are NRG Power Marketing LLC and GenOn Energy Management, LLC.

national emission standards for hazardous air pollutants from coal- and oil-fired generators and requiring compliance with MATS by April 16, 2015.⁴ An existing source may, if necessary, request an extension of one year to comply with MATS.⁵ If an existing source is deemed critical for reliability purposes, it may qualify for an administrative order from the EPA at the end of its extension, allowing it to operate in noncompliance with MATS for up to one additional year. An existing source may also choose to cease operations rather than comply with MATS.⁶

4. In its filing made on November 18, 2014,⁷ Consumers Energy represented that the Classic Seven were required to comply with MATS requirements by April 16, 2016,⁸ after which Consumers Energy stated that it will suspend the Classic Seven because they

⁴ *National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units*, 77 Fed. Reg. 9,304 (Feb. 16, 2012).

⁵ 40 C.F.R. § 63.6(i)(4)(i)(A) (2015) (“The owner or operator of an existing source who is unable to comply with a relevant standard established under this part . . . may request that the Administrator (or a State . . . when the State has been delegated the authority to implement and enforce the emission standard for that source) grant an extension allowing the source up to 1 additional year to comply with the standard, if such additional period is necessary for the installation of controls.”).

⁶ EPA, *The Environmental Protection Agency’s Enforcement Response Policy for Use of Clean Air Act Section 113(a) Administrative Orders in Relation to Electric Reliability and the Mercury and Air Toxics Standard*, at 1 (Dec. 16, 2011) (EPA Policy Statement), <http://www.epa.gov/mats/pdfs/EnforcementResponsePolicyforCAA113.pdf>.

⁷ Consumers Energy filed a previous request for waiver on August 7, 2014 in Docket No. ER14-2622-000. On November 7, 2014, the Commission denied the requested waiver, without prejudice, because it found that, “on balance, Consumers Energy has failed to carry its burden because it has not adequately demonstrated that the waiver will not cause undesirable consequences, such as harming third parties.” *Consumers Energy Co.*, 149 FERC ¶ 61,110, at P 27 (2014).

⁸ Consumers Energy Request for Waiver at 2, 5. Consumers Energy stated that it sought and received from the Michigan Department of Environmental Quality a one-year extension to permit Consumers Energy to continue operating the Classic Seven until April 16, 2016. *Id.* at 5 (citing Attachment A (Testimony of David F. Ronk) at 8 (Ronk Test.)).

will not meet those emission standards. Consumers Energy represented that, because MISO determined that the Classic Seven were not needed for reliability purposes beyond April 15, 2016, Consumers Energy could not obtain an administrative order from the EPA, which would allow the Classic Seven to continue to operate for up to one year past April 16, 2016.⁹

5. The MISO 2015-2016 Planning Year runs from June 1, 2015 to May 31, 2016,¹⁰ which leaves approximately 6.5 weeks between the EPA MATS compliance deadline and the end of the MISO Planning Year. Consumers Energy asserted that the Tariff requires Capacity Resources to be available for service during the entire 2015-2016 Planning Year and to meet this requirement the Classic Seven must be available for service from April 16, 2016 through May 31, 2016, over which 6.5 week period they would not meet the MATS requirements. Consumers Energy asserted that it was neither permitted to withhold the Classic Seven from offering into the MISO Planning Reserve Auction for the 2015-2016 Planning Year nor permitted to declare a forced or scheduled outage for the 6.5 week period. According to Consumers Energy, the Tariff did not provide a mechanism that would permit Consumers Energy to purchase replacement capacity through the auction to cover the 6.5 week period.¹¹

6. Consumers sought waiver of the must-offer requirement for the Classic Seven relative to the energy and ancillary services market under section 69A.5 and the requirement to purchase replacement capacity under section 69A.3.1.h of the MISO Tariff. Consumers Energy stated that its request for waiver meets the Commission's standard for granting waiver: (1) Consumers Energy has been unable to comply with the tariff provision at issue in good faith; (2) the waiver is of limited scope; (3) a concrete problem will be remedied; and (4) the waiver does not have undesirable consequences, such as harm to third parties.¹²

⁹ *Id.* at 7-8.

¹⁰ The MISO Planning Year begins June 1 and extends until May 31 of the following Year. MISO, FERC Electric Tariff, Module A, § 1.P (39.0.0).

¹¹ Consumers Energy Request for Waiver at 2.

¹² *Id.* at 22-26 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,132, at P 8 (2014); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069, at PP 8-9 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182, at P 8 (2011); *Cal. Indep. Sys. Operator, Inc.*, 132 FERC ¶ 61,004, at P 10 (2010); *Hudson Transmission Partners, LLC*, 131 FERC ¶ 61,157, at P 10 (2010); *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182, at PP 9-10 (2010); *ISO New England Inc.- EnerNOC, Inc, et al.*, 122 FERC ¶ 61,297

7. In the February 20 Order, the Commission found that, based on its review, Consumers Energy's request for waiver of the must-offer requirement and requirement to purchase replacement capacity in MISO Tariff sections 69A.5 and 69A.3.1.h, respectively, for the period from April 16, 2016 to May 31, 2016 satisfied the aforementioned conditions.¹³ Specifically, the Commission found that the requested waiver was limited in scope in that it applies only to Consumers Energy for a limited period of time from April 16, 2016 to May 31, 2016 of the 2015-2016 Planning Year. Further, the Commission found that Consumers Energy's requested waiver addressed a concrete problem created by the 6.5 week gap between the EPA MATS deadline and the MISO Planning Year by allowing the Classic Seven to remain operational for the first 45.5 weeks of the 2015-2016 Planning Year. The Commission also found that the requested waiver would not cause undesirable consequences, based on Consumers Energy's representation that it will meet all of its planning reserve requirements by the Classic Seven being on line during the peak periods of the summer 2015 and winter 2015/2016 seasons.¹⁴

II. Requests for Rehearing

8. In its request for rehearing, MISO notes that several companies have made waiver requests covering the same period from April 16, 2016 through May 31, 2016, and the Commission's granting of Consumers Energy's request for waiver has made it possible that other companies will make requests for similar treatment. MISO states that it remains fundamentally concerned that the cumulative effect of granting these waiver requests would not be limited in scope and would have the potential to yield undesirable consequences. MISO further states that the large number of such requests creates additional regulatory uncertainty among buyers and sellers of capacity and hinders the efficiency of MISO's capacity construct.¹⁵

9. MISO contends that the February 20 Order should be reconsidered, or alternatively clarified, because it contains insufficient analysis or record evidence to support the Commission's determination that the requested waiver will not have undesirable consequences, including to third parties. MISO states that the Commission

(2008); *Cent. Vt. Pub. Serv. Corp.*, 121 FERC ¶ 61,225 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 (2007); *Acushnet Co.*, 122 FERC ¶ 61,045 (2008)).

¹³ February 20 Order, 150 FERC ¶ 61,125 at P 41.

¹⁴ *Id.* PP 41-45.

¹⁵ MISO Request for Rehearing at 4-5.

relied on the MISO Zone 7 Maintenance Margin Charts as a key basis for the Commission's determination that the requested waiver will not have undesirable consequences. However, MISO asserts that the Maintenance Margin analysis is not the type of assessment MISO uses for making resource adequacy determinations. Instead, MISO states that the Maintenance Margin analysis is a voluntary process related to coordination of Generation Planned Outages and was designed as a proactive measure to provide Market Participants some forward insight to forecasted available capacity during those time periods.¹⁶

10. Further, MISO contends that unit suspensions and retirements are fundamentally different from scheduled maintenance or a planned outage because there is no opportunity to reschedule a unit once it is suspended or retired. According to MISO, generators that are not Capacity Resources are reflected in the Maintenance Margin analysis because they are available to serve load, but they do not have an obligation to serve load in MISO. MISO states that those generators have the ability to sell capacity and energy to other markets, so it cannot be assumed that those generators will be available during a time of potential shortage.¹⁷

11. MISO suggests that the Commission's decision to grant Consumers Energy waiver may be based on only the Maintenance Margin analyses, a small part of the information that is considered in establishing the Resource Adequacy Requirement and, therefore, the Commission should either alter its determination and deny the waiver, or clarify what other evidence in the record leads it to conclude that granting the waiver is appropriate.¹⁸

12. In Suppliers' request for rehearing of the February 20 Order, Suppliers state that granting Consumers Energy's request for waiver will result in unduly preferential treatment of Consumers Energy and unduly discriminatory treatment of other Capacity Resources.¹⁹ Suppliers state that the February 20 Order would permit Consumers Energy to satisfy its capacity obligations using a resource that will be non-functional for 6.5 weeks of the 2015-2016 Planning Year, without having to purchase any replacement capacity. Suppliers note, however, that other resources will be required to be available for the entire Planning Year and will be expected to purchase replacement capacity or be

¹⁶ *Id.* at 5-6.

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 6-7.

¹⁹ Suppliers Request for Rehearing at 9.

subject to penalties if they fail to satisfy their obligations for the entirety of the year.²⁰ Suppliers contend that MISO recognized this unduly discriminatory effect when it rejected the Supply Adequacy Working Group's proposed Tariff revisions that would have had the same effect as the waiver granted in the February 20 Order.²¹

13. Further, Suppliers argue that the Commission failed to address Suppliers' concerns regarding the discriminatory impact of Consumers Energy's waiver requests and the Commission stated only that Consumers Energy had "adequately demonstrated that waiver is warranted under the facts presented, and our determination here is limited to the specific facts of this proceeding."²² However, Suppliers argue that this statement falls short of providing a meaningful response, as required under the Administrative Procedure Act.²³ According to Suppliers, even if the facts presented in this case justified granting Consumers Energy's request for waiver, the Commission did not provide a colorable rationale for granting relief to Consumers Energy, when the EPA MATs requirements apply equally to all fossil-fueled generation facilities. Further, Suppliers assert that the Commission cites no authority under the Federal Power Act (FPA) or otherwise that would permit the Commission to use its waiver authority to grant an otherwise unlawful preference over the objections of similarly situated Market Participants.²⁴ Suppliers point out that the Commission recently rejected a waiver request that would "result in unduly favorable treatment to [the applicant], while other market participants abided by the Tariff requirement"²⁵

²⁰ *Id.* at 8-9.

²¹ *Id.* at 9 (citing MISO, Supply Adequacy Working Group Meeting Minutes, at 4 (Dec. 5, 2013), <https://www.misoenergy.org/Library/Repository/Meeting%20Material/Stakeholder/SAWG/2014/20140109/20140109%20SAWG%20Item%2001c%20Minutes%2020131205.pdf>).

²² *Id.* at 10 (quoting February 20 Order, 150 FERC ¶ 61,125 at P 48).

²³ *Id.* (citing 5 U.S.C. § 706(2)(A) (2012)).

²⁴ *Id.* at 11 (citing *City of Fremont v. FERC*, 336 F.3d 910, 918 (9th Cir. 2003)).

²⁵ *Id.* (citing *Mass. Muni. Wholesale Elec. Co.*, 148 FERC ¶ 61,227, at P 14 (2014)).

14. Suppliers also argue that the February 20 Order harms MISO's capacity market and suppliers participating in that market.²⁶ Specifically, Suppliers argue that the Commission ignored its concerns that granting Consumers Energy's waiver request would "harm MISO's capacity market by suppressing [auction] prices" and "cause other resources . . . to be deprived of capacity revenues."²⁷ According to Suppliers, the Commission failed to address that expanding supply by permitting otherwise ineligible capacity to offer into a Planning Resource Auction will, all other "market factors" being equal, result in lower capacity prices. Similarly, Suppliers argue that permitting otherwise ineligible capacity to be used to satisfy Load Serving Entities' capacity obligations will, all other "market factors" being equal, deprive other capacity resources of the opportunity to obtain capacity commitments.²⁸ Suppliers also assert that the Commission ignored Commissioner Bay's dissent and that the Commission is obligated to engage the arguments of its dissenting commissioners.²⁹ Further, Suppliers assert that the Commission failed to address Suppliers' arguments on the impacts of the requested waiver on MISO's capacity markets and capacity revenues. Furthermore, Suppliers argue that, although the Commission suggested that concerns regarding suppliers' revenues were outweighed by the increase in costs to Consumers Energy's customers, the Commission provided no evidence to support its findings.³⁰

15. Suppliers also suggested that the Commission could clarify that the Classic Seven do not have to be offered into the 2015-2016 Planning Resource Auction. Suppliers state that the Commission failed to address these options, finding them to be outside the scope of the proceeding because such relief had not been requested by Consumers Energy.³¹ Suppliers state that the Commission erred in brushing aside these suggestions, finding them to be outside the scope of the proceeding. Suppliers argue, however, that Consumers Energy expressly stated that, "[i]f the Commission determines that . . . Consumers [Energy] . . . must purchase replacement [capacity] under section 69A.3.1.h for this period, the Commission should condition any such requirement on the availability

²⁶ *Id.* at 11-12.

²⁷ *Id.* at 12 (citing February 20 Order, 150 FERC ¶ 61,125 at P 48).

²⁸ *Id.*

²⁹ *Id.* at 13 (citing *Elec. Power Supply Ass'n v. FERC*, 753 F.3d 216, 224 (D.C. Cir 2014)).

³⁰ *Id.*

³¹ *Id.* at 23.

of replacement [capacity] at just and reasonable costs.”³² Regardless, Suppliers argue that the Commission is obligated to consider alternatives put forward by dissenting commissioners and intervenors, but the Commission failed to explain why it did not accept such alternatives to granting waiver, such as Commissioner Bay’s suggestion to purchase replacement capacity for the 6.5 week period at just and reasonable rates.

16. Suppliers argue that the Commission ignored statements by MISO regarding the harm to reliability and chose instead to rely on limited evidence that was taken out of context. Specifically, Suppliers argue that the Commission inappropriately relied on the Attachment Y analysis³³ and MISO’s Zone 7 Maintenance Margin charts, which Suppliers assert that MISO has explained fall short even for the limited purpose of assessing scheduled maintenance outages because generators that are not Capacity Resources do not have an obligation to serve load in MISO.³⁴

17. Suppliers state that, while the Commission found the Michigan Commission’s support helpful, the Michigan Commission did not provide any analyses of reliability impacts. Further, Suppliers assert that the Planning Reserve Margin is only part of the annual Planning Reserve Margin Requirement established by MISO, and the fact that the Michigan Commission has authority to set a different Planning Reserve Margin for a specific year does not mean that it has authority to change Consumers Energy’s Planning Reserve Margin Requirement in the middle of a Planning Year, or to otherwise relieve Consumers Energy of its resource adequacy obligations under the Tariff.³⁵

18. Suppliers also contend that the Commission ignored MISO’s reliability concerns without explanation. According to Suppliers, the Commission should have assessed the impact of the waiver requests on reliability of the region as a whole because MISO’s system operates like a “mutual insurance network” for resource adequacy purposes.

³² *Id.* (citing Consumers Energy Request for Waiver at 21).

³³ Section 38.2.7 of the MISO Tariff requires that any Market Participant planning to retire or suspend a Generation Resource must notify MISO by submitting an Attachment Y Notification at least 26 weeks prior to retirement/suspension. MISO then completes an Attachment Y Reliability Study to determine whether the Generation Resource is necessary for the reliability of the Transmission System. MISO, FERC Electric Tariff, Module C, § 38.2.7 (39.0.0).

³⁴ Suppliers Request for Rehearing at 14-17 (citing MISO Protest at 9).

³⁵ *Id.* at 17-18.

Suppliers assert that the narrow approach of the February 20 Order is inappropriate given the interconnected nature of the MISO grid and contravenes Commission precedent.³⁶

19. Further, Suppliers contend that the Commission deviated from its precedent requiring a waiver applicant to demonstrate that it cannot comply with the relevant tariff provision in good faith. Suppliers admit that there are circumstances where the good faith criterion is not applicable, but argue that Consumers Energy could have complied with the Tariff by purchasing replacement capacity. Suppliers assert that the Commission failed to provide any rationale for not applying the good faith criterion in this case or to explain why the good faith criterion is not applicable in these circumstances, thereby rendering the February 20 Order arbitrary and capricious.³⁷

20. Suppliers request that the Commission act expeditiously on its request for rehearing to allow adequate time for Consumers Energy to purchase replacement capacity for its facilities in the event that rehearing is granted, or, alternatively, give Suppliers an opportunity to seek judicial review if the Commission denies its request for rehearing.³⁸

III. Procedural Matters

21. On April 6, 2015, Consumers Energy filed a motion for leave to answer and answer to the requests for rehearing filed by MISO and Suppliers. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2015) prohibits an answer to a request for rehearing. Accordingly, we reject Consumers Energy's answer.

IV. Discussion

22. We deny the requests for rehearing.

³⁶ *Id.* at 14-17 (citing *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 1113 (2006), *order on clarification & reh'g*, 119 FERC ¶ 61,076, *on clarification & reh'g*, 120 FERC ¶ 61,271 (2007)).

³⁷ *Id.* at 24-25 (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (stating that the Federal Communications Commission may not depart from a prior policy "sub silentio"); *Williams Gas Processing Gulf Coast Co. v. FERC*, 475 F.3d 319, 322 (D.C. Cir. 2006); *Nuclear Energy Inst., Inc. v. EPA*, 373 F.3d 1251, 1296 (D.C. Cir. 2004)).

³⁸ *Id.* at 2.

23. First, as the Commission made clear in this proceeding and when addressing other similar requests for waiver, the Commission considered potential impacts on reliability in determining whether to grant relief sought by particular applicants. In each case, that record included the concerns raised by MISO and other parties, and now reiterated on rehearing, that the waivers were not limited in scope because they, as well as other potential waivers that might be sought, presented a cumulative threat with the potential to yield undesirable consequences and regulatory uncertainty. We continue to disagree with those assertions and affirm our decision to grant relief to Consumers Energy. In particular, we note that the waiver granted to Consumers Energy is only one of three such waivers that the Commission granted for the entire MISO footprint, demonstrating that the Commission considered the specific facts of each case, as well as broader impacts on reliability, in determining whether relief was warranted based on the record.³⁹ Furthermore, the purported plethora of waiver requests similar to Consumers Energy's never materialized. Therefore, we continue to disagree with MISO that granting individual waiver requests will contribute to a cumulative threat to reliability. The Commission's conclusion that granting relief to Consumers Energy would not raise resource adequacy concerns is reinforced by the fact that, based on the results of the 2015-2016 Planning Resource Auction, we now know that Consumers Energy's zone, Zone 7, cleared capacity well in excess of its Local Clearing Requirement. Zone 7 also exported capacity, thereby not utilizing any of its Capacity Import Limit and presumably allowing sufficient capability to import energy during the 6.5 week period if necessary. In addition, the other five exporting zones in MISO have capacity exports that fall short of their Capacity Export Limits thereby providing flexibility for additional imports to Zone 7 if needed to cover any potential shortfall.

24. Suppliers and MISO also argue that reliance on Maintenance Margin Charts is misplaced, but we disagree. While the MISO Maintenance Margin Charts are not dispositive in and of themselves, as part of the record, we find them of particular importance given the level of scheduled maintenance outages typically experienced

³⁹ See *Duke Energy Indiana, Inc.*, 150 FERC ¶ 61,126, at PP 60-61 (2015) (*Duke Indiana*) (denying Duke Indiana's request for the same relief provided to Consumers Energy and granting different relief instead); see also *MidAmerican Energy Co.*, 150 FERC ¶ 61,124 (2015); *Wisconsin Pwr. and Light Co.*, 150 FERC ¶ 61,221 (2015). We note that after the Commission granted Consumers Energy's waiver, the Commission approved tariff revisions that, under a defined set of circumstances, allow generators that retire or suspend on or after March 31, 2015 and by May 31, 2016 to be relieved of physical withholding mitigation provisions if they decide not to offer those resources into the 2015-2016 Planning Resource Auction. See *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,222 (2015).

during shoulder periods. This information provides us with a more granular understanding of the load forecast and scheduled outages in MISO zones on a daily basis for the 6.5 week period, which is relevant to the Commission's larger finding that the requested waiver would not materially impact reliability during the period in question.

25. Suppliers assert that, while the Michigan Commission has authority to set a different Planning Reserve Margin for a specific year, the Michigan Commission does not have the authority to change Consumers Energy's Planning Reserve Margin Requirement in the middle of a Planning Year, or to otherwise relieve Consumers Energy of its resource adequacy obligations under the Tariff. However, the Commission in the February 20 Order merely acknowledged that the Michigan Commission has the authority to establish the Planning Reserve Margin,⁴⁰ not that the Michigan Commission had established the Planning Reserve Margin in this case. Rather, the Commission's statements acknowledged as helpful the statements made by the Michigan Commission. In particular, the Michigan Commission's support for the requested relief bolstered the Commission's conclusion that resource adequacy will be maintained.

26. We also disagree with Suppliers' assertion that the Commission failed to address Suppliers' concerns that granting the waiver request would result in undue discrimination. The Commission addressed protestors' concerns regarding undue discrimination and found that it did not expect that the limited scope of the waiver will unduly influence a generator's decision to make investments to comply with MATS rules. In fact, Consumers Energy states that it has itself committed to purchase a 542 MW natural gas-fueled electric generation plant in Jackson, Michigan in part to replace the Classic Seven generation.⁴¹ After considering the issues before it and the limited nature of the waiver sought in this proceeding, the Commission determined that Consumers Energy's request would not result in unfavorable treatment of similarly situated parties. We affirm that finding here.

27. We also disagree with Suppliers' assertion that the Commission failed to address concerns that granting the waiver request would result in suppressed capacity prices to the detriment of other capacity suppliers. The Commission considered protestors' arguments and found that granting the requested waiver would not cause undesirable consequences. In any case, in weighing any revenue increases for suppliers against the potential increase in costs to Consumers Energy's customers, we affirm that waiver was appropriate because the Commission could not justify assessing customers potentially significant costs to replace capacity during the 6.5 week period at issue when those costs

⁴⁰ MISO, FERC Electric Tariff, Module E-1, § 68A.1 (30.0.0).

⁴¹ Consumers Energy Request for Rehearing at Ronk Test. at 10.

are unlikely to have a meaningful impact on reliability or resource adequacy during the replacement period in question.

28. We disagree with Suppliers that the Commission failed to provide a rationale to explain why requiring Consumers Energy to pay for replacement capacity would be unjust or unreasonable. The Commission may grant a requested waiver where the applicant satisfies the Commission's waiver criteria. Upon finding that Consumers Energy met its burden for a particular form of relief, the Commission was not required to address the proposed alternative forms of relief,⁴² though we note that the Commission nonetheless did address the particular form of relief referenced by Suppliers in their rehearing request.⁴³ Instead, the Commission relied on its waiver criteria in granting the requested waiver and finding that such waiver "will benefit Consumers Energy's customers by reducing the financial impacts of the disconnect between the MISO 2015-2016 Planning Year and deadline for compliance with the EPA MATS requirements without materially impacting reliability or resource adequacy during the 6.5 week period in question."⁴⁴

⁴² Cf. *Midcontinent Indep. Sys. Operator, Inc., Pub. Serv. Comm'n of Wis. v. Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,071, at P 69 & n.146 (2014) (finding that because the Commission's determination extended the proposed System Support Resource cost allocation method beyond the proposed footprint, the Commission did not need to address alternative relief proposed by various commenters) (citing *e.g.*, *Cal. Indep. Sys. Operator, Corp.*, 124 FERC ¶ 61,271, at P 107 (2008) ("[W]e are not required here to consider alternative proposals. When the utility's proposed filing is determined to be just and reasonable, the Commission need not consider whether alternative proposals may also be just and reasonable."); *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,060, at P 129 (2012) ("Having found MISO's compensation proposal just and reasonable, we need not consider alternative compensation methodologies (*e.g.*, not providing compensation)."); *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 691 (D.C. Cir. 1995) ("[T]he Commission may approve the methodology proposed in the settlement agreement if it is 'just and reasonable'; it need not be the only reasonable methodology, or even the most accurate."); *Cities of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (finding that, under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology "need not be the only reasonable methodology, or even the most accurate one"))).

⁴³ February 20 Order, 150 FERC ¶ 61,125 at P 49 & n.81.

⁴⁴ *Id.* P 42.

29. We disagree with Suppliers' assertion that the Commission erred, in evaluating whether reliability will be harmed, by looking at one utility or one state in isolation but rather also by looking at reliability of the region as a whole. The Commission's analysis was not limited to a particular utility or state. Rather, the Commission relied on MISO's Attachment Y Reliability Study, which examines both local reliability and system reliability,⁴⁵ and the Maintenance Margin Charts for MISO Zone 7, which provide additional evidence in support of granting the requested waiver. Accordingly, we deny Suppliers' request for rehearing on this issue.

30. Suppliers also contend that the Commission deviated from its precedent requiring a waiver applicant to demonstrate that it cannot comply with the relevant Tariff provision in good faith. However, as Suppliers themselves admit, there are circumstances where the good faith criterion is not applicable. Even if it were applicable, we find that Consumers Energy acted in good faith in seeking waiver from the Commission. In particular, we note that parties, including Consumers Energy, sought (unsuccessfully) to address the disconnect between the MISO Planning Year and the MATS effective date through the MISO stakeholder process before seeking relief at the Commission.⁴⁶ Consumers Energy also sought relief well in advance of the beginning of the MISO

⁴⁵ MISO's Transmission Planning Business Practices Manual (Reliability Evaluation section 6.2.3) states:

System Intact (Category A) and single-element contingencies (Category B) will be considered in the evaluation, which are consistent with [North American Electric Reliability Corporation (NERC)] Planning Standards I.A. Category B includes any single transformer, generator, or transmission line outage. In addition, significant multiple-element contingencies consistent with NERC Category C will be reviewed.

NERC Transmission Planning Standards TPL-001, TPL-002, and TPL-003 effective April 1, 2005 will be applied to test the system. In performing the [System Support Resource] study, Regional, State, and MISO Member (Local) planning criteria will be respected. In addition to NERC Standards, load deliverability will be tested in areas with potential load deliverable deficiency. A 1 day in 10 year [Loss of Load Event] criteria will be applied.

⁴⁶ Conflict with MISO Capacity Planning Year definition and EPA MATS Timeline at 4 (May 31, 2013), <https://www.misoenergy.org/Library/Repository/Meeting%20Material/Stakeholder/SAWG/2013/20130606/20130606%20SAWG%20Item%2004%20MATS%20Capacity%20Cr edit%20Concern.pdf>.

Planning Year, providing other parties and the Commission ample time to consider its requested relief. Consumers Energy also complied with other pertinent Tariff provisions, including the requirement to timely submit an Attachment Y Notification.⁴⁷

31. Suppliers argue that the Commission's response to their concerns regarding the discriminatory impact of Consumers Energy's waiver requests falls short of the meaningful response required under the Administrative Procedure Act.⁴⁸ However, we disagree with Suppliers that the Commission failed to provide rationale for its findings. The Commission carefully reviewed the record before it and discussed why waiver was appropriate under each of the relevant Commission standards for waiver.⁴⁹ We also disagree with Suppliers' reliance on *Mass. Muni. Wholesale Elec. Co.* In that case, the Commission denied an applicant's request for waiver of a tariff requirement after it failed to meet a deadline due to administrative oversight.⁵⁰ Here, Consumers Energy makes no argument that its request for waiver is based on administrative oversight. Accordingly, we find Suppliers' reliance on the Commission's denial of a waiver request in *Mass. Muni. Wholesale Elec. Co.* unavailing.

⁴⁷ *Supra* note 33.

⁴⁸ Consumers Energy Request for Rehearing at 10 (citing 5 U.S.C. § 706(2)(A) (2012)).

⁴⁹ February 20 Order, 150 FERC ¶ 61,125 at PP 41-51; *see also United Gas Pipe Line Co. v. FERC*, 707 F.2d 1507, 1511 (D.C. Cir. 1983) (explaining that "the agency is not required to author an essay for the disposition of each application") (quoting *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972)).

⁵⁰ *Mass. Muni. Wholesale Elec. Co.*, 148 FERC ¶ 61,227, at P 13 (2014).

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.