

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Midcontinent Independent System)
Operator, Inc.) Docket No. ER20-1926-000

ANSWER OF AMERICA’S POWER AND THE LIGNITE ENERGY COUNCIL

The Commission should refuse to grant waiver and should deny MISO’s late-filed Motion for Leave to Answer (“Motion”)¹ and not consider its Answer.² Contrary to MISO’s claim, good cause does not exist for the Commission to accept MISO’s impermissible Answer. We remain appreciative of MISO’s efforts and opted to support MISO’s filing rather than protest based on the improvement from the status quo the instant filing represents and because of the expected short-term

¹ MISO submitted a single pleading containing both a Motion and an Answer. For clarity, this answer will refer to the Motion separately from the Answer as the context requires, despite that the pleading was combined.

² Rather than submitting its pleading within fifteen days after the date comments were filed, MISO inexplicably filed 31 calendar days thereafter and a mere nine days before a Commission order is expected to issue. MISO cited to three cases in support of its waiver request. MISO Motion at n.6. In one of the cited cases, the Commission accepted a MISO answer filed on June 1, 2004 to comments that had been filed on May 17, 2004, within a fifteen day period. *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,027 (2004). In another of the cases, the Commission accepted PJM Interconnection L.L.C.’s (“PJM”) September 11, 2006 answer to a pleading filed on August 25, 2006, as well as another party’s September 26, 2006 answer to the PJM September 11 submission. Both of these answers were submitted within fifteen days of the pleadings to which they responded. *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,168 (2006). In the third cited case, Morgan Stanley, on July 28, 2000, answered an answer filed by the New York Independent System Operator on July 17, 2020, in eleven days’ time. *Morgan Stanley Capital Group, Inc. v. New York Indep. Sys. Operator, Inc.*, 93 FERC ¶ 61,017 (2000). MISO provides no authority that supports waiver in the case of the extended 31 day filing timetable it employed, which caused its submission nearly to abut with the expected date of a Commission order. Its request for waiver should be denied both due to its timing, as well as to its substantive merit.

applicability of the changes. However, the Commission guidance we requested remains critically important.

MISO's pleading contains two main pleas. First, it urges the Commission not to provide the critically important guidance that America's Power and the Lignite Council, numerous other supporting parties,³ and United States Senator John Hoeven,⁴ requested relating to non-discrimination. Second, it asks the Commission not to dictate the proposed date certain for the MISO filing that will propose a replacement to the temporary stop-gap measures proposed in the instant docket. As to the permanent solution timeframe, MISO includes a *new* proposal to make a compliance filing within 30 days of the anticipated March 2021 MISO Board consideration of the durable proposal if the proposed solution itself is not filed for approval by that time.⁵ On both counts, MISO's Answer does not provide information necessary or useful to inform the Commission's decision-making in this case and thus its Motion should be denied.

While acknowledging that it agrees with America's Power and the Lignite Energy Council that the Commission has provided guidance relating to the

³ See Comments of the Coteau Properties Company, the Coyote Creek Mining Company, the Falkirk Mining Company, Hallador Energy Company, Illinois Coal Association, the Indiana Coal Council, the Kentucky Coal Association, the North American Coal Corporation, the National Mining Association, and the West Virginia Coal Association, ER20-1926-000 (filed June 19, 2020)(incorporating by reference and adopting the comments filed by America's Power and the Lignite Energy Council).

⁴ Senator Hoeven asked the Commission to ensure a level playing field and fair and equitable representation of affiliate sector members such as the Lignite Energy Council.

⁵ MISO Answer at 10.

development of durable solutions in past circumstances,⁶ MISO seeks to dismiss the need for current Commission guidance relating to its replacement Advisory Committee proposal by claiming this could restrict MISO's flexibility, and claims that "MISO would not file a proposal that it determined was unduly discriminatory."⁷ However, when issuing guidance such as that requested here, the Commission's precise purpose is to provide direction to ensure as best it can that a future submission conforms to its expectations and requirements. That is, it intends to limit flexibility.

Moreover, this guidance is of importance, given that it is not unprecedented for the Commission to find a tariff provision unduly discriminatory despite MISO's belief to the contrary.⁸ In this case, a proposal that treats similarly situated entities vastly differently from each other in important respects has been filed for approval. Arguably, that proposal would be unduly discriminatory as a long-term solution but is tolerable only because of its short-term duration. MISO receiving the Commission guidance requested by America's Power, the Lignite Energy Council, and many others, is not intended in any way to prejudge the ultimate approach to restructuring the Advisory Committee, but to provide key parameters that need to be met for the selected approach to pass Federal Power Act muster. Indeed,

⁶ *Id.* at n.11.

⁷ *Id.* at 4.

⁸ For example, in *Midcontinent Independent System Operator, Inc.*, 166 FERC ¶ 61,187 at P 10 (2019), MISO claimed that its proposed tariff revisions were just, reasonable, and not unduly discriminatory, but the Commission disagreed, finding that MISO failed to adequately support its proposal as just, reasonable and not unduly discriminatory or preferential, and providing guidance to assist MISO in developing a new proposal. *Id.* at PP 19, 42, 45.

MISO's concerns that its flexibility will be restricted are belied by the reality that its Board already has set forth certain parameters of its own that MISO must follow.⁹ Contrary to MISO's assertions that the Commission's guidance may be harmful, that guidance is all the more critical in this case because the Commission should be keenly concerned that any order accepting the stop-gap filing not be interpreted as the Commission's blessing of a construct whereby all but one sector can have voting rights, and dangerously cited as precedent for that proposition in the future.

As to the timing, MISO's initial filing indicated that its Board requires a permanent solution to be developed and proposed on or before March 31, 2021.¹⁰ MISO conducts Board meetings quarterly such that there will be a Board meeting in December 2020 and another meeting in March of 2021.¹¹ America's Power and the Lignite Energy Council requested that the Commission require the permanent solution to be filed in December of 2020. They noted that while MISO had proposed a deadline for developing and proposing the permanent solution, a date certain for actually filing it was not specified. In response, MISO, rather than committing to filing the proposal within 30 days of the date considered by the Board, proposes that if it does not for some unspecified reason, it would submit an informational report in that timeframe.¹² MISO should be reminded that its proposal would have been vehemently opposed had its expected duration been

⁹ MISO Answer at 4 (discussing MISO Board Chair Currie's letter setting forth criteria that MISO must adhere to for the permanent solution).

¹⁰ Midcontinent Independent System Operator, Inc., Revisions to Rate Schedule 1 to Establish a New Affiliate Sector for the Advisory Committee at 7.

¹¹ MISO Answer at 8-9.

¹² *Id.* at 10.

significant. While MISO's initial filing implied the replacement solution would be submitted to the Commission shortly after March of 2021, MISO is now suggesting the possibility that it may file only an informational report in April of 2021. This slippage in timing, which already has transpired for YEARS in relation to this matter, is probative of the important need for the Commission to provide a firm deadline. MISO's recitation of future planned meeting dates in its Answer is unavailing. Those can be changed to facilitate the filing of the already long overdue durable solution in December of 2020. In the alternative, and at the very least, the Commission should direct MISO to file the replacement proposal on or before April 30, 2021.

Accordingly, America's Power and the Lignite Energy Council respectfully request that the Commission deny MISO's Motion and reject consideration of its Answer.

Respectfully submitted,

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On behalf of the America's Power

July 22, 2020

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*On behalf of the Lignite Energy
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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing comment this 22nd day of July 2020, upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Jason Y Lee
Jason Y. Lee