170 FERC ¶ 61,066
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Wolverine Power Supply Cooperative, Inc. v. Midcontinent Independent System Operator, Inc.	Docket No. EL19-102-000
Midcontinent Independent System Operator, Inc.	Docket No. ER20-129-000 (not consolidated)

ORDER ACCEPTING TARIFF FILING AND DISMISSING COMPLAINT AS MOOT

(Issued January 30, 2020)

1. On September 27, 2019, Wolverine Power Supply Cooperative, Inc. (Wolverine) filed a complaint (Complaint) against Midcontinent Independent System Operator, Inc. (MISO) pursuant to section 206 of the Federal Power Act (FPA)[1] and Rule 206 of the Commission's Rules of Practice and Procedure.[2] In its Complaint, Wolverine argues that MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) is unjust and unreasonable because it allows resources that are on MISO-approved outage for the entire Planning Year to participate in the Planning Resource Auction (Auction).[3] On October 16, 2019, pursuant to section 205 of the FPA,[4] MISO submitted a filing proposing revisions to its Tariff to limit the ability of resources to participate in the Auction if the resource has expected full or partial outages that last for any ninety (90) or more of the first one hundred and twenty (120) Calendar Days in the Planning Year (Tariff Filing).

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[1] 16 U.S.C. § 824e (2018).

[2] 18 C.F.R § 385.206 (2019).

[3] MISO conducts the Auction within ten (10) business days of the last business day in March to procure capacity for the upcoming Planning Year, which runs from June 1 through May 31 of the following year. *See* MISO Tariff, Module A, § 1.P (Definitions) (59.0.0); Module E-1, § 69A.7.1 (44.0.0).

[4] 16 U.S.C. § 824d (2018).

2. As discussed below, we accept MISO's Tariff Filing, effective February 1, 2020, as requested, and dismiss Wolverine's Complaint as moot.

I. Complaint

A. Summary

3. Wolverine asserts that the Tariff is unjust and unreasonable because it allows resources that are on MISO-approved outages for the whole Planning Year to nonetheless participate in the Auction. According to Wolverine, an unspecified 350 megawatt (MW) resource in Local Resource Zone[5] 7 (Zone 7) identified by the MISO Independent Market Monitor (Market Monitor) participated in the 2019/20 Auction and set the clearing price; this resource, however, was unavailable during the entire Planning Year. Wolverine argues that the unavailability of such resources during the entire Planning Year results in three unjust and unreasonable outcomes: (1) system reliability is jeopardized; (2) Market Participants are not adequately compensated for their capacity contributions; and (3) long-term price signals are distorted.[6]

4. Wolverine explains that the participation of this unspecified resource directly affected both the reliability of Zone 7 and the clearing price of Zone 7 in the 2019/20 Auction. Wolverine states in the 2019/20 Auction, Zone 7's Local Clearing Requirement,[7] which was 21,812 MW, matched "exactly the volume of capacity in [Zone] 7 attributable to [Auction]-clearing and [Fixed Resource Adequacy Plan] resources."[8] Wolverine asserts that this is particularly dangerous because 350 MW of the Local Clearing Requirement is attributable to the unspecified unit that is unavailable

[5] MISO's footprint has 10 Local Resource Zones. *See* MISO Tariff, Attachment VV (Map of Local Resource Zone Boundaries) (38.0.0).

[6] Complaint at 1-3.

[7] The Local Clearing Requirement is the minimum amount of Unforced Capacity for a Zone that is required to meet its Loss of Load Expectation while fully using the Zonal Import Ability for such Zone and accounting for controllable exports. MISO Tariff, Module A, § 1.L (Definitions) (42.0.0).

[8] Complaint at 8. A Fixed Resource Adequacy Plan is a plan submitted to MISO by a Load Serving Entity which demonstrates that the Load Serving Entity has sufficient Zonal Resource Credits to meet all or part of its Planning Reserve Margin Requirement for one or more Zones. MISO Tariff, Module A, § 1.F (Definitions) (49.0.0).

for the entire Planning Year. According to Wolverine, this results in a capacity shortfall for Zone 7.[9]

5. Wolverine states that the clearing price for Zone 7 in the 2019/20 Auction was $24.30/MW-day. Wolverine states that it received permission from the Market Monitor to offer its Burnips generating unit No. 6 (Burnips 6) at $55.51/MW-day, demonstrating that this was the amount necessary for Burnips 6 to avoid retirement. Wolverine explains that Zone 7 would have cleared at $243.37/MW-day, the Cost of New Entry (CONE),[10] without the participation of the unspecified resource. As a result of the participation of this unspecified resource, Wolverine states that Burnips 6 did not clear the 2019/20 Auction and was forced to retire. Wolverine submits that it under-recovered approximately $12 million net revenue (not including Burnips 6) because of the depressed clearing price.[11] Wolverine further observes that, since 2016, the Market Monitor has identified the problems associated with resources being unavailable during peak periods. With respect to the 2019/20 Auction, Wolverine notes that the Market Monitor stated that the "distortion" in the Auction results supports the Market Monitor's recommendation that resources should not be able to qualify as Planning Resources if they have no expectation of being available during the summer peak period.[12]

6. Wolverine argues that the outcome of the 2019/20 Auction results in two indisputable conclusions. First, Wolverine states that the ability of unavailable resources to participate in the Auction, as demonstrated during the 2019/20 Planning Year, frustrates the primary function of the Auction, which Wolverine avers is to procure resources necessary for reliability. If the unspecified resource had been precluded from participating in the Auction, Wolverine asserts that the Auction would have allowed MISO to procure capacity to ensure reliability in Zone 7. Wolverine argues that MISO is responsible for setting the Planning Reserve Margin[13] "based upon the probabilistic

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[9] Complaint at 8.

[10] CONE is the capital, operating, financial and other costs of acquiring a new generation resource within MISO for any designated Zone. MISO Tariff, Module A, § 1.C (Definitions) (62.0.0).

[11] Complaint at 9-10.

[12] *Id*. at 10-12 (citing Potomac Economics, *IMM 2019 Summer Readiness and Resource Adequacy*, at 7 (July 11, 2019) (provided as Attachment 3 to the Complaint)).

[13] The Planning Reserve Margin is the percentage above forecasted Coincident Peak Demand of Planning Resources for the Transmission Provider Region in order to meet the Loss of Load Expectation. This percentage will include a quantity sufficient to cover transmission losses. MISO Tariff, Module A, § 1.P (Definitions) (59.0.0).

analysis of being able to serve the Transmission Provider Region's Demand for the applicable Planning Year."[14] According to Wolverine, this means that MISO has a responsibility to ensure sufficient capacity is procured, and that if a resource intends to be unavailable for the entire Planning Year, MISO should deny that resource's planned outage request. Wolverine states that MISO failed to do so, and, as a result, has set up the potential for continued capacity shortfalls in future Planning Years if resources able to provide capacity continue to be driven out of the market as a result of lower-priced, but unavailable, resources being allowed to participate in the Auction.[15]

7. Second, Wolverine asserts that the Auction also failed to achieve its secondary purpose of sending long-term market signals for investment. Wolverine observes that, for the 2019/20 Planning Year, the Market Monitor determined that the $24.30/MW-day clearing price for Zone 7 is 25 percent of the clearing price needed to induce existing resources to continue operating, and 12 percent of the clearing price needed to incentivize investment in new resources. Wolverine argues that if the Tariff had precluded the unspecified, unavailable resource from participating in the Auction, then the clearing price for Zone 7 would have been $243.37/MW-day, a price which, in the Market Monitor's estimation, would have both incentivized investment in new resources and ensured that existing resources needed for reliability do not exit the market.[16]

8. In addition to these two arguments, Wolverine asserts that, when unavailable resources participate in the Auction, other available resources are required to cover for those unavailable resources. According to Wolverine, these available resources are not properly compensated through the Auction for the value of the capacity they provide because the Auction clearing price has been depressed. Therefore, Wolverine argues that unavailable resources unfairly lean on available resources to maintain reliability creating a free-rider problem, and yet they still receive compensation for clearing in the Auction. As a result, Wolverine argues that existing resources that are actually available at times of peak demand are not justly and reasonably compensated for the value of their capacity, and such pricing is discriminatory.[17]

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[14] Complaint at 16 (citing MISO, FERC Electric Tariff, Module E-1, § 68A.2.1 (32.0.0)).

[15] *Id*. at 2, 15-17.

[16] *Id*. at 17-18.

[17] *Id*. at 3, 13; *see also id.* at 14-15 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,054, at PP 21, 31 (2009) (with regard to resource adequacy, an affected party could seek relief through section 206 of the FPA if a

9. Wolverine argues that, under the FPA, generators are entitled to just and reasonable compensation, and they must have a reasonable opportunity to recover their fixed costs and a fair rate of return.[18] Therefore, Wolverine asserts that the Tariff must be revised on a prospective basis prior to the 2020/21 Auction to prevent unavailable resources from setting the clearing price in the Auction. Wolverine acknowledges that, at the time it filed the Complaint, MISO was working through its stakeholder process on a proposal, to be effective by the 2020/21 Auction, that would disqualify resources from participating in the Auction if they were expected to be unavailable for at least ninety (90) days during the first one hundred and twenty (120) days of the Planning Year. Wolverine adds that it initially delayed filing this Complaint in order for MISO to continue its stakeholder process on this issue. While Wolverine states that it supports MISO's Tariff Filing with regard to the 2020/21 Auction as a good first step, it observes that MISO is proposing future refinement to the Auction qualification process that would not be ready until the 2021/22 Auction. Wolverine explains that this delay is unacceptable and made it necessary for Wolverine to file this Complaint to seek expedited Commission action.[19]

10. For relief, Wolverine asks the Commission to direct MISO "to revise its Tariff to expressly preclude resources seeking to qualify to participate in the [Auction] from scheduling planned outages during the peak periods of the Planning Year in which they seek to participate."[20] In addition, Wolverine requests that, on an interim basis, "the Commission clarify that MISO must deny a resource's request for planned outage for the entire Planning Year if that resource[] intends to participate in the [Auction]."[21]

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capacity-deficient load-serving entity were to "lean on" excess capacity without providing compensation)).

[18] *Id*. at 12-13 (citing 16 U.S.C. § 824d(a); *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944); *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679, 692–93 (1923)).

[19] *Id*. at 12-13, 18-20.

[20] Complaint at 21.

[21] *Id*. In addition, Wolverine observes that it does not allege a Tariff violation because it does not have sufficient public information to establish such a claim. However, if the Commission determines that the results of the 2019/20 Auction were unjust and unreasonable, Wolverine states that it would support appropriate retroactive relief. *Id.* at n.4.

Wolverine acknowledges that this interim relief may be overcome by any Tariff filing made by MISO.[22]

B. Notice and Responsive Pleadings

11. Notice of the Complaint was published in the *Federal Register*, 84 Fed. Reg. 53,430 (2019), with answers, interventions, and comments due on or before October 17, 2019. Timely motions to intervene were filed by Potomac Economics, Ltd. (Market Monitor); Exelon Corporation; Indianapolis Power & Light Company; Cooperative Energy; Coalition of MISO Transmission Customers; MidAmerican Energy Company; Association of Businesses Advocating Tariff Equity; Energy Michigan, Inc.; Duke Energy Corporation;[23] American Municipal Power, Inc.; Entergy Services, LLC;[24] International Transmission Company; Ameren Services Company;[25] DTE Electric Company; Cloverland Electric Cooperative; Consumers Energy Company; and Michigan Public Power Agency. Michigan Public Service Commission and Public Utility Commission of Texas each filed a notice of intervention. Organization of MISO States (OMS) filed a notice of intervention, motion to dismiss, and comments. National Rural Electric Cooperative Association (NRECA) and Coalition of Midwest Power Producers, Inc. (Power Producers)[26] each filed a motion to intervene and comments. Missouri Joint Municipal Electric Utility Commission and WPPI Energy filed a motion to intervene out-of-time.

12. On October 17, 2019, MISO filed an answer and motion to consolidate proceedings. On November 1, 2019, Wolverine filed an answer and motion to consolidate proceedings.

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[22] *Id*. at 21-22.

[23] Duke Energy Corporation is filing on behalf Duke Energy Indiana, LLC; Duke Energy Carolinas, LLC; Duke Energy Progress, LLC; and Duke Energy Business Services, LLC.

[24] Entergy Services, LLC is filing on behalf of Entergy Arkansas, LLC; Entergy Louisiana, LLC; Entergy Mississippi, LLC; Entergy New Orleans, LLC; and Entergy Texas, Inc.

[25] Ameren Services Company is filing on behalf of Ameren Illinois Company, Ameren Transmission Company of Illinois, and Ameren Missouri.

[26] Power Producers consist of Vistra Energy, Corp.; Calpine Corporation; Main Line Generation, LLC; EDF Renewables; and Midland Cogeneration Venture Limited Partnership.

1. Comments

13. NRECA contends that MISO's current rules governing the Auction are unjust and unreasonable because they allow a resource to participate in the Auction, clear the Auction, and receive compensation from MISO while the resource is unavailable during the Planning Year without consequence. NRECA explains that, as a result, MISO, other Market Participants, load-serving entities, and consumers experience unanticipated lower capacity margins, reduced system or local reliability, and distorted Auction clearing price signals. NRECA acknowledges that the Tariff revisions proposed in MISO's Tariff Filing may render Wolverine's Complaint moot, but it takes no position on that issue or on whether the proposed Tariff revisions are just and reasonable. However, NRECA supports Wolverine's request for prompt Commission action to ensure that MISO's Tariff revisions are effective for the 2020/21 Planning Year. Finally, NRECA observes that Wolverine's Complaint and MISO's proposed Tariff revisions propose changes to the existing Auction construct and argues that the Commission should not revisit its 2018 decision to not impose a mandatory capacity market construct in MISO.[27]

14. OMS asks the Commission to dismiss the Complaint without prejudice, or, alternatively, to hold the Complaint in abeyance for ninety (90) days to allow MISO to file its Tariff revisions and have the Commission rule on the filing.[28] OMS contends that MISO's stakeholder process to develop these Tariff revisions should be allowed to conclude. OMS argues that the threats to system reliability identified by Wolverine fail to recognize the safeguards that exist from the larger resource adequacy construct in place within the MISO footprint. OMS further asserts that it is the states within MISO, and not the Auction, that ensure there are sufficient resources within each jurisdiction. OMS agrees that a resource should not be able to participate in the Auction if it is known prior to the Auction that the resource will be on planned outage for an extended part of the peak season. OMS observes, however, that MISO has proposed Tariff revisions to its stakeholders that restrict participation of resources that are expected to be unavailable for ninety (90) of the first one hundred and twenty (120) days of a particular Planning Year. OMS states that it supports MISO in this effort, agrees that the proposed Tariff revisions are appropriate, and that the incremental reforms in MISO's proposed Tariff revisions will satisfy Wolverine's Complaint.[29]

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[27] NRECA Comments at 3-4 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 162 FERC ¶ 61,176, at PP 57-82 (2018)).

[28] OMS filed its comments prior to MISO submitting its Tariff Filing.

[29] OMS Comments at 2-6.

15. Power Producers state that they fully support the Complaint, arguing that the Auction fails to allow generators a reasonable opportunity to recover their fixed costs and a fair rate of return on their investments. According to Power Producers, allowing resources that are unavailable due to MISO-approved planned outages to participate in and set the capacity clearing prices in the Auction violates the purpose of the Auction, which is to plan and procure resources that can sustain reliable operation of the MISO system. Power Producers argue that allowing resources that are unavailable to participate in the Auction distorts market signals and impacts long term reliability, adding that artificially low clearing prices for capacity fail to adequately compensate generators, leading to retirements and lost capacity.[30]

16. Power Producers state that MISO's stakeholder process did not address all the issues raised in the Complaint and that MISO has been aware of the issues identified in the Complaint since 2016.[31] Power Producers assert that Wolverine was rightly concerned that any delay in the MISO process could result in the 2020/21 Auction being conducted under patently unreasonable rules.[32]

17. Further, Power Producers contend that MISO needs adequate market power and manipulation mechanisms. According to Power Producers, the MISO Tariff and Business Practices Manual (BPM) require a day-ahead must offer requirement for all cleared capacity resources, with an exception for those resources on an approved planned outage. Power Producers argue, however, that this planned outage exception was not designed for resources to never serve the customers that are required to pay for the capacity commitment. Power Producers contend that additional rules are needed to require resources to report planned outages to the Market Monitor, rather than the "merit-based system" that is in place today.[33]

2. <u>Answers</u>

18. In its answer to the Complaint, MISO asks the Commission to consolidate the Complaint proceeding with the Tariff Filing proceeding, or, alternatively dismiss the

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[30] Power Producers Comments at 3-4.

[31] *Id*. at 4 (citing Potomac Economics, *2018 State of the Market Report for the MISO Electricity Markets*, at xv, 113-114 (June 2019), https://www.potomaceconomics.com/wp-content/uploads/2019/06/2018-MISO-SOM_Report_Final2.pdf).

[32] *Id*. at 4-6.

[33] *Id.* at 7-8.

Complaint as mooted by the Tariff Filing.[34] MISO contends that consolidation of the Complaint and the Tariff Filing would allow for the development of a single, comprehensive record, avoid redundancies, and promote administrative efficiency without disrupting the ongoing proceeding on the Tariff Filing.[35] MISO argues that the Commission has, in similar circumstances, consolidated proceedings where a Complaint and FPA section 205 filing raise common issues of law and fact.[36] MISO adds that, given Wolverine's indicated support for the Tariff Filing as an immediate solution to its Complaint in advance of the 2020/21 Auction and request for fast track treatment, consolidation of the instant matter and the Tariff Filing is the most efficient and equitable approach to adjudicating the issues raised in the Complaint.[37]

19. MISO contends that the Tariff Filing satisfies Wolverine's request for relief because MISO's proposed Tariff revisions would preclude resources with existing full or partial outages expected to last for any ninety (90) of the first one hundred and twenty (120) Calendar Days of the Planning Year from participation in the Auction or inclusion in a Fixed Resource Adequacy Plan. MISO avers that this approach ensures that resources do not clear the Auction when they have no reasonable expectation of being available during the highest Loss of Load Expectation periods due to long-term planned outages.[38] MISO describes its proposal as a meaningful, albeit incremental, improvement over the current eligibility provision for the Auction, and explains that it chose a maximum outage duration of ninety (90) days as a compromise between stakeholders.[39] MISO concludes that it has satisfied the Complaint because the Tariff Filing will result in MISO clearing the additional operable resources needed to maintain reliability, improve Auction prices, and, over the long term, better ensure resource adequacy in the MISO region.[40]

[34] MISO Answer at 1.

[35] *Id*. at 2.

[36] *Id*. (citing *California Public Utilities Commission v. Pacific Gas and Electric Co.*, 163 FERC ¶ 61,113, at P 23 (2018)).

[37] *Id*.

[38] *Id*. at 5.

[39] *Id*. at 6.

[40] *Id*. at 7-8. MISO also requests waiver of the requirements of 18 C.F.R. § 385.213(c)(2)(i) and (ii) to: (1) admit or deny, specifically and in detail, each material allegation of the pleading answered; and (2) set forth every defense relied on. MISO states that good cause exists to grant this waiver because MISO has already submitted the

20. In its answer to MISO, Wolverine states that it supports consolidation of the Complaint proceeding with the Tariff Filing proceeding. Wolverine observes that, through MISO's Tariff Filing, MISO has proposed specific Tariff and BPM revisions that address the same deficiencies identified by Wolverine in its Complaint. According to Wolverine, it is appropriate to consolidate these proceedings in order to facilitate the development of a single, comprehensive record concerning the common issues presented in both proceedings in a manner that promotes administrative efficiencies and avoids redundancies. If the Commission chooses not to consolidate these proceedings, Wolverine argues that the Commission should hold the Complaint proceeding in abeyance pending the resolution of MISO's Tariff Filing. Wolverine asserts that it is neither substantively productive nor administratively efficient to operate both proceedings in parallel when the ultimate objective of both is the same. Further, Wolverine argues that the Commission should not dismiss the Complaint until the Commission has accepted MISO's Tariff Filing without material modification and has directed MISO to implement both the Tariff and BPM updates prior to the 2020/21 Auction. Wolverine states that it accepts that its Complaint would be moot if the Commission accepts both MISO's Tariff Filing and revisions to the BPM, which, taken together, would prevent gaming of the Auction by resources that will be on extended outages. Until the issues identified in the Complaint are resolved through MISO's Tariff Filing, however, Wolverine states that its request for immediate, interim relief remains exigent.[41]

C. Discussion

1. Procedural Matters

21. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the Complaint proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d), we grant Missouri Joint Municipal Electric Utility Commission and WPPI Energy's late-filed motions to intervene given their interest in the proceeding, the early stage of the Complaint proceeding, and the absence of undue prejudice or delay.

Tariff Filing pursuant to section 205 of the FPA, indicating its good faith effort to satisfy Wolverine's request for relief in the Complaint. MISO states that if the Commission does not grant this request for waiver, MISO reserves its right to file an amendment to this Answer to meet these requirements. MISO Answer at 8.

[41] Wolverine Answer at 3-5.

22. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept the answer filed by Wolverine in the Complaint proceeding because it has provided information that assisted us in our decision-making process.

2. Substantive Matters

23. We dismiss Wolverine's Complaint as moot.[42] With our acceptance of the Tariff Filing, as discussed more fully below, we find that there is no longer a live controversy requiring Commission action in this proceeding to resolve the issues raised by Wolverine in its Complaint. We also find Power Producers' contention that MISO needs adequate market power and manipulation mechanisms to be beyond the scope of this proceeding, although we note that MISO's proposed Tariff revisions, discussed below, require Market Participants to provide planned outage information to the Market Monitor.

24. We also deny the motions to consolidate the Complaint proceeding with the Tariff Filing proceeding. In general, the Commission consolidates proceedings only if a trial-type evidentiary hearing is required to resolve common issues of law and fact, and consolidation will ultimately result in greater administrative efficiency.[43] Here, we are not setting the Complaint or Tariff Filing for hearing and consolidating these proceedings would not ultimately result in greater administrative efficiency.

II. Tariff Filing

A. Summary

25. MISO observes that, in the State of the Market Report for 2016, the Market Monitor recommended that resources with no reasonable expectation of being available during the system peak should not be allowed to qualify as Planning Resources. MISO explains that, in response to this recommendation and stakeholder feedback, it evaluated its current requirements and determined that there are no resource adequacy considerations or consequences for resources that clear the Auction and take long-term planned outages during the peak season. Although there is a "must-offer" obligation that requires Planning Resources to offer their available capacity each day of the Planning Year, MISO states that this obligation may be overridden or reduced if a Planning Resource has a valid

[42] Accordingly, we also deny MISO's request for waiver of 18 C.F.R. § 385.213(c)(2) as moot.

[43] *Entergy Services, LLC*, 168 FERC ¶ 61,207, at P 21 (2019) (citing *Duke Energy Corp.*, 136 FERC ¶ 61,245, at P 33 (2011); *Terra-Gen Dixie Valley, LLC*, 132 FERC ¶ 61,215, at P 44 n.74 (2010); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 25 (2008)).

outage or derate status associated with a planned or forced outage. MISO states that it agrees with the Market Monitor and stakeholders that this constitutes a gap in its resource adequacy construct.[44]

26. To address these concerns, MISO explains that it proposes a two-phased approach. In the first phase, proposed in this Tariff Filing, MISO states that it addresses the most significant Planning Resource availability issues, which, if accepted, would be implemented in the 2020/21 Auction. In the second phase, MISO explains that it will address further resource accreditation and qualification issues based upon seasonal considerations in conjunction with its ongoing Resource Availability and Need initiative, currently targeted to be implemented for the 2021/22 Auction.[45]

27. MISO contends that its proposal is a meaningful, albeit incremental, improvement over the current MISO Auction eligibility provisions. MISO states that it proposes to revise its Tariff "to preclude [r]esources with existing full or partial outages expected to last for any ninety (90) or more of the first one hundred and twenty (120) Calendar Days of the Planning Year from participation in the [Auction] or inclusion in a [Fixed Resource Adequacy Plan]."[46] MISO states that it selected ninety (90) days as a compromise among stakeholders who wanted as few as thirty (30) days and as many as one hundred and twenty (120) days. MISO adds that it added "of the first one hundred and twenty (120) Calendar Days" to the Tariff language to address gaming concerns raised by stakeholders.[47]

28. According to MISO, this proposal is based upon current Loss of Load Expectation study parameters, which indicate that the highest risk to resource adequacy remains in July and August, with this risk potentially extending into June and September. MISO further asserts that its proposal focuses on long-term outages over a "season" which are not currently considered in the Loss of Load Expectation analysis, and that its proposal is enhanced by the outage scheduling incentives accepted by the Commission in 2019.[48]

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[44] Transmittal at 2-3.

[45] *Id*. at 3.

[46] *Id*.

[47] *Id*. at 4.

[48] *Id*. at 3 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 166 FERC ¶ 61,236 (2019) (Outage Scheduling Order)).

29. MISO explains that it will determine whether a resource is unavailable on a cumulative basis, meaning that it will consider the sum total of multiple outages during the first one hundred and twenty (120) Calendar Days of the Planning Year. MISO further states that it will identify "expected outages" (full and partial planned, maintenance or forced outages) prior to the closing of the Auction offer window using data from its outage scheduler. Further, MISO states that its proposed Tariff revisions give the Market Monitor authority to review a resource's outages to determine whether a resource is engaged in physical withholding.[49]

30. MISO states that stakeholders informally raised concerns about potential gaming to avoid preclusion from the Auction. Specifically, MISO explains there is concern that a Market Participant could offer a resource into the Auction, knowing the Resource would be on long-term outage over the first one hundred and twenty (120) Calendar Days of the Planning Year, but not notify MISO of the outage until after the resource cleared the Auction. MISO argues that this is possible but unlikely because, given the changes accepted in the Outage Scheduling Order, Market Participants are incentivized to schedule their outages more than one hundred and twenty (120) days in advance of the outage to avoid being subject to a new capacity accreditation adjustment. MISO further explains that, since a resource would not know whether it cleared the Auction until the Auction results are posted in mid-April, any outage scheduled to begin one hundred and twenty (120) Calendar Days after that would not begin until mid-August. MISO states that, in this case, the resource would not meet the threshold of being unavailable for at least ninety (90) of the first one hundred and twenty (120) Calendar Days of the Planning Year. Nonetheless, MISO adds that MISO would refer any such behavior to the Market Monitor for review. In addition, MISO proposes to modify its Resource Adequacy BPM to have Market Participants provide documentation to the Market Monitor if a resource clears the Auction and is subsequently on outage for at least ninety (90) days of the first one hundred and twenty (120) Calendar Days of the Planning Year.[50]

31. MISO states that the Market Monitor supports the Tariff Filing as an "effective step in the right direction consistent with [the Market Monitor's] recommendation."[51] In an attached affidavit, the Market Monitor argues that current market rules and Tariff provisions impose no requirement for Market Participants with inoperable units to downgrade their operating status and not offer the resource into the Auction, and that, since the Tariff qualifies such resources to be offered in the Auction, the supplier could

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[49] *Id*. at 4.

[50] *Id*. at 5.

[51] *Id*. at 4 (citing Attachment C, Affidavit of David B. Patton, Ph.D. at P 9 (Patton Affidavit)).

feel obligated to offer the resources.[52] The Market Monitor contends that the Tariff Proposal will result in MISO clearing the additional operable resources it will need to maintain reliability, improve Auction prices, and, over the long term, better ensure resource adequacy in MISO.[53]

32. MISO states that it requests an effective date of February 1, 2020 to allow the proposed revisions to be effective for the 2020/21 Auction.[54]

B. Notice and Responsive Pleadings

33. Notice of the Tariff Filing was published in the *Federal Register*, 84 Fed. Reg. 56,807 (2019), with answers, interventions, and comments due on or before November 6, 2019. Timely motions to intervene were filed by Potomac Economics, Ltd.; Coalition of MISO Transmission Customers; Exelon Corporation; International Transmission Company; National Rural Electric Cooperative Association; Entergy Services, LLC;[55] Cooperative Energy; DTE Electric Company; MidAmerican Energy Company; Consumers Energy Company; Ameren Services Company;[56] Coalition of Midwest Power Producers, Inc.;[57] American Municipal Power, Inc.; WEC Energy Group, Inc.;[58] Calpine Corporation; NRG Power Marketing LLC; WPPI Energy; Michigan South Central Power Agency; and the Michigan Public Power Agency. Michigan Public

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[52] Patton Affidavit at P 8.

[53] *Id.* P 9.

[54] Transmittal at 6.

[55] Entergy Services, LLC is filing on behalf of Entergy Arkansas, LLC; Entergy Louisiana, LLC; Entergy Mississippi, LLC; Entergy New Orleans, LLC; and Entergy Texas, Inc.

[56] Ameren Services Company is filing on behalf of Ameren Illinois Company, Ameren Transmission Company of Illinois, and Ameren Missouri.

[57] Power Producers consist of Vistra Energy, Corp.; Calpine Corporation; Main Line Generation, LLC; EDF Renewables; and Midland Cogeneration Venture Limited Partnership.

[58] WEC Energy Group is filing on behalf of Wisconsin Electric Power Company, Wisconsin Public Service Corporation, and Upper Michigan Energy Resources Corporation.

Service Commission and Public Utility Commission of Texas each filed a notice of intervention. Wolverine filed a motion to intervene and comments.

34. Wolverine states that it supports MISO's proposed revisions to its Tariff. Wolverine asserts that implementation of the Tariff and BPM revisions described in MISO's Tariff Filing would resolve a long-standing, material flaw in the rules governing the Auction. Wolverine argues that both elements of MISO's proposal – the Tariff changes and the BPM changes – are necessary in order to resolve the deficiencies in MISO's current Auction process. Therefore, Wolverine states that its support for MISO's proposal is contingent upon acceptance and implementation of both the proposed Tariff and BPM revisions. According to Wolverine, acceptance and implementation of only the proposed Tariff revisions would be inadequate and would continue to leave a loophole in the Tariff for potential exploitation by resources with long-term, planned outages.[59]

C. Discussion

1. Procedural Matters

35. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the Tariff Filing proceeding.

2. Substantive Matters

36. We find the revisions proposed by MISO in its Tariff Filing to be just and reasonable. Accordingly, we accept them effective February 1, 2020, as requested.

37. As noted above, MISO states that its Tariff currently does not contemplate consideration of or consequences for resources that clear the Auction but expect to be unavailable due to an outage. MISO's proposed Tariff revisions address this problem by ensuring that resources that are unavailable for the entire Planning Year will not qualify for participation in the Auction or inclusion in a Fixed Resource Adequacy Plan. By specifically addressing resource availability during the first one hundred and twenty (120) days of the Planning Year, which begins June 1, MISO's approach is consistent with current Loss of Load Expectation study parameters which indicate that the highest risk of resource adequacy concerns occurs generally from June through September. We also find that the ability of the Market Monitor to review a resource's

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[59] Wolverine Comments at 2-3.

outages is essential to provide a level of protection against anticompetitive behavior in the capacity market.[60]

38. Recognizing that MISO has committed to submit an additional filing on resource accreditation and is targeting implementation for the 2021/22 Auction and subsequent Auctions, we encourage MISO to continue to work through its stakeholder process with regard to these additional Tariff changes on this issue.

The Commission orders:

(A) MISO's Tariff Filing is hereby accepted, effective February 1, 2020, as discussed in the body of this order.

(B) Wolverine's Complaint is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[60] Wolverine indicates that its support of the Tariff Filing is conditioned on the acceptance of both the Tariff Filing and MISO's proposed revisions to its BPM, and that acceptance of the Tariff Filing alone is not sufficient. *See supra* P 34. MISO's BPM revisions, however, are not required to be filed with the Commission pursuant to section 205 of the FPA and, therefore, the proposed BPM revisions to which Wolverine refers are not before us. As explained above, we find the Tariff provisions filed with the Commission to be just and reasonable.