

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

Midcontinent Independent Systems )  
Operator, Inc.

Docket No. ER18-462-000

**COMMENTS IN SUPPORT OF AMERICAN MUNICIPAL POWER, INC.**

On December 15, 2017, under Section 205 of the Federal Power Act,<sup>1</sup> the Midcontinent Independent Systems Operator, Inc. (“MISO”) refiled its currently effective Resource Adequacy Construct of its Open Access Transmission, Energy, and Operating Reserve Markets Tariff (“Tariff”) Module E-1 (“MISO Refiling”) and requests that the Federal Energy Regulatory Commission (“Commission”) reaffirm that it is just and reasonable. MISO states that this request is made in an abundance of caution and to provide certainty in light of the decision of the U.S. Court of Appeals for the District of Columbia Circuit in *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017) (“*NRG*”) given the subsequent Commission Order on Remand.<sup>2</sup> Pursuant to Commission Rule 212 and in compliance with the deadline established in the Commission’s December 19, 2017 Errata Notice Extending Comment Period, American Municipal Power, Inc. (“AMP”) hereby offers these comments supporting the MISO Refiling. For the reasons stated below, AMP urges the Commission to issue the relief requested in the MISO Refiling.

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<sup>1</sup> 16 U.S.C. § 824d.

<sup>2</sup> See *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252 (2017).

## I. BACKGROUND

In 2011, MISO filed changes to its Resource Adequacy Construct and its existing voluntary capacity auction.<sup>3</sup> The changes included revisions to the MOPR, locational market mechanisms, moving from monthly auctions and capacity obligations to an annual schedule, and the procedural transition from Module E to Module E-1. In June of 2012 the Commission issued an Order accepting MISO's changes and directing further revisions in MISO's compliance filing.<sup>4</sup> The Commission denied rehearing requests and the revisions were appealed to the D.C. Circuit Court. During the pendency of the appeal, the Court issued the decision in *NRG* where it held that the Commission exceeded its authority under Section 205 of the Federal Power Act by modifying an amendment to PJM's MOPR rule in such a way that it changed the proposal "into an entirely new rate of FERC's own making."<sup>5</sup> Following the *NRG* decision, the Commission requested, and was granted, a voluntary remand from the D.C. Circuit Court to again consider the MISO 2011 revisions.<sup>6</sup> Although the Commission has yet to act on the voluntary remand, to provide certainty regarding the rules that will govern the imminent 2018/2019 Planning Resource Auction, MISO tactically requested that the Commission find MISO's Resource Adequacy construct just and reasonable, as it has on many prior occasions.<sup>7</sup>

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<sup>3</sup> See *Midwest Independent Transmission System Operator, Inc.*, Docket No. ER11-4081 (filed July 20, 2011).

<sup>4</sup> See *Midwest Independent Transmission System Operator, Inc.*, 139 FERC ¶ 61,199 (2012).

<sup>5</sup> *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108, 110 (D.C. Cir. 2017)

<sup>6</sup> *Madison Gas and Electric Co., et al. v. FERC*, D.C. Circuit Case Nos. 16-1019 and 16-1027.

<sup>7</sup> See *MISO Refiling*, at Tab C and Tab D.

## II. COMMENTS IN SUPPORT OF THE MISO REFILING

The *NRG* decision has created significant ambiguity around previously approved Commission orders and MISO seeks to reduce that confusion. MISO is not revising its Tariff, but simply seeks reaffirmation of the rules it is currently operating under. While AMP does not support every aspect of MISO's resource adequacy construct, AMP supports the MISO Refiling and urges the Commission to issue an order reaffirming the MISO Tariff Module E-1 and its related resource adequacy provisions as just and reasonable.<sup>8</sup> AMP agrees that the Commission's reaffirmation of the MISO capacity rules will bring certainty to MISO market participants in advance of the 2018/2019 auction.

## III. CONCLUSION

WHEREFORE, for the reasons stated herein, AMP supports the MISO Refiling and urges the Commission to grant the request contained therein.

Respectfully submitted,

/s/ Kristin V. Rothey

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<sup>8</sup> Notwithstanding AMP's support of the MISO Refiling, AMP reserves its right to take any position with respect to the MISO resource adequacy construct in this or other proceedings or in the MISO stakeholder process.

## CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused a copy of the foregoing document to be served on each person included on the official service list maintained for this proceeding by the Commission's Secretary, by electronic mail or such other means as a party may have requested, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010.

Dated this 12th day of January, 2018.

/s/ Lisa G. McAlister  
Lisa G. McAlister