UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System Operator, Inc.	)	Docket Nos. ER23-523-000 ER23-523-001

MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE MISO INDEPENDENT GENERATORS

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or the "Commission"),[1] Vistra Corp., Dynegy Marketing and Trade, LLC, Rainbow Energy Center, LLC, DESRI Holdings, L.P. (f/k/a D. E. Shaw Renewable Investments, L.L.C.), Geronimo Power, LLC (f/k/a National Grid Renewables Development, LLC), Invenergy Renewables LLC, NextEra Energy Resources, LLC, and RWE Clean Energy, LLC (together, the "MISO Independent Generators"), hereby move to answer[2] and answer the answer submitted by the MISO Transmission Owners and Alliant Energy Corporate Services, Inc. and its operating company affiliates Interstate Power and Light Company and Wisconsin Power and Light Company (collectively, the "MISO TOs")[3] and the answer of the Iowa Association of Municipal Utilities ("IAMU").[4]

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[1] 18 C.F.R. §§ 385.212 and 385.213.

[2] The MISO Independent Generators acknowledge that the Commission's Rules of Practice and Procedure do not typically allow answers to answers. However, the Commission has accepted answers in the past when they have (i) assisted the Commission in understanding the issues presented, (ii) provided additional information for the Commission's decision-making process, and (iii) helped ensure an accurate record. *See, e.g., PJM Interconnection, L.L.C.*, 181 FERC ¶ 61,162, at P 29 (2022); *Canal Generating LLC*, 181 FERC ¶ 61,157, at P 14 (2022); *Equitrans, L.P.*, 134 FERC ¶ 61,250, at P 6 (2011); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,023, at P 16 (2010). In this proceeding, the MISO Independent Generators' answer will help the Commission understand the issues presented by the answers in this proceeding and the D.C. Circuit's decision and provide further information to inform the Commission's decision-making process. The MISO Independent Generators therefore respectfully request leave to file this answer and ask the Commission to consider this answer in its deliberations in this proceeding.

[3] *Midcontinent Indep. Sys. Operator, Inc.*, Docket Nos. ER23-523-000, et al., Answer of the MISO Transmission Owners and Alliant Energy Corporate Services, Inc. and its operating company affiliates Interstate Power and Light Company and Wisconsin Power and Light Company (Dec. 23, 2025) ("MISO TOs Answer").

[4] *Midcontinent Indep. Sys. Operator, Inc.*, Docket Nos. ER23-523-000, et al., The Iowa Association of Municipal Utilities' Answer Opposing the MISO Independent Generators' Motion (Dec. 29, 2025) ("IAMU Answer" and, together with the MISO TOs Answer, the "Answers").

I. ANSWER

A. The Answers Are Premised On A Flawed Interpretation Of The D.C. Circuit's Decision In *Capital Power*

The Answers portray the decision of the U.S. Court of Appeals for the D.C. Circuit ("D.C. Circuit") in *Capital Power*[5] as a limited remand requiring only that the Commission better explain why accepting the MISO TOs' proposal to immediately eliminate reactive power compensation was appropriate despite the reliance interests of generators.[6] According to the MISO TOs, the only issue remanded to the Commission is whether a phase-in period for the elimination of reactive power is warranted.[7]

The MISO TOs and IAMU misstate the court's directives in *Capital Power*. The D.C. Circuit did not limit the scope of its remand to determining whether a transition period should be implemented. Instead, the court vacated the Commission's orders and remanded for further proceedings.[8] The D.C. Circuit has explained that the effect of vacatur is "'to annul; to cancel or rescind; to declare, to make, or to render, void; to defeat; to deprive of force; to make of no authority or validity; to set aside.'"[9] Thus, contrary to the arguments made in the Answers, the effect of *Capital Power* is that the Commission's prior orders accepting the MISO TOs' proposal are a legal nullity. Now, the Commission must determine what steps should be taken to implement the vacatur given the defects identified by the D.C. Circuit, the record in this proceeding, and the limitations imposed on it by the Federal Power Act ("FPA").

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[5] *Capital Power Corp. v. FERC*, 156 F.4th 644 (D.C. Cir. 2025) ("*Capital Power*").

[6] MISO TOs Answer at 3-4; IAMU Answer at 6.

[7] MISO TOs Answer at 5-6.

[8] *Capital Power* at 650, 654.

[9] *Action on Smoking & Health v. Civil Aeronautics Bd*., 713 F.2d 795, 797 (D.C. Cir. 1983) (quoting 91 C.J.S. Vacate (1955)); *Stewart v. Oneal*, 237 F. 897, 906 (6th Cir. 1916)).

If all that was required of FERC on remand was for it to better explain why the MISO TOs' proposal should be accepted and whether a transition period is necessary, the court could have simply remanded the proceeding back to FERC without vacating its orders. The D.C. Circuit has explained that "[a]n inadequately supported rule … need not necessarily be vacated."[10] Indeed, the D.C. Circuit has remanded without vacatur in cases where it concluded that there was a "significant possibility that [FERC] may find an adequate explanation for its actions."[11] In this case, the D.C. Circuit determined that the Commission's legal errors were sufficiently grave that it vacated the Commission's orders accepting the MISO TOs' proposal.[12]

Seeking to overcome the effect of vacatur, the MISO TOs' rely on the court's statement that its decision will not immediately trigger reinstatement of reactive power compensation owed to the MISO generators under prior tariff provisions and filed rates.[13] The court's statement is nothing more than an acknowledgment of its longstanding precedent recognizing that rates which have been accepted by the Commission remain in effect following remand until the Commission acts to undo the harm caused by its legal error.[14] *Capital Power* also recognizes that intervening Commission orders (*i.e.* Order No. 904) may impact the duration of reactive power compensation upon reinstatement of rates improperly terminated as a result of the now vacated orders. Those are precisely the reasons why the MISO Independent Generators filed their "Motion To Implement

[10] *Allied-Signal v. United States Nuclear Regulatory Comm'n*, 988 F.2d 146, 150 (D.C. Cir. 1993).

[11] *Am. Clean Power Ass'n v. FERC*, 54 F.4th 722, 728-29 (D.C. Cir. 2022) (quoting *Williston Basin Interstate Pipeline Co. v. FERC*, 519 F.3d 497, 504 (D.C. Cir. 2008)).

[12] *Capital Power* at 653 (finding that the Commission's orders were arbitrary). *See also Michigan v. EPA*, 576 U.S. 743, 750 (2015) (quoting *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Automobile Ins. Co*., 463 U.S. 29, 43 (1983) (explaining that an "agency action is lawful only if it rests 'on a consideration of the relevant factors.'")).

[13] MISO TOs Answer at 3, 18; IAMU Answer at 7.

[14] *Burlington Northern, Inc. v. U.S*., 459 U.S. 131, 141 (1982).

Vacatur and Reinstate Pre-Filing Rates."[15] The Commission must act to correct the errors. The fact that reactive power compensation was not automatically reinstated has no import on the effect of the D.C. Circuit's vacatur.[16]

B. The Commission Must Reject The MISO TOs' Proposal In Light Of The D.C. Circuit's Vacatur And The Record In This Proceeding

1. The MISO TOs Have Not Met Their Burden

In *Capital Power*, the D.C. Circuit found that the proponents of the filing in this proceeding failed to carry the FPA section 205 burden of demonstrating it was just and reasonable to terminate reactive power compensation for independent generators in the manner the MISO TOs proposed.[17] Although the MISO TOs assert that "the Court identified no such inquiry,"[18] the court explicitly found that "MISO never carried its initial burden of showing that it would be reasonable to end compensation for reactive power immediately, despite existing contracts and investment decisions predicated on its availability."[19] To suggest that the court's finding is anything other than a finding that the proponents of the proposal failed to carry their FPA section 205 burden is not credible.

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[15] *Midcontinent Indep. Sys. Operator, Inc.*, Docket Nos. ER23-523-000, et al., Motion to Implement Vacatur and Reinstate Pre-Filing Rates of MISO Independent Generators (Dec. 12, 2025).

[16] IAMU also asserts that the MISO Independent Generators' argument that the Commission should find that MISO may not eliminate the reactive power rate schedules of generators "unless and until these rate schedules are successfully challenged under section 206 of the FPA" is outside the scope of this proceeding. IAMU Answer at 8-9. IAMU overlooks that any exercise of the Commission's discretion on remand must respect the limitations placed on the Commission by the FPA, including the filed rate doctrine. *See, e.g., EDF Renewables, Inc. v. FERC*, 117 F.4th 1003, 1008 (8th Cir. 2024) (explaining that FERC's remedial discretion is limited by the filed rate doctrine). An order on remand in this case that finds that the MISO TOs can use a filing under section 205 of the FPA to stop compensating generators based on their Commission-approved rate schedules would be inconsistent with the FPA and prior Commission precedent. *See Midwest ISO Transmission Owners*, 122 FERC ¶ 61,305, P 38 (2008), *order on reh'g*, 129 FERC ¶ 61,041 (2009), *aff'd in relevant part sub nom. Dynegy Midwest Generation, Inc. v. FERC*, 633 F.3d 1122 (D.C. Cir. 2011)). Additionally, an order that authorized MISO to disregard Commission-approved rate schedules would be inconsistent with the filed rate doctrine. *See Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223 (D.C. Cir. 2018) (finding that the filed rate doctrine prohibits FERC from waiving the operation of a filed rate).

[17] *Capital Power* at 652.

[18] MISO TOs Answer at 7.

[19] *Capital Power* at 652.

Moreover, the court's finding that the FPA section 205 burden had not been met is consistent with the record in this proceeding. The MISO TOs and other proponents of the filing did not provide any evidence of the impact that eliminating reactive power would have on generators or even the broader MISO market. Instead, the MISO TOs rested their case on the premise that so long as the proposal satisfied the Commission's comparability principle, then it is just, reasonable, and not unduly discriminatory or preferential. In vacating the Commission's orders, *Capital Power* represents a clear rejection of this approach. The D.C. Circuit clearly found that satisfaction of the comparability principle is not a sufficient basis under FPA section 205 to find that a proposal that abruptly eliminates reactive power overnight is just, reasonable, and not unduly discriminatory, or preferential.

In light of the D.C. Circuit's directive, it should be clear that the MISO TOs must go beyond the comparability principle and provide sufficient evidence to establish that the significant reliance interests of MISO generators were unfounded, immaterial, or outweighed by countervailing policy concerns.[20] No such evidence—to the extent such evidence exists—is included in the record of this proceeding. As Commissioner Danly observed when the Commission accepted the MISO TOs' proposal, "[t]he MISO TOs have not offered any evidence of the effects of eliminating the $220 million annual reactive power revenue requirement from the MISO tariff."[21] This observation remains true today.[22]

[20] *Id.* at 653.

[21] *Midcontinent Indep. Sys. Operator, Inc.*, 182 FERC ¶ 61,033 (2023) (Comm'r Danly, concurring at P 4).

[22] For its part, IAMU acknowledges, apparently in light of the lack of evidence supporting the MISO TOs' proposal, that further procedures may be necessary. IAMU Answer at 8. But neither IAMU nor the MISO TOs provide any basis for concluding that such procedures would serve any purpose other than further protracting this proceeding. And commencing further procedures will not change the nature of the MISO TOs' proposal, which fails to make any effort to strike a reasonable balance between supplier and customer interests. *See Midcontinent, Indep. Sys. Operator, Inc.*, Docket Nos. ER23-523-000, *et al*., Motion to Implement Vacatur and Reinstate Pre-Filing Rates of MISO Independent Generators at 5-8 (Dec. 12, 2025).

2. None Of The Factors Cited By The MISO TOs Support A Finding That Their Proposal Is Just And Reasonable

The MISO TOs argue that the Commission can find that the elimination of reactive power compensation in MISO "*does* address policy concerns that outweigh the generators' short term financial concerns…"[23] In support, the MISO TOs argue that, prior to their proposal, transmission customers "were paying for something of no value."[24] But that is neither correct nor supported by the record in this proceeding.

Indeed, when MISO revised Schedule 2 to permit all generation resources to be compensated for their reactive power capability, MISO observed that it used the capability of resources to absorb or supply reactive power to "maintain transmission voltages within limits that are generally accepted in the region and consistently adhered to by" MISO.[25] In fact, MISO specifically rejected arguments that eligibility for compensation should be conditioned on the ability of a generator to demonstrate a need for its reactive power because "all generators interconnecting to the Transmission System must be capable of providing reactive power to support system voltage in order to ensure reliable operation of the interconnected system."[26]

Likewise, both the Commission and the North American Electric Reliability Corporation ("NERC") have recognized that reactive power is an essential service necessary for the reliability of the grid.[27] And transmission providers have explained that refusing to compensate generators

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[23] MISO TOs Answer at 10 (emphasis original).

[24] *Id*.

[25] *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER04-961-002, Motion for Leave to Answer and Answer of the Midwest Independent Transmission System Operator, Inc. at 2 (Dec. 7, 2004).

[26] *Id*. at 11-12.

[27] FERC, Principles for Efficient and Reliable Reactive Power Supply and Consumption at 3 (Feb. 4, 2005), *available at*: https://www.ferc.gov/sites/default/files/2020-04/20050310144430-02-04-05-reactive-power.pdf ("Reactive power supply is essential for reliably operating the electric transmission system. Inadequate reactive power has led to voltage collapses and has been a major cause of several recent major power outages worldwide."); North American Electric Reliability Corporation, Essential Reliability Services Task Force Measures Framework Report at 16, 87 (Dec. 2015), *available at*: https://www.nerc.com/globalassets/programs/rapa/ra/erstf-framework-report---

for the reactive power they provide could "introduce reliability issues onto the electric system,"[28] put their systems "at risk of exposure to a number of reliability risks,"[29] expose them to "voltage-related reliability violations of [NERC] reliability criteria," [30] and ultimately "jeopardize reliability."[31]

The MISO TOs also argue that because the Commission requires generators to provide reactive power within the standard power factor range they need not be compensated for it.[32] But the fact that a private entity is compelled by the government to provide a service does not mean that the entity must forgo compensation. To the contrary, the fact that generators have not been relieved of the obligation to have the capability to provide and absorb reactive power within the standard power factor range demonstrates that generators are providing a service critical to maintaining grid reliability. And the FPA mandates that generators be permitted to recover their costs from those customers benefitting from the reactive power capability that they provide.[33] A public policy that denies generators the ability to recover the costs of providing an essential reliability service is not one that the Commission can rely on to justify its acceptance of the MISO TOs' proposal. And, by the MISO TOs' logic, the Commission could deny transmission owners

final.pdf ("The ability to control the production and absorption of reactive power for the purposes of maintaining desired voltages is critical to the reliable and efficient operation of the BPS.").

[28] *Compensation for Reactive Power Within the Standard Power Factor Range*, Docket No. RM22-2-000, Notice of Proposed Rulemaking Comments of the New York Independent System Operator, Inc. at 7 (May 28, 2024).

[29] *Compensation for Reactive Power Within the Standard Power Factor Range*, Docket No. RM22-2-000, Comments of ISO New England Inc. at 6 (May 28, 2024).

[30] *Id.* at 7.

[31] *Compensation for Reactive Power Within the Standard Power Factor Range*, Docket No. RM22-2-000, Notice of Proposed Rulemaking Comments of the New York Independent System Operator, Inc. at 11 (May 28, 2024).

[32] MISO TOs Answer at 10.

[33] U.S. CONST. AMEND. V.; 16 U.S.C. § 824d; *Ameren Servs. Co. v. FERC*, 880 F.3d 571, 581 (D.C. Cir. 2018) ("[A] careful reading of Supreme Court precedent reveals that a regulated industry is entitled to a return that is sufficient to ensure that new capital can be attracted"); *Bluefield Waterworks & Improvement Co. v. Pub. Serv. Comm'n*, 262 U.S. 679 (1923); *Federal Power Comm'n v. Hope Natural Gas Co.,* 320 U.S. 591, 603 (1944).

the right to recover costs related to vegetation management, which they are obligated to provide under NERC Reliability Standards and as a matter of good utility practice.[34]

Additionally, the MISO TOs fail to explain why the policy considerations that they believe support the elimination of reactive power payments make it appropriate to do so in the manner that the MISO TOs proposed in this proceeding. Even if it were determined that generators should be required to provide reactive power capability without compensation as a matter of good utility practice going forward, it does not follow that abruptly eliminating reactive power compensation is just and reasonable. The reality is that reactive power compensation had been available in MISO for close to two decades and, as the record in this proceeding already shows, generators have relied on the availability of such compensation when making investment decisions, including entering into long-term power purchase agreements and obtaining financing. As the D.C. Circuit observed, even if "compensation cannot be guaranteed forever, that does not suggest it could reasonably be eliminated overnight."[35]

The MISO TOs assert two final policy grounds that they contend outweigh the generators' reliance interests: that the cost to provide reactive power is *de minimis* for generators and, to the extent they have costs, those costs can be recovered by generators renegotiating their power purchase or other power sale agreements.[36] The D.C. Circuit, however, already found that neither of these justifications were sufficient to address generators' reliance interests. With respect to the costs of reactive power production, the court explained that "the harm to the generators stems from

[34] *See* NERC Reliability Standard FAC-003-4 (Transmission Vegetation Management); *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards*, Order No. 672, 114 FERC ¶ 61,104, at P 259 (2006) ("[T]he Commission will allow recovery of all costs prudently incurred to comply with the Reliability Standards.").

[35] *Capital Power* at 653. The MISO TOs also do not provide any evidence that denying waiver of the 60-day notice requirement would be sufficient to mitigate the harm to generators that accounted for the availability of such revenues in their "long-term power obligations and accompanying investments." *Id*.

[36] MISO TOs Answer at 10-11.

the loss of all reactive-power revenue … [a]nd … there is reason to think that such revenues have been significant."[37] The court also rejected the notion that generators could simply renegotiate their power purchase agreements to obtain a higher real power sales price, noting the Commission's concession that generators may not be successful in renegotiating existing contracts and, even if they were, "the possibility of the generators recovering higher returns in future contracts does not directly address their immediate reliance concerns."[38] Setting aside the fact the court dismissed these arguments already, the MISO TOs have pointed to no record evidence that would establish either that generators' reactive power associated costs are *de minimis* or that they could renegotiate their power purchase agreements to recover such costs.

The MISO TOs' and IAMU's arguments that the cost savings for transmission customers outweigh the severe harm and disruption resulting from the MISO TOs' proposal are speculative. While protesters provided evidence that the MISO TOs' proposal would have a severe impact on generators supplying reactive power, neither the MISO TOs nor any other party provided evidence demonstrating that immediately eliminating reactive power compensation was necessary to protect consumers from excessive rates.[39] And even if eliminating reactive power compensation would reduce the costs borne by transmission customers, this is merely one factor that the Commission must consider when evaluating whether a proposal submitted under section 205 of the FPA is just and reasonable.[40]

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[37] *Capital Power* at 653.

[38] *Id*.

[39] Protesters also noted that any attempt to change existing reactive power rates needed to be made through a filing under section 206 of the FPA. *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER23-523-000, Protest of Rainbow Energy Center, LLC at 6-13 (Dec. 21, 2022); *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER23-523-000, Protest of Vistra Corp. and Dynegy Marketing and Trade, LLC at 26-28 (Dec. 21, 2022).

[40] *See Midcontinent Indep. Sys. Operator, Inc.*, Docket Nos. ER23-523-000, *et al*., Motion to Implement Vacatur and Reinstate Pre-Filing Rates of MISO Independent Generators at 3-4 (Dec. 12, 2025). *See also Jersey Central v. FERC*, 810 F.2d 1168, 1176 (D.C. Cir. 1987) (application of the FPA's "just and reasonable" standard requires review of the "entirety" and "total effect" of a Commission rate order and such order's "consequences").

Finally, the MISO TOs' claim that the Commission can simply ignore reliance interests given the time that has passed since FERC issued its initial order in this proceeding is incorrect.[41] Court precedent—including the precedent the D.C. Circuit relied on in *Capital Power*[42]—requires that if an agency attempts to remedy its failure to address reliance interests by offering a fuller explanation (rather than abandoning its prior action), it must do so based upon its "reasoning *at the time of the agency action.*"[43] Thus, the Commission must consider the reliance interests of generators at the time of the Commission's order, including that generators had accounted for reactive power revenues in their "financings, bilateral contracting, power purchase agreements, and other arrangements."[44] The MISO TOs' arguments to the contrary are legally flawed and contrary to the court's directives in *Capital Power*.

C. The Commission Should Ignore Calls To Delay Action And Promptly Act To Implement The D.C. Circuit's Vacatur

IAMU acknowledges that the Commission must act "within a reasonable timeframe," but urges the Commission to "not rush to act within 60 days" and notes that the court imposed no time limit on when the Commission must address the court's vacatur and remand.[45] But just because the court did not impose a deadline on the Commission, that does not mean that delaying action in this proceeding would be appropriate, particularly given the vacatur the court imposed. As the court has previously explained, although there may be "'no *per se* rule as to how long is too long' to wait for agency action, … a reasonable time for agency action is typically counted in weeks or

[41] MISO TOs Answer at 5-6.

[42] *Capital Power* at 650 (citing *Dep't of Homeland Sec. v. Regents of the Univ. of Cal*., 591 U.S. 1, 31-32 (2020)).

[43] *Dep't of Homeland Sec. v. Regents of the Univ. of Cal*., 591 U.S. 1, 20 (2020) (emphasis original) (quoting *Pension Benefit Guaranty Corporation* v. *LTV Corp.*, 496 U.S. 633, 654 (1990)).

[44] *Midcontinent Indep. Sys. Operator, Inc.*, 182 FERC ¶ 61,033 (2023) (Comm'r Danly, concurring at P 4).

[45] IAMU Answer at 7-8.

months, not years."[46] Under section 205 of the FPA, the Commission was afforded 60 days to rule on the MISO TOs' proposal to eliminate reactive power compensation. The fact that the Commission legally erred in accepting that proposal should not be used as a basis for delaying action beyond the timeframes established by Congress for the Commission to evaluate rate filings. Additionally, granting prompt relief in this proceeding will reduce the amount of interest owed by transmission customers and provide revenues to support the continued operation of resources providing an important reliability service when the Commission finds, as it should, that the MISO TOs' proposal is unjust and unreasonable.

II. CONCLUSION

The MISO Independent Generators respectfully request that the Commission issue an order on vacatur and remand consistent with this answer and their Motion to Implement Vacatur and Reinstate Pre-Filing Rates.

Respectfully submitted,

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[46] *In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004) (quoting *In re Int'l Chem. Workers Union*, 958 F.2d 1144, 1149 (D.C. Cir. 1992). *See also*, *In re La. Pub. Serv. Comm'n*, 58 F.4th 191, 193 (5th Cir. 2023) ("We conclude that although Congress did not impose a hard and fast deadline for FERC to resolve complaints, it certainly anticipated greater alacrity than this.") (internal citations omitted).

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Dated: January 13, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 13th day of January, 2026.

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