UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Pelican Power LLC	)	
	)	
v.	)	**Docket No. EL26-26-001**
	)	
Midcontinent Independent System Operator, Inc.	)	
	)	
Coalition of Midwest Power Producers, Inc., JERA Nex Americas LLC, and Rainbow Energy Center, LLC	)	
	)	
	)	**Docket No. EL26-35-001**
v.	)	
	)	
Midcontinent Independent System Operator, Inc.	)	

(Not consolidated)

REQUEST FOR REHEARING

Pursuant to Section 313(a) of the Federal Power Act (the "FPA")[1] and Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the "Commission" or "FERC"),[2] Pelican Power LLC ("Pelican"), the Coalition of Midwest Power Producers, Inc. ("COMPP"), Rainbow Energy Center, LLC ("Rainbow"), Double Black Diamond Solar Power, LLC ("Double Black Diamond") and Harvest Gold Solar Power, LLC (collectively with Pelican, COMPP, Rainbow and Double Black Diamond, "Petitioners") respectfully request rehearing of the Commission's August 7, 2026, order in the above-captioned proceedings.[3]

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[1] 16 U.S.C. § 825*l*(a) (2024).

[2] 18 C.F.R. § 385.713 (2025).

[3] *Pelican Power LLC v. Midcontinent Indep. Sys. Operator, Inc.*, 196 FERC ¶ 61,112 (2026) (the "August 7 Order").

Having determined long after the Planning Resource Auction ("PRA")[4] for the 2025/2026 Planning Year (the "2025/26 PRA") closed that it had failed to calculate the Loss of Load Expectation ("LOLE") used to set the demand curve for the auction in accordance with the definition in the MISO Tariff, MISO undertook an ad hoc, multi-step repricing and remedial exercise of its own invention. That ad hoc process was spelled out nowhere in the MISO Tariff and dramatically altered the auction results, to the tune of approximately $280 million. MISO did so relying only on its authority to make "appropriate adjustments" for a Continuing Error under Section 12A(e) of MISO Tariff. But, as Pelican, COMPP and Rainbow showed in their complaints,[5] MISO's authority to make appropriate adjustments does not authorize it to undertake any and all adjustments it wishes, including those that violate other Tariff provisions, are plainly inappropriate and contrary to Commission policy and precedent, or re-write contracts in violation of the *Mobile Sierra* doctrine.[6] Affirming these adjustments also runs contrary to Commission precedent emphasizing the need for finality in auctions, even after a filed rate violation and even where the regional transmission organization ("RTO")/independent system operator ("ISO") does not *literally* re-run the auction. In affirming MISO's remedial methodology and denying the Complaint, the Commission failed to engage in reasoned decision-making, disregarded arguments

[4] This and other capitalized terms used and not otherwise defined herein have the meaning given in the Midcontinent Independent System Operator, Inc. ("MISO") Open Access Transmission, Energy and Operating Reserve Markets Tariff (the "MISO Tariff").

[5] *See* Complaint Requesting Fast-Track Processing, Docket No. EL26-26-000 (filed Nov. 14, 2025) (the "EL26-26 Complaint"); Complaint Requesting Fast Track Processing of the MISO Generators, Docket No. EL26-35-000 (filed Dec. 15, 2025) (the "EL26-35 Complaint" and together with the EL26-26 Complaint, the "Complaints").

[6] The doctrine takes its name from decisions of the United States Supreme Court in *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) ("*Mobile*"), and *FPC v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956) ("*Sierra*").

and evidence that did not support its desired outcome, and failed to reconcile its action with precedent.

I.

BACKGROUND

The 2025/26 PRA opened on March 26, 2025, and closed on March 31, 2025. On April 28, 2025, MISO posted the results of the 2025/26 PRA, with the following Auction Clearing Prices:[7]

	North/Central Subregion	South Subregion
Summer (June-August)	$666.50/MW-day	$666.50/MW-day
Fall (September-November)	$91.60/MW-day	$74.09/MW-day
Winter (December-February)	$33.20/MW-day	$33.20/MW-day
Spring (March-May)	$69.88/MW-day	$69.88/MW-day
Annualized	$217.00/MW-day	$212.00/MW-day

Almost four months later and two and one-half months into the 2025/2026 Planning Year, on August 15, 2025, MISO posted a notice stating that it had discovered a software error affecting the LOLE calculation – specifically, that LOLE was being calculated using all daily hours, rather than just peak daily hours consistent with the then-effective tariff definition.[8] MISO labeled the error, which dated back to the 2017 calculation of LOLE for the PRA for the 2018/2019 Planning Year, a "Continuing Error"[9] and stated its intention to make "appropriate adjustments to the results of the 2025/26 PRA" with a total financial impact of approximately $280 million.[10]

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[7] *See* EL26-26 Complaint at 9 (citing MISO, *MISO's Planning Resource Auction indicates sufficient resources, Improved pricing signal more accurately highlights reliability risk* (Apr. 28, 2025), https://www.misoenergy.org/meet-miso/media-center/2025---news-releases/misos-planning-resource-auction-indicates-sufficient-resources/).

[8] *See id.* at 10 (citing MISO, *Notification, Loss of Load Expectation (LOLE) - Continuing Error* (Aug. 15, 2025) (the "August 15 Notification"), https://www.misoenergy.org/markets-and-operations/notifications/market-settlements-notifications/miso-loss-of-load-expectation-lole---continuing-error/).

[9] *See id.* (citing the August 15 Notification).

[10] *Id.* at 10-11 (quoting MISO, *LOLE Continuing Error*, at 6 (Resource Adequacy Subcommittee, Aug. 20, 2025), https://cdn.misoenergy.org/20250820%20RASC%20Item%2005%20LOLE%20Continuing%20Error714224.pdf).

MISO determined these "appropriate adjustments" by: (1) recalculating the LOLE considering only loss of load during peak hours; (2) estimating adjustments to the Local Reliability Requirement ("LRR") based on the recalculated LOLE; (3) adjusting the Reliability-Based Demand Curves ("RBDC") used for the 2025/26 PRA based on the percentage change in initial Planning Reserve Margin Requirement ("PRMR") rather than using the tariff-prescribed process for determining PRMR; (4) using the modified RBDCs to estimate financial impact based on the same offers and other inputs as those used in the 2025/26 PRA; and (5) determining the net financial impact for market participants based on their net positions in the 2025/26 PRA.[11] MISO also established a make-whole mechanism whereby resources that would not have cleared at the lower clearing price but that are retaining their capacity obligations would be paid based on their offer prices.[12]

In parallel with its announcements of the settlement adjustments, MISO also made a filing under Section 205 of the FPA[13] proposing to modify the LOLE definition in the MISO Tariff to use the all-hours calculation (*i.e.*, the same methodology whose use for the 2025/26 PRA was identified a "Continuing Error") going forward.[14] MISO stated that the change will "better capture and measure the likelihood that generation capacity will be insufficient at a given hour."[15] In accepting the changes, the Commission "agree[d] with MISO that the proposed revision to the

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[11] *See id.* at 22. *See also id.*, Attachment C (MISO, *Settlement Adjustments for LOLE Continuing Error* (Settlements User Group, Sept. 3, 2025) (the "September 3 Presentation")).

[12] *See id.* at 11-12 & Attachment C.

[13] 16 U.S.C. § 824d (2024).

[14] *See* Loss of Load Expectation Definition Change Filing, Docket No. ER25-3307-000 (filed Aug. 27, 2025) (the "ER25-3307 Filing"), *accepted*, *Midcontinent Indep. Sys. Operator, Inc.*, 193 FERC ¶ 61,065 (2025) (the "ER25-3307 Order").

[15] *Id.* at 2.

LOLE definition accurately reflects system risks and aligns the LOLE analysis with MISO's direct loss of load accreditation methodology, beginning with the 2028/2029 Planning Year."[16]

Through the EL26-26 Complaint and the EL26-35 Complaint, Pelican and COMPP, Rainbow and their co-complainants (collectively, the "MISO Generators"), respectively, challenged MISO's actions, demonstrating that MISO's adjustments violated the filed rate doctrine, the rule against retroactive ratemaking, and the *Mobile-Sierra* doctrine, and that MISO's adjustments were otherwise unjust and unreasonable and thus not appropriate regardless of how broad MISO's authority to correct Continuing Errors might be. Pelican also provided an extensive declaration from expert economist Roy J. Shanker, Ph.D., explaining how the methodology used by MISO to recalculate LOLE and adjust the RBDCs was flawed and inconsistent with the MISO Tariff because it skipped critical steps required by the MISO Tariff and resulted in unjust and unreasonable outcomes,[17] as well as an affidavit from Isaac "Ike" Budd describing actions Pelican took in reliance on expectations based on the posted LOLE and other posted parameters for the 2025/26 PRA.[18]

In the August 7 Order, the Commission rejected Pelican's and the MISO Generators' arguments and denied the Complaints. According to the August 7 Order, MISO's actions complied with the MISO Tariff, because MISO's adjustments were "narrowly tailored and time limited, and represent reasonable approximations of the values the affected market participants would have received but for the Continuing Error."[19] The Commission rejected arguments that MISO's adjustments violate the *Mobile-Sierra* doctrine, asserting that "*Mobile-Sierra* protection does not

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16 ER25-3307 Order, 193 FERC ¶ 61,065 at P 11.

17 *See* EL26-26 Complaint, Attachment A (the "Shanker Affidavit").

18 *See id.*, Attachment B (the "Budd Affidavit").

19 August 7 Order, 196 FERC ¶ 61,112 at P 46.

attach automatically to the [2025/26] Auction results, and . . . that there are no compelling circumstances before us to warrant extending such protection here."[20] The Commission also rejected the arguments regarding negative impacts to markets, reliability, and unfairness to market participants.[21]

II.

REQUEST FOR REHEARING

A. The August 7 Order Violates the Filed Rate Doctrine

The filed rate doctrine "forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate federal regulatory authority."[22] The Commission has consistently rejected arguments that remedying one violation of a filed rate justifies violating another element of that same filed rate, even if enforcement of that other element "results in a lack of refunds for [the] violation of the filed rate."[23] Yet that is exactly what it allowed here.

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20 *Id.*

21 *See id.*

22 *Arkansas La. Gas Co. v. Hall*, 453 U.S. 571, 577 (1981) ("*Hall*") (citation omitted). *See also, e.g.*, *Maislin Indus. U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 127 (1990) ("*Maislin*") ("[T]he rate of the carrier duly filed is the only lawful charge." (quoting *Louisville & Nashville R.R. Co. v. Maxwell*, 237 U.S. 94, 97 (1915) ("*Maxwell*")); *Oklahoma Gas & Elec. Co. v. FERC*, 11 F.4th 821, 829 (D.C. Cir. 2021) ("*Oklahoma Gas*") (the filed rate doctrine is "shorthand for the interconnected statutory requirements that bind regulated entities to charge only the rates filed with FERC and to change their rates only prospectively"); *Old Dominion Elec. Coop. v. FERC*, 892 F.3d 1223, 1226 (D.C. Cir. 2018) ("*ODEC*") ("At bottom, [the filed rate] doctrine means that 'a regulated seller of [power]' is prohibited 'from collecting a rate other than the one filed with the Commission,' and 'the Commission itself' cannot retroactively 'impos[e] a rate increase for [power] already sold.'" (citation omitted)); *Texas E. Transmission Corp.*, 72 FERC ¶ 61,152 at 61,766-67 (1995) ("*Texas Eastern*") ("Under the filed rate doctrine, final rates approved by the Commission cannot be changed retroactively."), *aff'd sub nom. Texas E. Transmission Corp. v. FERC*, 102 F.3d 174 (5th Cir. 1996). The filed rate doctrine "is not limited to 'rates' *per se*" but also extends to non-rate terms that "directly affect[] . . . wholesale rates . . . ." *Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 966-67 (1986).

23 *Southwest Power Pool, Inc.*, 166 FERC ¶ 61,160 at P 50 (2019) ("*SPP*"), *on reh'g*, 183 FERC ¶ 61,217 (2023), *aff'd sub nom. Oklahoma Gas*, 11 F.4th 821. *See also, e.g., Liberty Power Holdings LLC v. Eversource Energy Co.*, 172 FERC ¶ 61,031 at P 19 (2020); *Seminole Elec. Coop., Inc. v. Florida Power & Light Co.*, 153 FERC ¶ 61,037 at P 27 (2015), *aff'd sub nom. Seminole Elec. Coop., Inc. v. FERC*, 861

Petitioners understand MISO's concern that the original LOLE calculation error for the 2025/26 PRA was inconsistent with the definition of LOLE then in the MISO Tariff.[24] But MISO's subsequent actions only created further violations of the filed rate. Pelican and the MISO Generators showed how MISO's settlement adjustments were outside the scope of any reasonable interpretation of Section 12A, violated multiple Tariff provisions, including provisions governing the calculation of the RBDC and the determination, and application, of the Auction Clearing Price, leading to inconsistent and arbitrary results, and violated the prohibition on retroactive ratemaking, because nothing in Section 12A gave market participants notice that this level of retroactive change to auction-derived clearing prices was possible. The Commission's conclusions to the contrary are erroneous.

1. The August 7 Order Did Not Meaningfully Address Petitioners' Arguments about the Proper Interpretation of Section 12A

Pelican and the MISO Generators explained, and the August 7 Order effectively concedes, that the settlement adjustments undertaken by MISO result in violations of numerous provisions of the MISO Tariff.[25] Nonetheless, according to the August 7 Order, MISO's settlement adjustments did not violate the filed rate doctrine because they fell within MISO's tariff authority to make "appropriate adjustments" to address the financial impacts of the Continuing Error.[26] The Commission concluded that the "flexibility afforded under Section 12A" of the MISO Tariff

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F.3d 230 (D.C. Cir. 2017). *See also PJM Power Providers Grp. v. FERC*, 96 F.4th 390, 394 (3rd Cir. 2024) ("*PJM Power*") ("The [filed rate] doctrine is unbending regardless of where the equities lie." (citation omitted)).

[24] *See* Motion to Dismiss and Answer of the Midcontinent Independent System Operator, Inc. at 18-19, Docket No. EL26-26-000 (filed Dec. 15, 2025) (the "EL26-26 MISO Answer"). *See also* August 7 Order, 196 FERC ¶ 61,112 at P 58 (concluding that "MISO's LOLE miscalculation was in direct violation of a Tariff provision").

[25] *See* August 7 Order, 196 FERC ¶ 61,112 at P 125 (rejecting arguments that "MISO must abide by all Tariff rules for the Auction").

[26] *Id.* at P 122.

provides MISO with the authority impose the adjustments it did.[27] This conclusion is erroneous in multiple respects.

First, Pelican explained that the fact that Section 48 of the MISO Tariff expressly gives MISO remedial powers with respect to energy and operating reserve prices attributed to Market Implementation Errors and Emergency System Conditions is strong evidence that the MISO Tariff does not give MISO similar remedial powers with respect to Continuing Errors.[28] As Pelican explained, Section 48 of the MISO Tariff expressly allows MISO to "impose [specified] corrective measures . . . to remedy [a] Market Implementation Error or Emergency System Condition . . . ."[29] Those corrective measures include allowing MISO to:

> recalculate changes in LMPs or other prices cleared through the Energy and Operating Reserve Markets and the corresponding changes in Settlements in a manner that reflects, as closely as reasonably practicable, the LMPs or other prices that would have cleared through the Energy and Operating Reserve Markets but for the Market Implementation Error or Emergency System Conditions.[30]

By contrast, as Pelican explained, nothing in Section 12A of the MISO Tariff gives MISO comparable power to recalculate capacity prices in the same manner as Section 48, and under the *expressio unius est exclusio alterius* canon, the express lack of such a provision – even after MISO revised Section 12A twice before this error occurred – is strong evidence that Section 12A's

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27 *Id.* at P 123.

28 *See* EL26-26 Complaint at 17-18.

29 MISO Tariff, § 48.

30 *Id.*, § 48.3(d).

reference to "appropriate adjustments" is more limited than the full recalculation authority for energy and operating reserves prices described in Section 48.[31]

Second, Pelican and the MISO Generators pointed to the history of Section 12A, which shows that it was adopted to *improve* market certainty, not upend it, by limiting, rather than expanding, MISO's remedial discretion. As Pelican explained, "Section 12A was added to the MISO Tariff as part of a package of reforms whose sole purpose was 'to end the uncertainty of the [MISO] Tariff's currently open-ended dispute and resettlement timeframe for correcting MISO's Tariff implementation errors.'"[32] That uncertainty existed precisely because unless the terms of the filed rate – in this case, the MISO Tariff – imposes a time limit, there is no temporal restriction on a public utility's inherent right and duty to enforce that filed rate, regardless of how far in the past a given filed rate violation may have occurred. Indeed, when MISO proposed Section 12A in 2018, it stated that without a time limit, it had been forced to address, either through resettlement or a request for waiver, filed rate violations going back almost as far as the start of its markets in 2006.[33] MISO first set a two-year time limit for such corrections and later shortened the limit to

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[31] *See* EL26-26 Complaint at 17-18 (citing *NLRB v. SW Gen., Inc.*, 580 U.S. 288, 302 (2017) (noting the "interpretive canon, *expressio unius est exclusio alterius*,'expressing one item of [an] associated group or series excludes another left unmentioned'"). *See also Affirmed Energy, LLC v. FERC*, 166 F.4th 1070, 1080 (D.C. Cir. 2026) ("We interpret tariff provisions according to their "'plain meaning.'" (quoting *Oklahoma Gas*, 11 F.4th at 827)). Indeed, in *PJM Power*, the Court of Appeals for the Third Circuit (the "Third Circuit") relied on this same interpretive canon to explain that a "Tariff's inclusion of circumstances in which the LDA Reliability Requirement could be adjusted is evidence of its intent to exclude all other circumstances not enumerated." *PJM Power*, 96 F.4th at 400.

[32] EL26-26 Complaint at 14-15 (quoting Response to Deficiency Letter – Section 205 Filing to Amend Tariff to Establish Categorical Time Limits for Disputes and Resettlements, Transmittal Letter at 1, Docket No. ER18-1648-000 (filed Aug. 30, 2018) (the "ER18-1648 Response")). *See also* EL26-35 Complaint at 29.

[33] *See* Midcontinent Independent System Operator, Inc.'s Section 205 Filing to Amend Tariff to Establish Categorical Time Limits for Disputes and Resettlements at 4 & n.14, Docket No. ER18-1648-000 (filed May 16, 2018) (the "ER18-1648 Filing"), *accepted*, *Midcontinent Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,065 (2018) (the "ER18-1648 Order"). *See also, e.g.*, *Midcontinent Indep. Sys. Operator, Inc.*, 159 FERC ¶ 62,304 (2017) (granting waiver of provisions of the MISO Tariff with respect to resettlements for the period January 6, 2009, through April 20, 2017).

one year, and MISO's filings and the Commission's orders in both instances were solely focused on the temporal limitations on MISO's authority to enforce the terms of the filed rate in order to *improve* market certainty.[34] In neither case did MISO or the Commission give any hint that MISO's remedial powers were being expanded to encompass anything other than straightforward actions to enforce the filed rate. Section 12A did not expand MISO's powers to make corrections, much less as broadly as would be required to authorize the settlement adjustments at issue here.

The August 7 Order did not substantively address either of these arguments regarding the proper interpretation of Section 12A; that alone requires rehearing.[35] Moreover, the Commission's only answer on this point – which does not address Petitioners' interpretive position – is that nothing in Section 12A expressly *limits* MISO to straightforward corrections.[36] But that is not how the filed rate doctrine works. The filed rate doctrine requires and permits only strict enforcement

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[34] *See, e.g.*, ER18-1648 Order, 165 FERC ¶ 61,065 at P 18 (discussing MISO's description of Section 12A as intended to "balance the requirements of the filed rate doctrine regarding the correction of continuing errors and the need to promote market security and promptness of claims"); ER18-1648 Response at 11 (stating that "[w]ithout the proposed two-year going-backward correction limit, and absent a Tariff waiver, even MISO errors that occurred *more than* two years earlier than such date . . . would have to be corrected in order to comply with the filed rate" and that "[t]hat is precisely why MISO is proposing the two-year going-backward correction limit for the sake of market certainty"); Midcontinent Independent System Operator, Inc.'s Section 205 Filing to Revise Tariff to Modify Resettlement Periods, and *De Minimis* Thresholds for Correcting Impacts of Continuing Errors, and to Add/Clarify Tolling Language, Transmittal Letter at 9, Docket No. ER25-117-000 (filed Oct. 16, 2024), *accepted*, *Midcontinent Indep. Sys. Operator, Inc.*, 189 FERC ¶ 61,192 (2024). *See also id*. at 2 (describing the earlier "Time Bar Filing" (the ER18-1648 Filing) as "propos[ing] time limits . . . for submitting market or transmission settlement disputes, and alternative dispute resolution . . . disputes; and for correctively resettling previous impacts of a MISO Continuing Error").

[35] *See, e.g., PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1198 (D.C. Cir. 2005) (requiring the Commission to "respond meaningfully" to concerns raised by parties); *NorAm Gas Transmission Co. v. FERC*, 148 F.3d 1158, 1165 (D.C. Cir. 1998) (reversing order in which the Commission "not only failed to provide an adequate response to [petitioner's] argument, it failed to take seriously its responsibility to respond at all"); *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1303 (D.C. Cir. 1992) (stating that an agency must "engage the arguments raised before it – that it conduct a process of *reasoned* decisionmaking" (emphasis in original)).

[36] *See* August 7 Order, 196 FERC ¶ 61,112 at P 127.

of the filed rate,[37] and, just as importantly, the filed rate doctrine and the corollary prohibition against retroactive ratemaking expressly bar retroactive deviations from the filed rate.[38] By the August 7 Order's logic, MISO would be free to exercise any remedial authority not expressly prohibited, even if it entails other violations of the filed rate, which would result in MISO enjoying essentially unfettered remedial authority and in the complete nullification of the filed rate doctrine.[39] But the Commission has previously made clear, "MISO is not authorized to implement whatever policies or procedures that it chooses as long as they are not specifically prohibited."[40] The Commission's holding here is contrary to the filed rate doctrine and also fails to satisfy the requirements of reasoned decision-making as it is "illogical on its own terms"[41] and an unexplained departure from Commission precedent.[42]

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37 *See Maislin*, 497 U.S. at 136 (stating that the filed rate doctrine embodies a requirement of "strict adherence" to the terms of tariffs).

38 *See PJM Power*, 96 F.4th at 399; *Towns of Concord v. FERC*, 955 F.2d 67, 71 n.2 (D.C. Cir. 1992) ("*Concord*").

39 The Commission also cites *Maryland Off. of People's Couns. v. FERC*, 164 F.4th 920, 927 (D.C. Cir. 2026), for the proposition that "MISO's authority to make adjustments that give effect to the filed rate is not barred by retroactive ratemaking principles as long as those adjustments are within the scope of its remedial authority under Section 12A to correct the Continuing Error." August 7 Order, 196 FERC ¶ 61,112 at n.285. This case does not support the Commission's conclusion, as that case concerned the Commission's remedial authority under Section 206 of the FPA, not after-auction rate adjustments by an RTO/ISO.

40 *Shetek Wind Inc. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,250 at P 49 (2012) ("*Shetek*").

41 *GameFly, Inc. v. Postal Regul. Comm'n*, 704 F.3d 145, 148 (D.C. Cir. 2013) ("*GameFly*") (citation omitted). *See also, e.g.*, *Baltimore Gas & Elec. Co. v. Natural Res. Def. Council, Inc.*, 462 U.S. 87, 105 (1983) ("*Baltimore Gas*") (agency must "consider[] the relevant factors and articulate[] a rational connection between the facts found and the choice made" (citations omitted)).

42 *See, e.g.*, *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("*Fox*") (holding that an agency must "display awareness that it *is* changing position" and "show that there are good reasons for the new policy" (emphasis in original)); *West Deptford Energy, LLC v. FERC*, 766 F.3d 10, 20 (D.C. Cir. 2014) ("*West Deptford*") ("It is textbook administrative law that an agency must 'provide[] a reasoned explanation for departing from precedent or treating similar situations differently,' and Commission cases are no exception . . . ." (internal citation omitted)).

Third, the August 7 Order also claims MISO's reimagining of Section 12A(e) of the MISO Tariff is appropriate because this provision would otherwise be "meaningless because MISO would be unable to make any adjustments to finalized [PRA] results."[43] The Commission's surplusage conclusion does not follow from its premise: Petitioners' arguments leave plenty of room for MISO to do *something*; it just cannot do *this*. As an initial matter, even setting aside the other problems with the Commission's construction of this provision, the plain language of Section 12A(e) limits what MISO can do under this provision, because "the term[] . . . 'adjust' mean[s] 'to change moderately or in minor fashion,'" so an "adjustments provision" cannot be used for "severe" or "substantial" changes.[44] And in any event, it is the Commission's interpretation of Section 12A(e), not Petitioners', that creates a surplusage problem inasmuch as reading that provision this broadly renders meaningless any number of other provisions of the MISO Tariff, including (but not limited to) provisions: specifying when the PRA results are to be published and the limited circumstances in which MISO may delay publication;[45] under which "[a]ll PRA transactions will be financially binding";[46] and requiring that all cleared offers be settled at the Auction Clearing Price.[47] Nothing in the filed rate doctrine permits a public utility to enforce some terms of a tariff but not others[48]

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43 August 7 Order, 196 FERC ¶ 61,112 at P 125.

44 *Bridgeport Hosp. v. Becerra*, 108 F.4th 882, 888 (D.C. Cir. 2024) ("*Bridgeport*") (quoting *Amgen, Inc. v. Smith*, 357 F.3d 103, 117 (D.C. Cir. 2004), *Biden v. Nebraska*, 143 S. Ct. 2355, 2368-69 (2023) ("*Biden*"), and *MCI Telecomm. Corp. v. AT&T*, 512 U.S. 218, 225 (1994) ("*MCI*")).

45 *See* MISO Tariff, § 69A.7.1(c)(xi).

46 *Id.*, § 69A.7.2.

47 *See id.*, § 69A.7.6(a). *See also Chamber of Com. of United States of Am. v. United States DOL*, 885 F.3d 360, 382 (5th Cir. 2018) ("*Chamber of Commerce*") ("Illogic and internal inconsistency are characteristic of arbitrary and unreasonable agency action."); *Illinois Pub. Telecomm. Ass'n v. FCC*, 117 F.3d 555, 566 (D.C. Cir. 1997) ("*IPTA*") (finding "seemingly illogical decision" to be arbitrary and capricious).

48 *See PJM Interconnection, L.L.C.*, 184 FERC ¶ 61,055, Dissenting Statement of Comm'r Danly at P 30 (2023) ("Danly ER23-729 Dissent") (footnote omitted), *vacated*, *PJM Power*, 96 F.4th 390.

or to violate one term of a tariff in the name of remedying a violation of another.[49] In this regard, it bears emphasis that Section 12A(e) does include any language directing MISO to make appropriate adjustments "notwithstanding any other provision of the MISO Tariff" or otherwise signaling any intent that this provision override any and all other tariff provisions.[50] The Commission's internally inconsistent and illogical reasoning on this score cannot support its conclusion.[51]

2. The August 7 Order Arbitrarily Accepted MISO's Assurances Regarding Its Technical Methodology without Engaging with Pelican's Expert Evidence to the Contrary

The August 7 Order accepted MISO's "representation" that its adjustments were "reasonable approximations of the values that the affected market participants would have received but for the Continuing Error,"[52] without any technical review of MISO's methodology and without answering Pelican's detailed evidence showing MISO's adjustments skipped critical steps and resulted in incoherent results. As Dr. Shanker observed, "[w]hat MISO is doing is not a simple adjustment such as correcting a mathematical computation."[53] MISO's original calculation of LOLE using the all hours methodology was but one in a series of sequential calculations and

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[49] *See, e.g.*, *SPP*, 166 FERC ¶ 61,160 at P 50 (holding that enforcement of a tariff provision limiting remedial actions "is consistent with the filed rate doctrine, even where such provision results in a lack of refunds for a violation of the filed rate").

[50] *See, e.g.*, *Cisneros v. Alpine Ridge Grp.*, 508 U.S. 10, 18 (1993) ("[T]he use of . . . a 'notwithstanding' clause clearly signals the drafter's intention that the provisions of the 'notwithstanding' section override conflicting provisions of any other section." (citing *Shomberg v. United States*, 348 U.S. 540, 547-48 (1955)); *L & B 57th Street, Inc. v. E.M. Blanchard, Inc.*, 143 F.3d 88, 93 (2d Cir. 1998) (finding that a clause stating that "its application is 'notwithstanding anything herein to the contrary' . . . trumps [a conflicting] clause").

[51] *Business Roundtable v. SEC*, 647 F.3d 1144, 1153 (D.C. Cir. 2011) ("*Business Roundtable*"). *See also, e.g., Air Transp. Ass'n of Am. v. United States DOT*, 119 F.3d 38, 43 (D.C. Cir. 1997) (vacating decision that was "internally inconsistent"); *Air Line Pilots Ass'n v. FAA*, 3 F.3d 449, 453 (D.C. Cir. 1993) (finding agency decision to be "internally inconsistent and therefore unreasonable and impermissible").

[52] August 7 Order, 196 FERC ¶ 61,112 at P 123.

[53] Shanker Affidavit at ¶ 14.

actions using values to be calculated and posted at prescribed times that culminated in the setting of demand curves that were then used, together with supplier offers, to clear an auction.[54] In calculating the settlement adjustments, MISO "skip[ped] over critical steps"[55] and ultimately "chang[ed] the essence of the market by shifting the representation of demand for the product."[56] The steps applied by MISO are, as Dr. Shanker explains, inconsistent with the process specified in the MISO Tariff for establishing the RBDCs and conducting a PRA.[57]

Further, while MISO drastically reduced payments to Pelican and other suppliers for capacity cleared in the 2025/26 PRA, the quantity of capacity procured was unchanged, with the result that, as Dr. Shanker explains, this aspect of the "Continuing Error [wa]s effectively prolonged rather than remedied . . . ."[58] MISO can hardly be said to be enforcing the filed rate when it preserves the volume but changes the price. And MISO's selective remedial actions then led it to concoct a "make-whole" mechanism found nowhere in the MISO Tariff.[59] The result was adjustments that were "incomplete"[60] and not "appropriate,"[61] as MISO is making out-of-market capacity payments not authorized under the MISO Tariff to "retain the original, higher quantity of capacity that was cleared in the 2025/26 PRA but would not have cleared under MISO's revised

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54 *See id.*, Exh. RJS-1 (MISO chart setting forth the timeline for the 2025/26 PRA and other resource adequacy-related activities for the 2025/2026 Planning Year).

55 Shanker Affidavit at ¶ 30.

56 *Id.* at ¶ 14.

57 *See id.* at ¶¶ 29-38.

58 *Id.* at ¶ 20. See also EL26-26 Complaint at 24 ("While MISO's settlement adjustments dramatically reduce payments for capacity cleared in the 2025/26 PRA, the quantity components of suppliers' capacity commitments remain unchanged.").

59 See EL26-26 Complaint at 24-25.

60 Shanker Affidavit at ¶ 15.

61 *Id.*

RBDCs and resettled prices."[62] While the market, like other organized capacity markets, is "designated as a single clearing price market where every cleared offer is intended to receive the same price for capacity," MISO's ad hoc adjustments transformed it, without advance notice to market participants or Commission authorization, into a hybrid "where one set of suppliers receives the re-settled [clearing price], and another set of suppliers receive pay as bid compensation."[63]

As Dr. Shanker explained, MISO's approach effectively results "in a 'one off' transfer of funds from sellers/suppliers to buyers/load":[64] payments to suppliers are reduced by approximately $280 million while buyers receive the higher quantity of capacity and superior level of system reliability associated with the original clearing prices.[65] Notably, the level of reliability received by maintaining the quantity procured using an all-hours approach was significantly higher than that which would have been provided by determining the LOLE in accordance with the then-effective tariff definition.[66] Indeed, MISO's independent market monitor (the "IMM") agreed with Dr. Shanker's assessment,[67] explaining that "the original capacity prices and schedules are consistent with the true 1-in-10 reliability standard and, therefore, are efficient," and that it would be inappropriate for MISO to now make its settlement adjustments "at the end of the summer, the

62 *Id.* at ¶ 19 (footnote omitted).

63 *Id.* at ¶ 23.

64 *Id.* at ¶ 24.

65 *See id.*

66 *See id.* at ¶ 17.

67 *See id.* at ¶¶ 18-24.

only tight season, [after] participants had already performed, and MISO had already benefited from the higher level of reliability procured for the 2025/2026 Planning Year."[68]

The Commission did not address Dr. Shanker's affidavit, much less provide a reason to disregard the explanation he provided. Instead, the Commission's entire rationale for concluding that MISO's adjustments were "appropriate" was MISO's own representation that its adjustments roughly approximated the values market participants would have received but for the Continuing Error. But the Commission cannot "simply summarize[]" a party's argument "in broad strokes" and then "announce" that it is persuaded.[69] If an agency relies on a regulated party's analysis to justify its decision, it must either critically review that analysis or perform its own.[70] The Commission did neither here. Rather, it simply summarized MISO's claim that its settlement adjustments were "reasonable approximations"[71] and then concluded that, as a result, MISO's adjustments were "appropriate."[72] That lack of explanation renders the Commission's conclusion arbitrary and capricious.[73] And the Commission made its conclusion without addressing Dr.

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68 Motion to Intervene and Comments on the MISO Independent Market Monitor at 6, Docket No. EL26-26-000 (filed Dec. 16, 2025) (the "IMM Comments").

69 *In re NTE Conn., LLC*, 26 F.4th 980, 988 (D.C. Cir. 2022) ("*NTE*").

70 See *Susquehanna Int'l Grp. v. SEC*, 866 F.3d 442, 447 (D.C. Cir. 2017) ("*Susquehanna*"). *See also Cboe Futures Exch., LLC v. SEC*, 77 F.4th 971, 979 (D.C. Cir. 2023) (rejecting "'unquestioned reliance' on a regulated entity's submission" (quoting *Susquehanna*, 866 F.3d at 447)); *Bloomberg L.P. v. SEC*, 45 F.4th 462, 473 (D.C. Cir. 2022) (finding "unquestioning reliance" a party's submission insufficient (quoting *Susquehanna*, 866 F.3d at 447)).

71 August 7 Order, 196 FERC ¶ 61,112 at P 123.

72 *Id*.

73 *NTE*, 866 F.3d at 988 ("An agency must either 'critically review[]' the third party's analysis or "perform[] its own.' Here, FERC did neither." (quoting *Susquehanna*, 866 F.3d at 447)).

Shanker's or the IMM's explanation that MISO's adjustments were incomplete and inappropriate. This, too, was error.[74]

The closest that the August 7 Order comes to engaging with Dr. Shanker's testimony is its insistence that "MISO may run software simulations to arrive at settled amounts" in response to Pelican allegedly having argued that "MISO may not use simulations . . . to make its settlement adjustments."[75] But Pelican and Dr. Shanker never made any such claim. Instead, as Pelican explained when MISO made this same false assertion: "[t]he problem is not that MISO is using simulations but that it is skipping steps related to the use of those simulations expressly required under the MISO Tariff."[76] Having mischaracterized Pelican's and Dr. Shanker's position, the Commission offers a *non sequitur* when reasoned decision-making demanded a meaningful response[77] and impermissibly "ignore[d] evidence that undercuts its judgment . . . ."[78] As a result, the August 7 Order fails to satisfy the requirements of reasoned decision-making and is not supported by substantial evidence, as required by both the APA and the FPA.[79]

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74 *See Genuine Parts Co. v. EPA*, 890 F.3d 304, 312 (D.C. Cir. 2018) ("*Genuine Parts*") (making clear that "an agency cannot ignore evidence that undercuts its judgment …[or] minimize such evidence without adequate explanation"); *Lakeland Bus Lines, Inc. v. NLRB*, 347 F.3d 955, 963 (D.C. Cir. 2003) ("*Lakeland*") (overturning an agency decision that reflected a "clipped view of the record"); *Tenneco Gas v. FERC*, 969 F2d 1187, 1214 (D.C. Cir. 1992) ("*Tenneco*") (finding that "a FERC order neglectful of pertinent facts on the record must crumble for want of substantial evidence"); *International Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. NLRB*, 802 F.2d 969, 975 (7th Cir. 1986) ("*International Union*") (agency may not "confine[] its attention to evidence that support[s] its conclusion and . . . ignore[] any contrary evidence").

75 August 7 Order, 196 FERC ¶ 61,112 at P 126.

76 Motion for Leave to Answer and Answer at 8, Docket No. EL26-26-000 (filed Jan. 12, 2026) ("January 12 EL26-26 Answer") (citing Shanker Affidavit at ¶¶ 30-38).

77 *See City of Vernon, Cal. v. FERC*, 845 F.2d 1042, 1048 (D.C. Cir. 1988) ("*Vernon*") ("No matter how rudimentary a claim, an agency is not entitled under the [Administrative Procedure Act (the "APA")] to respond with a non sequitur."). *See also, e.g.*, *Tennessee Gas Pipeline Co. v. FERC*, 824 F.2d 78, 84 (D.C. Cir. 1987).

78 *Genuine Parts*, 890 F.3d at 312.

79 *See* 5 U.S.C. § 706(2)(E) (2018); 16 U.S.C. § 825*l*(b) (2018).

3. The Commission Arbitrarily Concluded that MISO's Adjustments Did Not Constitute Retroactive Ratemaking

The filed rate doctrine and the corollary prohibition against retroactive ratemaking[80] preclude the Commission "from doing indirectly what it cannot do directly" – that is, allowing a utility to collect a rate other than the filed rate.[81] These rules are "not limited to 'rates' *per se* but also extend[] to matters 'directly affecting rates.'"[82]

As Pelican explained, "[i]rrespective of whether MISO is understood to be changing Auction Clearing Prices or amounts paid for capacity cleared in the auction, the settlement adjustments are retroactive and thus violative of the filed rate doctrine in that they 'alter[] the legal consequence attached to past actions.'"[83] The purpose of the bar against retroactive rate changes "reflects a congressional determination that parties in the industry need to be able to rely on the finality of approved rates, and that this interest outweighs the value of being able to correct for decisions that in hindsight may appear unsound."[84] Market participants here relied on both the

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80 *See Hall*, 453 U.S. at 578 (1981). *See also, e.g.*, *Oklahoma Gas*, 11 F.4th at 829 (explaining the filed rate doctrine is "shorthand for the interconnected statutory requirements that bind regulated entities to charge only the rates filed with FERC and to change their rates only prospectively"); *ODEC*, 892 F.3d at 1232 (finding a petitioner's requested relief would "retroactively rewrite the terms of the filed rate" and holding that "[t]he filed rate doctrine and rule against retroactive rulemaking flatly forbid such a result"); *Louisiana Pub. Serv. Comm'n v. FERC*, 761 F.3d 540, 556 (5th Cir. 2014) (stating that "the absence of retroactive relief is a function of the filed-rate doctrine"); *OXY USA, Inc. v. FERC*, 64 F.3d 679, 700 (D.C. Cir. 1995) (holding that a new methodology for valuing petroleum shipments "could not have been imposed retroactively without violating the filed rate doctrine"); *East Tenn. Natural Gas Co v. FERC*, 863 F.2d 932, 941 (D.C. Cir. 1988) (stating that "[r]etroactive changes in rates violate the filed rate doctrine, by allowing the collection of rates other than the ones that were on file at the time of purchase"); *Public Serv. Co. of N.H. v. FERC*, 600 F.2d 944, 958 (D.C. Cir. 1979) (stating that "only prospective ratemaking is allowed"); *Texas Eastern*, 72 FERC ¶ 61,152 at 61,766-67 ("Under the filed rate doctrine, final rates approved by the Commission cannot be changed retroactively.").

81 *SFPP, L.P. v. FERC*, 967 F.3d 788, 801-802 (D.C. Cir. 2020) (citation omitted).

82 *Oklahoma Gas*, 11 F.4th at 829 (citation omitted).

83 EL26-26 Complaint at 27 (quoting *PJM Power*, 96 F.4th at 399). *See also* EL26-35 Complaint at 21.

84 *PJM Power*, 96 F.4th at 402 (quoting *Public Utils. Comm'n of the State of Cal. v. FERC*, 894 F.2d 1372, 1383-84 (D.C. Cir. 1990)).

posted parameters for the 2025/26 PRA and the Auction Clearing Prices. The reliance here was not only self-evident; it was confirmed by testimony from Mr. Budd, the Senior Vice President of Commodity Portfolio Management with Kindle Energy LLC, which acts as Pelican's asset manager.[85] And with respect to the LOLE calculation specifically, MISO had been calculating LOLE on an all-hours basis for eight PRAs and, as MISO itself acknowledged, such an approach could, therefore, "be assumed to be a baseline for both MISO and its stakeholders with respect to Resource Adequacy Requirements."[86]

Because MISO's adjustments amount to retroactive ratemaking, they are impermissible unless the MISO Tariff can be said to have put market participants on notice that the prices for capacity cleared in the 2025/26 PRA were subject to modification in this fashion. The Commission's only response to these arguments was to declare that MISO's adjustments were "consistent with the filed rate doctrine" and "not impermissibly retroactive" because they were conducted pursuant to Section 12A of the MISO Tariff.[87] As Petitioners explain above, MISO's adjustments are not reasonably authorized by Section 12A of the MISO Tariff.[88] And Section 12A certainly did not provide adequate notice that MISO could make adjustments like those at issue here.

According to the August 7 Order, market participants were on notice because Section 12A "itself clearly provides for 'appropriate adjustments' for Continuing Errors,"[89] even though there is nothing in the MISO Tariff suggesting that such adjustments would involve anything other than

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85 *See* Budd Affidavit at ¶¶ 11-18.

86 ER25-3307 Filing at 4.

87 *See* August 7 Order, 196 FERC ¶ 61,112 at P 124.

88 *See supra* at 7-13.

89 August 7 Order, 196 FERC ¶ 61,112 at P 131.

enforcement of the filed rate.[90] This conclusion is directly contrary to prior decisions of the Commission, and of the courts, rejecting claims that such general language provides the required notice.[91] For example, the Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit") in *ODEC* affirmed a Commission order rejecting a supplier's argument that it was entitled to recover costs above then-applicable offer caps "because ratepayers were on notice that the [system operator's] Tariff set a market rate for electricity, and the Polar Vortex altered that market rate,"[92] because it "failed to identify any Tariff provisions that openly specify the type of market-variable cost components required for formula rates."[93] And it is also contrary to D.C. Circuit and Supreme Court precedent holding precisely the opposite in the statutory-interpretation context: authority to "adjust" is authority "to change moderately or in minor fashion" – not power to make sweeping revisions.[94]

If the notice requirement is watered down such that the two words "appropriate adjustment" can authorize retroactive excursions of the nature and magnitude of those undertaken by MISO, the notice exception easily swallows the filed rate doctrine rule. At that point, the filed rate

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[90] In support of this supposed notice, the Commission cites only its *own* order accepting MISO's revisions to Section 12A(g), which referenced "the administrative burdens associated with investigation, restaging market data, rerunning upstream processes, and resettling financial impacts" as reason to shorten the time frame for such corrections and said nothing whatsoever about what MISO's remedial process would be. *See* August 7 Order, 196 FERC ¶ 61,112 at P 131 & n.302.

[91] *See ODEC*, 892 F.3d at 1231; *Associated Gas Distribs. v. FERC*, 893 F.2d 349, 356 (D.C. Cir. 1989) ("*AGD*") (finding language concerning costs that "may require special consideration" to be "delphic at best" and inadequate to provide the notice for later surcharges to comply with the filed rate doctrine); *Southwest Power Pool, Inc.*, 170 FERC ¶ 61,125 at P 35 (2020) (finding that a tariff " did not provide adequate notice of [an RTO's] intent to invoice transmission customers retroactively beyond the [specified] time limit" because it did not "notif[y] customers or 'plainly' state [the RTO]'s intent to waive or adjust" that limit (footnote omitted)); *ANR Pipeline Co.*, 89 FERC ¶ 61,244 at 61,724 n.20 (1999) (stating that recovery of deferred costs other than through the method previously approved by the Commission "would violate the filed rate doctrine," because "no notice was given as to a specific recovery mechanism").

[92] *ODEC*, 892 F.3d at 1231.

[93] *Id.* (citations omitted).

[94] *Bridgeport*, 108 F.4th at 888. *See also Biden*, 143 S. Ct. at 2368-69; *MCI*, 512 U.S. at 225.

doctrine ceases to be a set of "rules mandating the open and transparent filing of rates and broadly proscribing their retroactive adjustment"[95] and becomes a dead letter any time similarly general language – which could presumably include language purporting to authorize any retroactive rate change later deemed just and reasonable – is included in a tariff. Such an approach is not only contrary to law; it will also deprive buyers and sellers alike of the predictability that the filed rate doctrine is meant to provide.[96] As the Third Circuit cautioned, such "disregard of the filed rate doctrine as a limiting principle creates unpredictability in the markets," and "[b]y eroding confidence in the markets, FERC may ultimately harm consumers who buy electricity in those markets."[97]

The Commission's reliance[98] on *Hecate Energy Greene Cnty. 3 LLC v.* FERC[99] is misplaced. In *Hecate*, the D.C. Circuit found adequate notice in the MISO Tariff where three expressly cross-referenced provisions listing specific definitions and practices provided sufficient notice when read "together."[100] Here, however, there is nothing more than the two words "appropriate adjustments"[101] that, according to the August 7 Order, were supposed to provide notice MISO could later adjust the price set by the 2025/26 PRA based on various after-the-fact

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95 *ODEC*, 892 F.3d at 1226.

96 *See id.* at 1230 (describing the filed rate doctrine and the prohibition against retroactive ratemaking as "operat[ing] as a nearly impenetrable shield" that "ensur[es] rate predictability"). *See also, e.g.*, *West Deptford*, 766 F.3d at 12 (explaining that the filed rate doctrine "ensures evenhandedness, fairness, stability, and predictability in the prices charged for electrical energy").

97 *PJM Power*, 96 F.4th at 402. *See also* Shanker Affidavit at ¶ 47 ("While there are winners and losers from MISO's resettlement in the short term, all participants are harmed by the uncertainty created over the longer term.").

98 *See* August 7 Order, 196 FERC ¶ 61,112 at P 128.

99 72 F.4th 1307, 1313 (D.C. Cir. 2023) ("*Hecate*").

100 *Id.* at 1313.

101 MISO Tariff, § 12A(e).

estimates, processes and calculations not specified anywhere in the MISO Tariff. Nothing approaching the specificity outlined in *Hecate* is present here, or anything else that would suggest these settlement adjustments were "foreordained."[102]

Indeed, the August 7 Order's explanation for why Section 12A supposedly provides the necessary notice undermines its claim that Section 12A authorizes these adjustments at all. The Commission acknowledges that Section 12A "establishes a 12-month time bar that defines the maximum lookback period for addressing the financial impacts of a continuing error."[103] The MISO Generators argued that this meant MISO could only adjust settlement amounts that accrued prior to the notification date.[104] Ignoring the plain tariff language, the Commission held that "Section 12A does not restrict MISO's authority to make adjustments to settlements issued *after* the notification date"[105] and that "MISO does not need explicit Tariff authority to correct errors in charging the filed rate."[106] This undermines the Commission's claim that Section 12A provides adequate notice, as the Commission concedes that, at least in part, what MISO has done is not described in Section 12A. This reasoning is also entirely inconsistent with judicial and Commission precedent recognizing that the Commission cannot correct a violation of the filed rate by, in turn, implementing a remedy that violates the filed rate.[107]

Similarly inadequate is the Commission's explanation as to why MISO was not required by Section 205(c) of the FPA to file notice of these new methodologies with the Commission.

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102 *ODEC*, 892 F.3d at 1231.

103 August 7 Order, 196 FERC ¶ 61,112 at P 132.

104 *See* EL26-35 Complaint at 34-35; Motion for Leave to Answer and Answer of the MISO Generators at 15-17, Docket No. EL26-35-000 (filed Jan. 27, 2026).

105 August 7 Order, 196 FERC ¶ 61,112 at P 132 (emphasis added).

106 *Id.*

107 *See supra* at 6 & n.23.

While the courts have recognized that it would be impractical to insist on the filing of "*all* of the practices affecting rates,"[108] they have nonetheless made clear that a public utility is required to file "those practices that affect rates and service *significantly*, that are realistically *susceptible* of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous."[109] There can be little doubt that resettlement rules governing a $280 million wealth transfer, deviating from the single-clearing price auction design, and inventing a new make-whole mechanism "affect rates and service *significantly*,"[110] and MISO's own description of the steps taken to calculate the settlement adjustments demonstrates that these rules "are realistically *susceptible* of specification . . . ."[111] Lastly, the complexity of the exercise should leave little room for doubt that these rules are not "so generally understood in any contractual arrangement as to render recitation superfluous."[112] Rather than engage with these arguments, the Commission simply falls back on its original position that these adjustments were covered by Section 12A and thus were part of the filed rate already.[113] That non-response does not satisfy the requirements of reasoned decision-making.[114]

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108 *City of Cleveland v. FERC*, 773 F.2d 1368, 1370 (D.C. Cir. 1985) ("*City of Cleveland*") (emphasis in original).

109 *Id.* at 1376 (emphasis in original). *See also Keyspan-Ravenswood, LLC v. FERC*, 474 F.3d 804, 811 (D.C. Cir. 2007) (same).

110 *City of Cleveland*, 773 F.2d at 1376 (emphasis in original).

111 *Id.* (emphasis in original).

112 *Id.*

113 *See* August 7 Order, 196 FERC ¶ 61,112 at P 128.

114 *See American Clean Power Ass'n v. FERC*, 54 F.4th 722, 728 (D.C. Cir. 2022) ("*ACPA*") (reversing order in which "FERC acted arbitrarily and capriciously by failing to meaningfully respond to Petitioner's arguments"); *New Eng. Power Generators Ass'n, Inc. v. FERC*, 881 F.3d 202, 211 (D.C. Cir. 2018) ("*NEPGA II*") (finding error where "FERC failed to respond to the substantial arguments put forward by Petitioners and failed to square its decision with past precedent"); *TransCanada Power Mktg. Ltd. v. FERC*, 811 F.3d 1, 12 (D.C. Cir. 2015) ("*TransCanada*") ("It is well established that the Commission must 'respond meaningfully to the arguments raised before it.'" (quoting *Public Serv. Comm'n v. FERC*, 397 F.3d 1004, 1008 (D.C. Cir. 2005))).

B. The August 7 Order Disregards Commission Precedent Favoring Finality of Auction Results without Explanation

Neither MISO nor the Commission dispute that the Commission has a "well-established policy of not disrupting the results of cleared capacity auctions."[115] Applying this policy, the Commission has consistently rejected requests to rerun, resettle or otherwise disturb the results of past auctions,[116] even when the underlying auctions were not conducted in accordance with the filed rate.[117] Pelican and the MISO Generators persuasively showed why MISO's settlement adjustments amounted to an auction re-run under any conception of the term. As Dr. Shanker explained:

> MISO can call this a banana, but it is difficult to contemplate a more fundamental change in the clearing of a capacity auction than the modification of the reliability metric for the market and the *associated shifting of the demand curve for the resource adequacy product*. What MISO is doing is not a simple adjustment such as correcting a mathematical computation. Instead, MISO is changing the essence of the market by shifting the representation of demand

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115 *PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,153 at P 322 ("*PJM II*") (footnote omitted), *on reh'g*, 173 FERC ¶ 61,123 (2020). *See also* August 7 Order, 196 FERC ¶ 61,112 at P 191; MISO Answer 26-27.

116 *See* EL26-26 Complaint at 32 & n.136 (collecting cases); EL26-35 Complaint at 41-42.

117 *See, e.g.*, *Shanker v. PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,209 at P 39 (2024) ("[E]ven if we had found that [the RTO/ISO] iolated its tariff, we would not grant retroactive relief because . . . re-running past auctions to correct such a violation is not warranted under these circumstances."), *on reh'g*, 191 FERC ¶ 61,006 (2025); *Midcontinent Indep. Sys. Operator, Inc.*, 173 FERC ¶ 61,055 at P 9 (2020) (agreeing with MISO that "market resettlement and refunds [we]re not an appropriate remedy" even though "MISO's settlement practices violated [a provision of] the [MISO] Tariff for a period exceeding nine years" (footnote omitted)); *ISO New Eng. Inc.*, 170 FERC ¶ 61,187 at P 21 (2020) (finding that rerunning two capacity auctions applying a market rule change initially rejected but then accepted on rehearing "would . . . create harm in the form of market uncertainty that outweighs the benefit of rerunning those [auctions]"); *Midwest Indep. Transmission Sys. Operator, Inc.*, 162 FERC ¶ 61,173 at P 17 (2018) (finding that "rerunning the past five years of MISO's markets under the Tariff that was effective prior to [implementation of later-vacated market rules changes] . . . is not warranted in this case"); *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252 at P 54 (2017) ("*PJM I*") (finding that "ordering recoupment of funds through rerunning the markets or any other remedy for the period during which [an RTO/ISO] operated its market with [later-vacated mitigation rules] is unwarranted"), *on reh'g*, 169 FERC ¶ 61,237 (2019). The application of this policy in such cases does not violate the filed rate doctrine, because the courts have found that the Commission may exercise its discretion not to order refunds even in circumstances in which there was no question that filed rate "[v]iolations occurred." *Concord*, 955 F.2d at 72.

> for the product. . . . [C]hanging the LOLE calculation and shifting the administratively set demand curves to determine a price impact and then reducing payments to suppliers by this amount cannot be reconciled with MISO's declaration that it is not establishing new clearing prices. *This is effectively re-settling/re-running the 2025/26 PRA, regardless of how MISO tries to characterize the change*.[118]

Moreover, Commission precedent makes clear that this policy applies irrespective of whether the changes to auction results are effected through the rerunning or resettling of the auction or some other mechanism. The policy is simply one of "not disrupting the results of cleared capacity auctions."[119] This policy has been applied not just to proposals to rerun or resettle auctions but to "recoupment of funds through . . . any other remedy . . . ."[120] Accordingly, the Commission has rejected alternatives to rerunning or resettling auctions that, consistent with MISO's characterization of the settlement adjustments, would have "recreate[d] auction results" without actually rerunning the auction.[121]

Even assuming *arguendo* that Section 12A of the MISO Tariff can be construed as authorizing any retroactive modification that might be deemed "appropriate," well-established Commission precedent is plainly relevant to the question of whether a given modification meets this standard. Rather than grapple with this argument, the Commission "reject[ed] [the] characterization of MISO's adjustment process as a manual rerun of the Auction requiring adherence to the Module E-1 requirements" because "MISO did not re-establish or re-post Auction

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118 Shanker Affidavit at ¶ 14 (emphases in original) (footnotes omitted). *See also* Comments of Cooperative Energy in Support of Pelican Power LLC's Complaint and Request for Alternative Relief at 5 (filed Dec. 15, 2025) (stating that "despite its claims to the contrary, MISO has recalculated the ACP to resettle a portion of the market" and that "MISO itself refers to the results of its remedial actions as an 'estimated price delta'" (footnote omitted)).

119 *PJM II*, 171 FERC ¶ 61,153 at P 322 (footnote omitted).

120 *PJM I*, 161 FERC ¶ 61,252 at P 54.

121 *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,237 at P 29 (2019).

parameters, take new bids, establish new [Auction Clearing Price]s, or re-establish capacity commitments. Rather, MISO applied adjustments to settlement statements pursuant to Section 12A. . . ."[122] But even if accurate, that assertion is a *non-sequitur*: the issue is not whether MISO literally re-ran the auction, but that it disturbed the results of the auction. The Commission's only response is that the "Tariff itself" mandated a remedy for this Continuing Error.[123] That wholly fails to engage with Commission precedent concerning auction finality or the *reality* of what MISO's adjustments accomplished and thus fails to meet the requirements for reasoned decision-making.[124]

C. MISO's Adjustments Were Inappropriate and Unjust, Unreasonable and Unduly Discriminatory, and The August 7 Order's Acceptance of those Adjustments Was Arbitrary and Capricious

As Pelican explained, although the MISO Tariff does not define "appropriate," the use of this term cannot mean that MISO enjoys unfettered discretion to make any and all adjustments, even if the term "adjustment" can be stretched to cover the changes made here (and, as discussed above, it cannot[125]).[126] To the contrary, the Commission has held that when an RTO/ISO has discretion, it must exercise that discretion in a just and reasonable and not unduly discriminatory

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122 August 7 Order, 196 FERC ¶ 61,112 at P 130. *See also id.* at P 193 (stating the Commission "agree[s] with MISO that it did not rerun the Auction, reopen bids, or alter the Auction's clearing parameters.").

123 *Id.* at P 193.

124 *See Vernon*, 845 F.2d at 1048 ("No matter how rudimentary a claim, an agency is not entitled under the APA to respond with a non sequitur.").

125 *See supra* at 12.

126 *See Appropriate*, *Merriam-Webster's Dictionary*, https://www.merriam-webster.com/dictionary/appropriate.

manner.[127] Against that backdrop, "appropriate adjustments"[128] must be construed to be limited to adjustments that are just and reasonable, not unduly discriminatory, and otherwise consistent with Commission policy. Petitioners identified multiple ways in which MISO's changes were not just and reasonable. The Commission's rationales for rejecting each are fatally unexplained, arbitrary, and inadequate, and the Commission's conclusion that MISO's adjustments were "both appropriate and just and reasonable"[129] is, therefore, not the product of reasoned decision-making.

First, Pelican pointed out that MISO's calculation of LOLE using the all-hours methodology, while inconsistent with the tariff definition of "Loss of Load Event," was clearly just and reasonable and provided significant benefits to the system in the form of greater reliability, given that MISO proposed to move to this calculation method going forward.[130] As MISO recognized, such an approach allows it "to better capture and measure the likelihood that generation capacity will be insufficient at a given hour,"[131] compared with the daily peak hour approach, which, it said, "underrepresent[s] the resource adequacy risk, leading to capacity requirements that are lower than needed to address [current] risk[s] . . . ."[132] MISO further explained that revising the definition to prescribe an all-hours calculation is "just and reasonable

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127 *See Independent Energy Producers Ass'n v. California Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,276 at P 46 (2007) (explaining that an RTO/ISO "must exercise any discretion under its tariff in a reasonable manner"). *See also, e.g.*, *Astoria Generating Co., L.P. v. New York Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,044 at P 30 (stating that "while the Commission provides . . . ISO/RTOs a great deal of discretion in interpreting their own tariffs, . . . that does not relieve the Commission of its responsibility to determine whether [an RTO/ISO's] interpretation of its tariff is reasonable"), *on reh'g*, 153 FERC ¶ 61,274 (2015); *Southwest Power Pool, Inc.*, 114 FERC ¶ 61,222 at P 78 (stating that where its credit policies give it discretion, the RTO/ISO "must exercise that discretion in a not unduly discriminatory manner" (footnote omitted)), *on reh'g*, 116 FERC ¶ 61,162 (2006), *on reh'g*, 118 FERC ¶ 61,035 (2007).

128 MISO Tariff, § 12A(e).

129 August 7 Order, 196 FERC ¶ 61,112 at P 191.

130 *See* EL26-26 Complaint at 48-50.

131 ER25-3307 Filing at 2.

132 *Id.* at 3.

and necessary to accurately reflect the system risks that MISO *has been experiencing* and will continue to experience in the future."[133] The IMM also "recommend[ed] that the Commission reverse the [settlement] adjustments if it is legally permissible to do so."[134] This recommendation reflects the IMM's recognition that "resettling wholesale electricity retroactively, whether through a complete re-posting of prices and schedules or simply through settlement adjustments, can undermine the integrity of the competitive market."[135]

The Commission's only response to this point was to categorically declare that Section 12A of the MISO Tariff does not require MISO to consider the "tangible reliability benefits" of the error or "market uncertainty" before making "appropriate adjustments."[136] This non-answer does not engage with Pelican's argument that these considerations must necessarily be part of a determination of whether "adjustments" *are* "appropriate" in the first place, especially because the entire *purpose* of Section 12A was to improve market certainty.[137] The Commission cannot simply declare that these considerations are not spelled out in the MISO Tariff and then refuse to consider them itself.[138] That is particularly problematic when the MISO Tariff does not specify any of the factors that MISO actually did take into account in calculating the adjustments.

Second, the Commission incorrectly dismissed the MISO Generators' concerns about discriminatory treatment resulting from MISO's application of settlement adjustments based on

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133 *Id.* at 4 (emphasis added).

134 IMM Comments at 7.

135 *Id.*

136 August 7 Order, 196 FERC ¶ 61,112 at P 192.

137 *See, e.g.*, *Michigan v. E.P.A.*, 576 U.S. 743, 753-754 (2015) (statutory authorization to take "appropriate" action required consideration of all relevant factors).

138 *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) ("*State Farm*") (agency rule is arbitrary and capricious if agency "entirely failed to consider an important aspect of the problem").

market participants' net positions.[139] The Commission declares that MISO's settlement adjustments produced no undue discrimination because MISO applied the adjustments "uniformly based on each entity's net position at the time of the [2025/26 PRA]."[140] But that fails to account for the discriminatory *impacts* of MISO's settlement adjustments[141] or to explain why net positions provided a valid justification for the disparate treatment of different market participants. By definition, a market participant is unhedged (*i.e.*, net long or net short on capacity) to the extent of its net position and is, therefore, exposed to the Auction Clearing Price to that same extent. But MISO insists, and the August 7 Order accepts, that MISO did not change the Auction Clearing Price,[142] and if that is true, market participants' net positions at the time of the 2025/26 PRA should be irrelevant. The Commission's failure to grapple with those issues renders its conclusion that MISO's adjustments were just and reasonable arbitrary and capricious,[143] as does the inherent illogic of its holding.[144]

Finally, the Commission utterly failed to engage with arguments concerning MISO's continued use of the original Auction Clearing Price for purposes of calculating Capacity Replacement Non-Compliance Charges ("CRNCCs"). CRNNCs are charges assessed to suppliers that fail to deliver cleared capacity and are calculated as the sum of the daily Cost of New Entry ("CONE") value and the Auction Clearing Price.[145] The purpose of the Auction Clearing Price

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139 *See* EL26-35 Complaint at 36-38.

140 August 7 Order, 196 FERC ¶ 61,112 at P 195.

141 *See id.* at P 22 (summarizing MISO Generator's argument that the settlement adjustments "disproportionately impacting independent power producers who cannot pass costs to ratepayers, while most LSEs have limited exposure.").

142 *See id.* at P 130.

143 *See, e.g.*, *State Farm*, 463 U.S. at 43.

144 *Chamber of Commerce*, 885 F.3d at 382.

145 *See* EL26-26 Complaint at 44.

component is to offset the payments being made to the supplier, so "'the resource will stop receiving the Auction Clearing Price for clearing and start paying a daily CONE payment that reflects the missing capacity . . . .'"[146] By reducing payments for cleared capacity but using the original Auction Clearing Price in the CRNCC calculation, MISO effectively increased the CRNCC such that a deficient supplier will be subject to net charges "well in excess of a daily CONE payment."[147] The IMM estimated that this mismatch caused CRNCCs to "be inflated to "roughly $10.4 million . . . for the Summer of 2025, which is 33 percent higher than they would be if MISO modified its capacity prices."[148] The Commission's only rationale for disregarding this inconsistency is that CRNCCs are "unrelated" to the LOLE error and therefore do not need to be adjusted.[149] Here, again, the August 7 Order substitutes a *non sequitur* for a meaningful response and fails to satisfy the requirements of reasoned decision-making.[150]

D. The August 7 Order Violates the *Mobile-Sierra* Doctrine

As Pelican explained, when MISO cleared the 2025/26 PRA, "it accepted suppliers' offers, which formed fixed-rate contracts to which the *Mobile-Sierra* doctrine applies."[151] Indeed, as Pelican explained, auctions have long been understood to produce contracts upon the "fall of the hammer,"[152] and the hammer fell in this case when the 2025/26 PRA closed on March 31, 2025.[153]

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146 *Id.* at 44-45 (quoting Midcontinent Independent System Operator, Inc.'s Filing to Include Seasonal and Accreditation Requirements for the MISO Resource Adequacy Construct, Tab C, Prepared Direct Testimony of Shawn McFarlane at 39:14-16, Docket No. ER22-495-000 (filed Nov. 30, 2021)).

147 *Id.* at 45.

148 IMM Comments at 5-6.

149 August 7 Order, 196 FERC ¶ 61,112 at P 184 (footnote omitted).

150 *See Vernon*, 845 F.2d 1 at 1048.

151 EL26-26 Complaint at 52. *See also* EL26-35 Complaint at 39.

152 U.C.C. § 2-328. *See also In re GWI PCS 1 Inc.*, 230 F.3d 788, 807 (5th Cir. 2000); *In re NextWave Pers. Commc'ns, Inc.*, 200 F.3d 43, 60 (2d Cir. 1999); 1 Williston on Contracts § 4:12, at 515-527.

153 *See* EL26-26 Complaint at 52-53.

Those contracts cannot be modified by MISO or the Commission itself without a Commission finding that "the contract seriously harms the public interest."[154] Alternatively, Pelican and the MISO Generators demonstrated that, even if the Auction results were characterized as tariff rather than contract rates, the Commission was nonetheless required by its precedent to apply *Mobile-Sierra* protection as a matter of discretion.[155] The Commission rejected both arguments. The Commission insisted that the 2025/26 PRA results are not "contract rates to which *Mobile-Sierra* protection applies automatically"[156] and that the circumstances warranting exercise of the Commission's discretion to extend *Mobile-Sierra* protection to them were not present.[157] Both conclusions are incorrect and rest on a misreading of Commission and judicial precedent.

The Commission's determination that *Mobile-Sierra* does not apply was based on language in a 2011 order in *Devon Power LLC*[158] to the effect that auction results "represent tariff, not contract, rates."[159] But, as Pelican explained, that language was not necessary to the ultimate decision in *Devon Power* to grant auction results *Mobile-Sierra* protection and is, therefore, *dicta*.[160] Indeed, as Pelican also explained, the D.C. Circuit dismissed a petition for review of

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154 *Morgan Stanley Cap. Grp. Inc. v. Public Util. Dist. No. 1*, 554 U.S. 527, 530 (2008) ("*Morgan Stanley*").

155 *See* EL26-26 Complaint at 53-54; EL26-35 Complaint at 39-40.

156 August 7 Order, 196 FERC ¶ 61,112 at P 144.

157 *See id.* at P 146.

158 134 FERC ¶ 61,208 ("*Devon Power*"), *on reh'g*, 137 FERC 61,073 (2011), *aff'd sub nom. New Eng. Power Generators Ass'n v. FERC*, 707 F.3d 364 (D.C. Cir. 2013) ("*NEPGA I*").

159 *Id.* at P 13.

160 *See, e.g., Louisiana Pub. Serv. Comm'n v. FERC*, 551 F.3d 1042, 1046-47 (D.C. Cir. 2008) (finding that statements in prior Commission orders were "in fact dicta and d[id] not preclude [petitioner] from pressing [an] issue in a different proceeding").

Devon Power challenging that language on the ground that the petitioner had already obtained its desired substantive result: *Mobile-Sierra* protection for the auction results.[161]

At a minimum, *Devon Power* stands for the proposition that capacity auction results *should* enjoy *Mobile-Sierra* protection, as a matter of Commission discretion, and not, as the Commission found in the August 7 Order, the opposite.[162] At minimum, the Commission's refusal to extend *Mobile-Sierra* protection as a matter of discretion was inadequately reasoned. *Devon Power* applied the presumption because capacity-auction rates possess important contract-like characteristics: they are produced through a market-based mechanism that disciplines prices, they create forward commitments, they provide investment signals, and price certainty is critical to attracting and retaining the resources needed for reliability.[163] The D.C. Circuit upheld that determination because the Commission had supplied "ample reasoning" grounded in those market-based attributes.[164] But instead of considering those same factors – which are amply present here – the August 7 Order attempts to distinguish *Devon Power* on the ground that the settlement agreement in that case established a system operator's "overall forward capacity auction structure," while these proceedings involve "only a single MISO auction."[165] But that is no answer at all. The August 7 Order does not explain why predictability and stability are any less important for a single auction versus multiple auctions, especially considering the fact that upholding MISO's adjustments here only sets a precedent for future adjustments of the same magnitude in response

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161 *See NEPGA I*, 707 F.3d at 369.

162 And courts give "no deference to an agency's interpretation of judicial precedent." *Maryland Off. of People's Couns. v. FERC*, 164 F.4th 920, 926 (D.C. Cir. 2026) (citation omitted).

163 *See Devon Power*, 134 FERC ¶ 61,208 at P 19.

164 *NEPGA I*, 707 F.3d at 373-74.

165 August 7 Order, 196 FERC ¶ 61,112 at P 146.

to future Continuing Errors under the MISO Tariff. The Commission failed to consider the relevant factors under the *Devon Power* analysis and to adequately articulate a reason for its decision.[166]

III.

STATEMENT OF ISSUES

In accordance with Rule 713(c)(2) of the Commission's Rules of Practice and Procedure,[167] Petitioners hereby identify each issue on which they seek rehearing of the August 7 Order and provide representative precedent in support of their position on each of those issues:

1. The August 7 Order violates the filed rate doctrine by permitting MISO to violate multiple provisions of the filed rate. Here, the Commission effectively concedes that MISO's settlement adjustments result in violations of various provisions of the MISO Tariff. But the Commission has recognized that one filed rate violation does not justify violating another element of that same filed rate, even if enforcement of that other element "results in a lack of refunds for [the] violation of the filed rate." *SPP*, 166 FERC ¶ 61,160 at P 50. The Commission's holding here is thus contrary to the filed rate doctrine and also fails to satisfy the requirements of reasoned decision-making as it is "illogical on its own terms," *GameFly*, 704 F.3d at 148 (citation omitted), and an unexplained departure from precedent, *see, e.g., Fox*, 556 U.S. at 515; *West Deptford*, 766 F.3d at 20. The Commission also failed to engage with Petitioners' arguments and evidence demonstrating reliance on the posted parameters and auction results. *See, e.g.*, *Genuine Parts*, 890 F.3d at 312.

2. The Commission failed to engage in any meaningful way with the MISO Generators' argument that Section 12A(e) only authorized changes to settlement amounts accrued prior to the notification date, resulting in yet another violation of the filed rate, *see, e.g., PJM Power*, 96 F.4th at 399, and, again, failing to satisfy the requirements of reasoned decision-making, *see, e.g.*, *Genuine Parts*, 890 F.3d at 312.

3. The August 7 Order finds MISO's adjustments to fall within MISO's authority to make "appropriate adjustments" under Section 12A of the Tariff. *See* August 7 Order, 196 FERC ¶ 61,112 at P 123. The Commission's interpretation of Section 12A of the MISO Tariff was arbitrary and capricious, not the product of reasoned decision-making, and

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166 *See, e.g.*, *State Farm*, 463 U.S. at 43.

167 18 C.F.R. § 385.713(c)(2) (2025).

failed to address multiple arguments made by Petitioners. Petitioners explained that the meaning of "appropriate adjustments" in Section 12A is limited by implication – both by the fact that Section 48 expressly provides for remedies like those exercised by the Commission here, while Section 12A does not, and the history of Section 12A, which was designed to reduce market uncertainty. The Commission addressed neither argument. This renders the August 7 Order arbitrary and capricious. *See, e.g.*, *ACPA*, 54 F.4th at 728; *NEPGA*, 881 F.3d at 211; *TransCanada*, 811 F.3d at 12; *GameFly*, 704 F.3d at 148. Moreover, the Commission's reasoning disregards the text of the MISO Tariff itself, as the word "adjustment" is limited by definition to minor changes, not substantial ones. *Bridgeport*, 108 F.4th at 888.

4. Rather than substantively addressing Petitioners' arguments regarding the proper interpretation of Section 12A, the August 7 Order states that nothing in that provision expressly "limits the appropriate adjustments to 'straightforward corrective measures.'" August 7 Order, 196 FERC ¶ 61,112 at P 127. The Commission ignores the fact that the filed rate doctrine requires and permits only strict enforcement of the filed rate and prohibits deviations from the filed rate. *See, e.g.*, *Maislin*, 497 U.S. at 136; *PJM Power*, 96 F.4th at 399. By contrast, the Commission's logic here would authorize MISO to exercise any remedial authority not expressly prohibited, contrary to the Commission's prior determination that "MISO is not authorized to implement whatever policies or procedures that it chooses as long as they are not specifically prohibited." *Shetek*, 138 FERC ¶ 61,250 at P 49 (2012). The August 7 Order does not address this unexplained departure from precedent. *See, e.g., Fox*, 556 U.S. at 515; *West Deptford*, 766 F.3d at 20.

5. The Commission attempts to rationalize its interpretation of Section 12A as necessary to avoid rendering Section 12A's language surplusage. *See* August 7 Order, 196 FERC ¶ 61,112 at P 125. But this holding is illogical and internally inconsistent as it ignores the fact that MISO's adjustments render other provisions of the tariff superfluous as well. *See Chamber of Commerce*, 885 F.3d at 382; *IPTA*, 117 F.3d at 566; *GameFly*, 704 F.3d at 148. Nothing in the filed rate doctrine permits MISO or the Commission to prioritize one element of the filed rate over others and to allow further filed rate violations in the name of remedying prior filing rate violations under these circumstances. *See PJM Power*, 96 F.4th at 400-401; *SPP*, 166 FERC ¶ 61,160 at P 50. *See also* Danly ER23-729 Dissent at P 30.

6. The Commission failed to engage meaningfully with the evidence before it, including Dr. Shanker's affidavit, illustrating that MISO's adjustments skipped critical steps and resulted in incoherent results. Instead, the Commission simply accepted MISO's representation that its adjustments were "reasonable approximations of the values that the affected market participants would have received but for the Continuing Error," August 7

Order, 196 FERC ¶ 61,112 at P 123, without any technical review of MISO's methodology. This failure of reasoned decision-making and failure to address the evidence before it renders the Commission's decision arbitrary and capricious. *See e.g., NTE*, 26 F.4th at 988; *Susquehanna*, 866 F.3d at 447; *Cboe Futures*, 77 F.4th at 979; *Bloomberg*, 45 F.4th at 473; *Genuine Parts Co.*, 890 F.3d at 312.

7. Similarly, the August 7 Order failed to address Dr. Shanker's explanation that, by leaving the quantity of capacity procured unchanged while dramatically lowering the price, MISO in fact did not even come close to enforcing the filed rate, and that as a result, MISO also had to come up with a "make whole" remedy that was selectively paid to certain generators, in violation of the market design. And the Commission not only ignored Dr. Shanker's testimony but also the comments of MISO's IMM explaining that MISO's adjustments were inappropriate given that the region had benefited from higher reliability from maintaining the quantity procured. This failure of reasoned decision-making and failure to address the evidence before it renders the Commission's decision arbitrary and capricious. *See e.g., NTE*, 26 F.4th at 988; *Susquehanna*, 866 F.3d at 447; *Cboe Futures*, 77 F.4th at 979; *Bloomberg*, 45 F.4th at 473; *Genuine Parts Co.*, 890 F.3d at 312.

8. Rather than engaging meaningfully with the arguments before it, the Commission mischaracterized Dr. Shanker and Pelican as taking the position that MISO may not use simulations in making adjustments. *See* August 7 Order, 196 FERC ¶ 61,112 at P 126. But the January 12 EL26-26 Answer explained that the problem was not with MISO's use of simulations, but that MISO's simulations skipped steps expressly required under the MISO Tariff. January 12 EL26-26 Answer at 8. The Commission's response was thus a *non sequitur*, rather than a meaningful response to the arguments and evidence before it. *See, e.g.*, *Vernon*, 845 F.2d at 1048; *Genuine Parts*, 890 F.3d at 312.

9. The Commission's failure to respond to the Shanker and Budd Affidavits and other record evidence renders the August 7 Order arbitrary and capricious and not supported by substantial evidence, as required by the FPA and the APA. *See, e.g.*, 16 U.S.C. § 825*l*(b) (2018); 5 U.S.C. § 706(2)(E) (2018); *Tenneco*, 969 F2d at 1214. *See also, e.g.*, *Genuine Parts*, 890 F.3d at 312; *Lakeland*, 347 F.3d at 963; *International Union*, 802 F.2d at 975.

10. The August 7 Order arbitrarily and capriciously concludes that MISO's adjustments did not constitute impermissible retroactive ratemaking because Section 12A provided adequate notice to market participants of the nature of the changes MISO could impose. *See* August 7 Order, 196 FERC ¶ 61,112 at PP 124, 131. This finding is at odds with both the text of the MISO Tariff – again, "adjustment" implies minor changes, *Bridgeport*, 108 F.4th at 888 – and with applicable precedent, and would effectively render

the notice requirement a dead letter. *See, e.g.*, *PJM Power*, 96 F.4th at 402; *ODEC*, 892 F.3d at 1231; *AGD*, 893 F.2d at 356. Moreover, the August 7 Order attempts to rely on *Hecate*, even though the facts in that case bear no resemblance to this one. *See Hecate*, 72 F.4th at 1313.

11. In responding to the MISO Generators' argument that Section 12A prohibits MISO from adjusting settlement amounts that accrued prior to the notification date, the Commission ignored the actual tariff language. Indeed, by finding that "MISO does not need explicit Tariff authority to correct errors in charging the filed rate," August 7 Order, 196 FERC ¶ 61,112 at P 132, the Commission effectively undercuts its holding that Section 12A provides notice of the adjustments undertaken here. The August 7 Order is thus illogical and cannot be squared with the limitations of the filed rate doctrine. *See, e.g.*, *GameFly*, 704 F.3d at 148; *SPP*, 166 FERC ¶ 61,160.

12. The August 7 Order's conclusion that MISO was not required to make a filing under Section 205 setting forth the steps it would take, *see* August 7 Order, 196 FERC ¶ 61,112 at P 128, was arbitrary and capricious, and not the product of reasoned decision-making, because the Commission failed to respond to Pelican's arguments that MISO's new methodology affected rates and service significantly and were reasonably susceptible to specification. *See ACPA*, 54 F.4th at 728; *NEPGA*, 881 F.3d at 211.

13. The Commission failed to explain, much less justify, its departure from prior precedent and well-established Commission policy favoring the finality of auction results, *see, e.g.*, *PJM II*, 171 FERC ¶ 61,153 at P 322, or to engage with Mr. Budd's testimony showing that market participants would have made decisions in reliance on those auction results. This renders the August 7 Order arbitrary and capricious. *See, e.g.*, *Fox*, 556 U.S. at 515; *State Farm*, 463 U.S. at 43; *West Deptford*, 766 F.3d at 20; *Vernon*, 845 F.2d at 1048; *Genuine Parts*, 890 F.3d at 312.

14. The Commission failed to explain why MISO's adjustments were "appropriate" under Section 12A or are otherwise just and reasonable and not unduly preferential or discriminatory. As the Complaints explained, MISO's adjustments were patently *inappropriate* given the benefits to the system resulting from the LOLE used in the 2025/26 PRA. MISO itself stated that using LOLE as calculated (even if incorrect under the Tariff) was "just and reasonable" and more "accurately reflect[ed] the system risks that MISO has been experiencing and will continue to experience in the future." ER25-3307 Filing at 4. By declaring "tangible reliability benefits" and "market uncertainty" irrelevant under Section 12A of the Tariff, August 7 Order, 196 FERC ¶ 61,112 at P 192, the Commission abused its discretion and violated the requirements of reasoned decision-making by utterly ignoring "an important aspect of the problem. . . ." *State Farm*, 463 U.S. at 43.

15. The Commission's refusal to engage with arguments regarding the undue discrimination and preference resulting from market participants experiencing a disparate *impact* of MISO's adjustments was arbitrary and capricious. *See, e.g.*, *State Farm*, 463 U.S. at 43; *Baltimore Gas*, 462 U.S. at 105; *ACPA*, 54 F.4th at 728. It also results in the August 7 Order being contrary to law and contrary to the FPA's prohibition against unduly discriminatory or preferential rates and rate practices. *See, e.g.*, 16 U.S.C. §824d(b) (2018); 16 U.S.C. § 824e(a) (2018).

16. Rather than engaging with arguments that it was unreasonable for MISO to continue to use the original Auction Clearing Price for purposes of calculating CRNCCs, the August 7 Order instead claims that MISO's treatment of CRNCCs was "unrelated" to the LOLE error. August 7 Order, 196 FERC ¶ 61,112 at P 194. This renders the August 7 Order arbitrary and capricious as it fails to satisfy the requirements of reasoned decision-making. *See, e.g.*, *Vernon*, 845 F.2d 1 at 1048.

17. The Commission erred in finding that the 2025/26 PRA did not result in fixed-rate contracts protected under the *Mobile-Sierra* doctrine. *See* August 7 Order, 196 FERC ¶ 61,112 at PP 142-144. This finding rests on a failure to recognize that cited language in *Devon Power* is dicta and does not grapple with longstanding precedent recognizing that contracts are formed when the hammer falls in an auction. *See* U.C.C. § 2-328. Even assuming *arguendo* that the auction results are not contracts automatically subject to *Mobile-Sierra*, the Commission misread its own precedent in *Devon Power*, which provides that capacity auction results are nonetheless entitled to *Mobile-Sierra* protection. Moreover, the Commission failed to articulate its reasoning, consider the relevant factors under the *Devon Power* analysis, or to adequately articulate a reason for its decision. *See State Farm*, 463 U.S. at 43.

IV.

CONCLUSION

WHEREFORE, for the foregoing reasons, Petitioners respectfully request that the Commission grant rehearing of the August 7 Order as requested herein.

Respectfully submitted,

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Dated: September 8, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served on each person designated on the official service lists compiled by the Secretary of the Federal Energy Regulatory Commission in these proceedings.

Dated at Washington, D.C., this 8th day of September 2026.

/s/ David G. Tewksbury
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