

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

Association of Businesses Advocating Tariff Equity  
Coalition of MISO Transmission Customers  
Illinois Industrial Energy Consumers  
Indiana Industrial Energy Consumers, Inc.  
Minnesota Large Industrial Group  
Wisconsin Industrial Energy Group

Docket No. EL14-12-015

v.

Midcontinent Independent System Operator, Inc., *et al.*

Arkansas Electric Cooperative Corporation  
Mississippi Delta Energy Agency  
Clarksdale Public Utilities Commission  
Public Service Commission of Yazoo City  
Hoosier Energy Rural Electric Cooperative, Inc.

Docket No. EL15-45-014

v.

ALLETE, Inc., *et al.*

**ANSWER IN OPPOSITION  
OF MISO COMPLAINANT-ALIGNED PARTIES  
TO MISO TRANSMISSION OWNERS'  
MOTION FOR LEAVE TO ANSWER CAPS' REQUEST FOR REHEARING**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission's ("FERC" or "Commission") Rules of Practice and Procedure,<sup>1</sup> the MISO Complainant-Aligned Parties ("CAPs")<sup>2</sup> respectfully submit this answer opposing the MISO Transmission Owners' ("MISO TOs") motion for leave to answer and answer ("MISO TOs' Motion") filed on July 17, 2020.<sup>3</sup>

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<sup>1</sup> 18 C.F.R. §§ 385.212, 385.213 (2020).

<sup>2</sup> CAPs joining this Joint Answer are: American Municipal Power, Inc. ("AMP"); Coalition of MISO Transmission Customers ("CMTC"), Illinois Industrial Energy Consumers ("IECC"), Indiana Industrial Energy Consumers, Inc. ("INDIEC"), Minnesota Large Industrial Group ("MLIG"), and Wisconsin Industrial Group ("WIEC") (collectively, "Joint Complainants" or Industrial Consumer Groups ("ICG")); Joint Customers,

## I. BACKGROUND

On July 17, 2020, the MISO TOs sought leave to submit a response to CAPs' June 22, 2020 request for rehearing ("CAPs Rehearing")<sup>4</sup> of Opinion No. 569-A.<sup>5</sup> The MISO TOs claim that the CAPs Rehearing inappropriately seeks rehearing of issues previously raised in rehearing of Opinion No. 569,<sup>6</sup> which the Commission resolved in Opinion No. 569-A. Particularly, the MISO TOs ask the Commission to "disregard" the portions of the CAPs Rehearing addressing the application of the presumptive immunity zones in the context of the Second ROE Complaint in Docket No. EL15-45.<sup>7</sup>

## II. ANSWER IN OPPOSITION

CAPs oppose the MISO TOs' Motion seeking leave to answer the CAPs Rehearing. The Commission rules explicitly prohibit answers to requests for rehearing.<sup>8</sup> The Commission has discretion to accept an otherwise impermissible answer when it serves to supplement or clarify the record and helps the Commission in its decision-making process. However, there is nothing

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including Cooperative Energy and Hoosier Energy Rural Electric Cooperative, Inc. ("Hoosier"); Mississippi Public Service Commission ("MS PSC"), Missouri Public Service Commission ("MO PSC"), and Missouri Joint Municipal Electric Utility Commission ("MJMEUC") (collectively, "Missouri-Mississippi Parties" or "MOMs"); Organization of MISO States, Inc. ("OMS"); Resale Power Group of Iowa ("RPGI"); Southwestern Electric Cooperative, Inc. ("SWEC"); and Wabash Valley Power Associate, Inc. ("WVPA"). CAPs have previously referred to themselves as "MISO CAPs" to avoid confusion with the New England "CAPs," but here use the same naming convention as Opinion Nos. 569 and 569-A.

OMS participates in this Answer where it is consistent with the policy positions approved by a majority of its Board of Directors. Nothing in OMS's participation in Answer should be read as assertions or arguments by state commission members of OMS applicable to state return on equity proceedings. Individual state commissions have their own proceedings and applicable precedent guiding state return on equity determinations. Where OMS has no position or its position differs from positions stated in this Answer, exceptions have been footnoted.

<sup>3</sup> MISO TOs July 17, 2020 Motion for Leave to Answer and Answer, eLibrary 20200717-5168 ("MISO TOs' Motion").

<sup>4</sup> CAPs June 22, 2020 Request for Rehearing of Opinion No. 569-A, eLibrary 20200622-5194 ("CAPs Rehearing").

<sup>5</sup> *Ass'n of Bus. Advocating Tariff Equity, et al. v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569-A, 171 FERC ¶ 61,154 (2020) ("Opinion No. 569-A").

<sup>6</sup> *Ass'n of Bus. Advocating Tariff Equity, et al. v. Midcontinent Indep. Sys. Operator, Inc.*, Opinion No. 569, 169 FERC ¶ 61,129 (2019) ("Opinion No. 569").

<sup>7</sup> MISO TOs' Motion at 6.

<sup>8</sup> 18 CFR § 385.213(a)(2) (2020).

in the MISO TOs' Motion that serves these purposes. The MISO TOs' Motion is merely an effort to portray the CAPs Rehearing as "a second bite at the apple" on issues that, according to the MISO TOs, were already rejected in Opinion No. 569.<sup>9</sup> The MISO TOs offer no substantive clarification or new information that may aid the Commission in its decision-making process.

The MISO TOs' Motion is not only unnecessary to supplement or clarify the record in this case, but it strives for the exact opposite outcome. Essentially, the MISO TOs seek to have the Commission "disregard" or strike from the record legitimate arguments advanced by CAPs.

The MISO TOs claim that the CAPs Rehearing simply repeated arguments first made in CAPs' request for rehearing of Opinion No. 569 that

in the context of the Second Complaint proceeding, the existing base ROE had not been shown to be unjust and unreasonable based on a finding that the base ROE fixed in [the First Complaint proceeding] resided within the presumptively just and reasonable range of returns for the Second Complaint's study period, and no party had rebutted the resulting presumption that the existing base ROE remained just and reasonable.<sup>10</sup>

In so arguing, the MISO TOs ignore the fact that Opinion No. 569-A revised the findings that CAPs had challenged in the earlier rehearing request. In Opinion No. 569, the Commission found that, based on the record of the First Complaint, the just and reasonable Return on Equity ("ROE") for the MISO TOs was 9.88%.<sup>11</sup> The Commission further found that the issue to be determined in the Second Complaint was whether 9.88% continued to be a just and reasonable ROE, and that the record in the Second Complaint did not overcome the presumption that 9.88% remained just and reasonable.<sup>12</sup>

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<sup>9</sup> MISO TOs' Motion at 5.

<sup>10</sup> *Id.* at 3-4.

<sup>11</sup> Opinion No. 569 at P 20.

<sup>12</sup> *Id.* at P 21.

In Opinion No. 569-A, however, the Commission granted rehearing on a number of issues. As a result, it found that, based on the record of the First Complaint, the just and reasonable ROE for the MISO TOs was actually 10.02%.<sup>13</sup> The Commission further found that the issue to be determined in the Second Complaint was whether 10.02% continued to be a just and reasonable ROE, and that the record in the Second Complaint did not overcome the presumption that 10.02% remained just and reasonable.<sup>14</sup> Thus, CAPs appropriately sought rehearing of Opinion No. 569-A's findings that the question for decision in the Second Complaint was whether 10.02% - an ROE set for the first time in Opinion No. 569-A itself – “remained” just and reasonable, and whether the record in the Second Complaint overcame the presumption that it did. These issues were not – and could not have been – addressed in Opinion No. 569-A itself.

Additionally, as CAPs explained in their rehearing request, Opinion No. 569-A proposed a new methodology that inappropriately expanded the width of the presumptive immunity zones used by the Commission to determine whether the previously set ROE remained just and reasonable.<sup>15</sup> That expansion gave rise to a new objection that, consistent with FERC precedent,<sup>16</sup> supports CAPs' right to seek rehearing of the presumptive immunity zones issue in the context of Opinion No. 569-A. Furthermore, disregarding or striking portions of the CAPs

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<sup>13</sup> Opinion No. 569-A at P 3.

<sup>14</sup> *Id.*

<sup>15</sup> CAPs Rehearing at 54-63.

<sup>16</sup> The Commission considers requests for rehearing and/or clarification when the order on rehearing changes the ruling of the initial order or clarifies it in a way that raises a new objection. *See e.g., Standards of Conduct for Transmission Providers*, Order No. 717-C, 131 FERC ¶ 61,045, at P 5 (2010); *Union Electric Co., v. FERC*, 114 FERC ¶ 61,230, at 61,745 (2006).

Rehearing, as the MISO TOs seek, would be contrary to the Commission's general policy favoring inclusion to ensure completeness of the record.<sup>17</sup>

### III. CONCLUSION

For the foregoing reasons, CAPs respectfully request that the Commission reject the MISO TOs' Motion.

Respectfully submitted,

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<sup>17</sup> *Power Mining, Inc.*, 45 FERC ¶ 61,311, at 61,972 n.1 (1988) (denying motion to strike where Commission did not find that the matters sought to be omitted had no possible relationship to the controversy, would confuse the issue, or would otherwise prejudice a party).

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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 of the Federal Energy Regulatory Commission in this proceeding.

Dated at Washington, D.C. this 3<sup>rd</sup> day of August, 2020.

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