

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

Midcontinent Independent System) ER26-1538-000
Operator, Inc.)

**ANSWER AND MOTION FOR LEAVE TO ANSWER AND ANSWER OF
THE ELECTRICITY TRANSMISSION COMPETITION COALITION AND
THE INDUSTRIAL ENERGY CONSUMERS OF AMERICA**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practices and Procedures,¹ the Electricity Transmission Competition Coalition (“Competition Coalition”) and the Industrial Energy Consumers of America (“IECA”) (collectively, “Protesters”) submit this Answer and Motion for Leave to Answer and Answer (“Answer”) to the motions and answers² of the Midcontinent Independent System Operator, Inc. (“MISO”) and American Transmission Systems, Inc.; Commonwealth Edison Company; Duke Energy Ohio, Inc.; Indiana Michigan Power Company, and AEP Indiana Michigan Transmission Company, Inc. (collectively, “Indicated Transmission Owners”)³ pertaining to MISO’s filing for Commission approval of certain amendments to MISO’s Open Access Transmission, Energy and Operating Reserve Markets Tariff (“Tariff”).⁴ If the Commission accepts the

¹ 18 CFR §§ 385.212, 385.213.

² “Motion for Leave to Answer and Answer of the Midcontinent Independent System Operator, Inc.” Docket Nos. ER26-1538-000, ER26-1676-000, ER26-1761-000 (filed May 1, 2026) (“MISO Answer”).

³ “Motion for Leave to File Limited Answer and Answer of the American Transmission Systems, Inc. *et al.*” Docket Nos. ER26-1538-000, ER26-1676-000, ER26-1761-000 (filed on May 7, 2026) (“Indicated Transmission Owners Answer”).

⁴ Proposed Revisions to MISO Tariff to Implement Agreements with External Transmission Owners, Docket No. ER26-1538-000 (Feb. 27, 2026) (“MISO Filing”).

answers of MISO and the Indicated Transmission Owners, then IECA and the Competition Coalition respectfully ask that the Commission accept this Answer.⁵

I. MOTION FOR LEAVE TO FILE ANSWER

IECA and the Competition Coalition respectfully submit that this Answer will clarify the issues herein, assist the Commission in its decision-making, and help build a complete record. The Commission has discretion to accept responses to answers and has routinely done so for good cause where accepting the response would either lead to a more complete or accurate record, improve the Commission’s understanding of the issues, clarify disputed or erroneous matters, or help the Commission in its decision-making.⁶ Good cause exists for the Commission to accept this Answer because it provides information that is not otherwise in the record and attempts to clarify salient points which MISO either failed to demonstrate or mischaracterized in its answer.

II. ANSWER

A. Unable to Meet Its Section 205 Burden, MISO Invokes Irrelevant Standards Governing Section 205 Filings.

The Competition Coalition and IECA answer in opposition to MISO’s May 1, 2026 answer (“MISO Answer”) because MISO misapplies case law governing Federal Power Act (“FPA”) Section 205 filings to argue that the Commission’s role in this proceeding is

⁵ Protesters answer MISO’s motion for leave within 15 business days, consistent with Commission Rule 213(d)(1). To the extent needed, Protesters further move for leave to answer the substantive answer included in MISO’s motion and the May 7, 2026 motion of the Indicated Transmission Owners.

⁶ 18 C.F.R. § 385.213(a)(2); *see, e.g., PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,133, at P 12 (2017) (accepting answers to protests because they provided information that assisted in the Commission’s decision-making process); *KO Transmission Co.*, 156 FERC ¶ 61,147, at n. 5 (2016) (accepting an answer to a protest because it provided a better understanding of the issues and ensured a complete record); *TransColorado Gas Transmission Co.*, 111 FERC ¶ 61,208, at P 4 (2005).

“passive” and “reactive,”⁷ and focused on the Section 205 application proposal “and not on the protesting parties’ alternative solutions.”⁸ IECA and the Competition Coalition do not advance an alternative solution, but simply ask FERC to reject MISO’s filing because MISO’s actions violated its existing Tariff, and its after-the-fact Section 205 filing to allow it to rectify its Tariff violation has not been demonstrated to be just and reasonable.

In *NRG*, the Commission found that PJM Interconnection, L.L.C.’s (“PJM”) proposed rate, filed under Section 205, was not just and reasonable.⁹ The Commission then suggested significant, material modifications to PJM’s proposal in an effort to make that proposal just and reasonable.¹⁰ The United States Court of Appeals for the District of Columbia Circuit held that FERC was not permitted to make major modifications to a proposal under Section 205 where FERC’s role is “passive and reactive.”¹¹ Here, IECA and the Competition Coalition are not suggesting major modifications to MISO’s proposal or to MISO’s Tariff. IECA and the Competition Coalition seek rejection of MISO’s proposal and seek MISO’s conformance with its existing Tariff. MISO’s reliance on *NRG*’s discussion of the Commission’s “passive” and “reactive” role is a misdirection to avoid focus on its Tariff violations.

Even if the Commission’s role in a Section 205 filing is more “reactive,” Section 205 still mandates that “[a]ll rates and charges ... demanded, or received by any public utility for ... the transmission or sale of electric energy subject to the jurisdiction of the

⁷ MISO Answer at 5 (citing *AEMA v. FERC*, 860 F.3d 656, 662 (D.C. Cir. 2017); *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108, 114 (D.C. Cir. 2017).

⁸ MISO Answer at 5.

⁹ *NRG*, 862 F.3d at 114, citing *PJM Interconnection, L.L.C.*, 143 FERC ¶ 61,090, at ¶ 26 (2013).

¹⁰ See *NRG*, 862 F.3d at 110-115.

¹¹ *NRG*, 862 F.3d at 114 (citing *AEMA*, 860 F.3d at 662.)

Commission ... shall be just and reasonable.”¹² The burden of proof lies with MISO to prove its proposal to exclude billions in greenfield transmission from competition is just and reasonable.¹³ MISO flatly states that its proposed Tariff revisions and CRAF agreements are just and reasonable,¹⁴ then quickly shifts focus to alternatives advanced by protesters to the filing.¹⁵ MISO assertion about “parties’ alternative solutions”¹⁶ is a red herring because the Competition Coalition and IECA do not propose alternatives.

MISO’s filing does not merely propose a rate change, rather it attempts to update the language of its Tariff so as to allow a loophole for MISO to cherry-pick developers and avoid the competitive solicitation process. A Section 205 filing does not operate as a backdoor option for utilities to bypass their existing tariffs by making changes after the violation has already occurred. Courts have held that “FERC is not free to approve amendments that violate the filed rate doctrine, regardless of the equities.”¹⁷ Because MISO’s filing operates as an unsupported request for waiver of MISO’s existing Tariff and the requirements of Order No. 1000¹⁸ that regionally planned and regionally cost allocated transmission be subject to competition, IECA and the Competition Coalition ask FERC to reject MISO’s Section 205 filing, direct MISO to comply with its existing Tariff, and

¹² *Xcel Energy Serv. v. FERC*, 815 F.3d 947, 949 (D.C. Cir. 2016).

¹³ *ISO New England, Inc.*, 136 FERC ¶ 61,221 at P 20 (2011).

¹⁴ MISO Answer at 5.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *PJM Power Providers Grp. v. FERC*, 96 F.4th 390 (3d Cir. 2024), (even tariff amendments filed on an emergency basis under Section 205 cannot operate retroactively or violate the filed rate doctrine”).

¹⁸ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 66,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

initiate the Competitive Transmission Process in Attachment FF. MISO's filing seeks, after-the-fact, approval of yet another exemption from the Commission-approved default rule requiring competitive solicitations for Eligible Projects.¹⁹

B. MISO and the Indicated Transmission Owners Fail to Justify MISO's Circumvention of Order No. 1000 and the MISO Tariff as They Relate to Transmission Competition.

In their answers, both MISO and the Indicated Transmission Owners fail to support MISO's false premise that MISO's existing Tariff and Order No. 1000 do not apply because the MISO-planned, greenfield Multi-Value Projects ("MVPs") are "located outside the MISO region."²⁰ From this false premise MISO asks FERC to approve Tariff changes to make MISO's false assertion true, and then approve additional Tariff changes to allow MISO to directly assign the MVPs at issue, plus additional PJM transmission-owner determined additions, through contractual arrangements at MISO ratepayer expense.

MISO provides no justification in its answer for its clear circumvention of Order No. 1000. In their Answer, the Indicated Transmission Owners²¹ assert that MISO competition rules "do not and cannot apply to the MISO-Requested Facilities because they will be constructed in PJM by PJM TOs," and "[j]ust as MISO has no authority to plan projects in PJM or direct PJM transmission owners to build projects in PJM, it has no authority to apply its competitive process rules to projects in PJM."²² The Indicated Transmission Owners rehash MISO's Filing and advance no legal justification for MISO's

¹⁹ See MISO Tariff, Att. FF, § 8.

²⁰ See MISO Filing at 1.

²¹ "Motion for Leave to File Limited Answer and Limited Answer of American Transmission Systems, Incorporated, Commonwealth Edison Company, Duke Energy Ohio, Inc., Indiana Michigan Power Company, and AEP Indiana Michigan Transmission Company, Inc.," ("CRAF TOs Answer") FERC Docket Nos. ER26-1538-000, ER26-1676-000, ER26-1761-000, filed on May 7, 2026.

²² See Indicated Transmission Owners Answer at 7.

claimed authority to dictate the location of facilities in another planning region, and by doing so skirt MISO's Competitive Transmission Process and regional cost allocation rules, both designed to protect and serve consumers. The Indicated Transmission Owners make the argument they do because they will benefit from the Tariff shell game and will be excused from competing for billions of dollars in new transmission.

The totality of the greenfield MVPs that MISO seeks to directly assign by contract are regional or interregional projects under Order No. 1000 and are subject to competition.²³ The Commission directed "public utility transmission providers, . . . to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation."²⁴ This is true regardless of the claimed location of the projects because projects selected in the regional plan for purposes of cost allocation "include both regional transmission facilities, which are located solely within a single transmission planning region and are determined to be a more efficient or cost-effective solution to a regional transmission need, and interregional transmission facilities, which are located within two or more neighboring transmission planning regions and are determined by each of those regions to be a more efficient or cost effective solution to a regional transmission need."²⁵ Under either approach, MISO's Filing directly contravenes Order No. 1000. The MVPs at issue were definitively selected in a regional transmission plan for purposes of cost

²³ Order No. 1000-A at P 430 (if any costs of a new transmission facility are allocated regionally or outside of a public utility transmission provider's retail distribution service territory or footprint, then there can be no federal right of first refusal associated with such transmission facility, except as provided in this order.)

²⁴ Order No. 1000 at P 313.

²⁵ Order No. 1000 at P 63.

allocation and are therefore subject to Order No. 1000's competition requirements. MISO's existing Tariff provisions mandate that very result.

C. There Is No Definitive Geographic Border Separating PJM and MISO; MISO Fails to Provide a Tariff Basis for Its MVP Routing Decision That Bypasses the Competitive Transmission Process for Regional Projects and Instead Applies PJM Tariff Rules for Supplemental Projects.

MISO employs linguistic gymnastics to justify avoiding competitive solicitations by purporting to route the MVPs "outside" the MISO region, while claiming it can plan facilities "outside" its region and pass the costs of the claimed outside projects exclusively to MISO customers while denying those customers the benefits of competition:

Clearly, the transmission projects at issue in these proceedings were not planned by PJM and are not needed to meet any PJM criteria. Rather, they were planned by MISO to address MISO's criteria. However, because the MISO-Requested Facilities will be located in the PJM Region and under PJM's operational control, they must be classified under PJM's governing documents.²⁶

MISO states that its own Competitive Developer Selection Process "has no application in the footprint of another transmission provider, such as PJM."²⁷ Yet, MISO finds no such restriction on its ability to plan "in the footprint of another transmission provider, such as PJM."²⁸ It is unclear from MISO's answer what authority it has 1) planning for facilities it claims are in another RTO footprint that curiously do not fall under interregional planning, or 2) allocating the cost of such facilities to MISO customers only. Where a project's costs are allocated regionally, except in limited circumstances not applicable here, incumbent transmission owner preferences are illegal under the Federal Power Act.²⁹

²⁶ MISO Answer at 16.

²⁷ MISO answer at 10-11.

²⁸ MISO Answer at 11.

²⁹ *Midwest Independent Transmission System Operator, Inc.*, Order on Compliance Filings and Tariff Revisions, Docket No. ER13-187-000, 142 FERC ¶ 61,215 (2013), *on reh'g*, *Midwest Indep. Transmission*

Specifically, the Commission held that “if **any** costs of a new transmission facility are allocated regionally or outside of a public utility transmission provider’s retail distribution service territory or footprint, then there can be no federal right of first refusal associated with such transmission facility.”³⁰ Because the MVPs are regionally cost allocated, they cannot, as a matter of Commission policy and regulations, be subject to any incumbent preference—whether exercised by MISO transmission owners or, as here, by MISO interpreting PJM’s tariff to grant PJM transmission owners a preference.

Without providing any Tariff basis, MISO contends it may declare that a transmission facility is needed in another RTO footprint. MISO states that classifying the MVPs as external facilities necessitates MISO determining their eligibility for competitive development under the tariff of the transmission provider in whose region MISO declared those facilities would be located (*i.e.*, PJM).³¹ MISO then endeavors to classify the MVPs as “Supplemental Projects” under the PJM tariff. MISO fails to show that it is entitled to such unlimited discretion to interpret and apply the rules of PJM’s tariff to MISO’s transmission planning.

D. MISO Does Not Justify Its Use of Individual, Voluntary Arrangements to Bypass Its Own Tariff Provisions.

MISO explains that “because the MISO-Requested Facilities will be located in PJM, it was necessary for MISO, PJM, and each individual PJM transmission owner to negotiate voluntary agreements for the construction of facilities.”³² MISO fails to rebut

Sys. Operator, Inc., 147 FERC ¶ 61,127, at PP 436-437 (2014) (discussing Baseline Reliability Projects that are cost allocated to the zone in which the project is located).

³⁰ Order No. 1000-A at P 430 (emphasis added).

³¹ MISO Answer at 14.

³² MISO Answer at 12.

the fundamental point that MISO’s filing rests on a false premise – “that MISO may declare FERC-mandated processes inapplicable based on its unilateral characterization of where a project is ‘located.’”³³ MISO makes up a new term – MISO-Requested Facilities – and then decides on its own accord that those facilities are located in PJM so that MISO can pursue special agreements in order to bypass its Tariff. Empowering MISO with this level of discretion undermines the legal durability of the Tariff rate on file with the Commission. MISO does not adequately define or contextualize its new term of art (nor does it show that the PJM definition of “Supplemental Project” applies here).

Allowing MISO to directly assign regionally cost-allocated projects through bilateral agreements would undermine the Commission’s reforms and reintroduce the very preferences that Order No. 1000 was designed to eliminate.³⁴ Regardless of how MISO characterizes the proposed contractual framework, the practical effect is to grant a *de facto* right of first refusal to incumbent transmission owners for regionally planned and cost-allocated projects. The Commission has emphasized that it will look to the substance of an arrangement rather than its form, and has rejected mechanisms that result in undue discrimination or preferential treatment.³⁵ When MISO claims these voluntary agreements were the “only” way to create an *obligation* for PJM transmission owners to build the MISO-Requested Facilities, MISO ignores applicable mandates in its own Tariff and Order No. 1000. As IECA and the Competition Coalition established, MISO can “obligate” development of the greenfield portions of the MVP through its competitive process. Indeed, nothing prevents the PJM transmission owners from competing for the projects.

³³ IECA and Competition Coalition Protest at 3.

³⁴ Order No. 1000 at PP 287, 319–321.

³⁵ *See id.* at PP 63, 226–227.

For the additional facilities that are claimed to be needed, transmission to transmission interconnection would address the “obligation” to build those facilities.

III. CONCLUSION

MISO cannot cure its past Tariff violations through a Section 205 filing, and the proposed revisions are not just and reasonable going forward. Further, even if MISO can claim the Multi-Value Projects at issue are legitimately outside the MISO region, Order No. 1000 defines the projects as interregional projects and requires that they be treated accordingly.

WHEREFORE, the Electricity Transmission Competition Coalition and Industrial Energy Consumers of America respectfully request that the Commission reject MISO’s Compliance Filing, and order MISO to comply with its existing Tariff provisions.

Respectfully submitted,

/s/ Kenneth R. Stark

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Date: May 18, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have, this day, caused the foregoing Protest to be served upon each person designated on the official service list compiled by the Secretary in these proceeding.

Dated on this 18th day of May, 2026.

/s/Kenneth R. Stark

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