UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

American Transmission Company, LLC	)	
Complainant,	)	
v.	)	
	)	Docket No. EL26-83-000
Midcontinent Independent System Operator, Inc.	)	
Respondent	)	

PROTEST OF
THE ELECTRICITY TRANSMISSION COMPETITION COALITION

On June 22, 2026, American Transmission Company, LLC ("ATC" or "Complainant"), who is an incumbent utility in the Midcontinent Independent System Operator, Inc. ("MISO") transmission grid, filed a complaint ("Complaint") against MISO requesting that the Federal Energy Regulatory Commission ("FERC" or "Commission") find that MISO violated its Open Access Transmission, Energy and Operating Reserve Markets Tariff ("Tariff") through MISO's administration of a competitive request for proposal ("RFP") process for the Wisconsin Southeast Competitive Transmission Project ("Project WISE").[1] Pursuant to Rule 211 of the Commission's Rules of Practice and Procedures,[2] the Electricity Transmission Competition Coalition ("ETCC") protests the Complaint and asks that the Commission reject the Complaint with prejudice because ATC has not demonstrated under Section 206 of the Federal Power Act ("FPA") that MISO unjustly and unreasonably applied any provisions of its Tariff. ETCC further asks the Commission to expedite the issuance of its order rejecting the Complaint to help prevent customers from bearing excess costs and to help avoid creating regulatory uncertainty among competitive developers by

[1] *See American Transmission Company LLC v. Midcontinent Independent System Operator, Inc.*, Docket No. EL26-83-000 (filed June 22, 2026) ("Complaint").

[2] 18 C.F.R. § 385.211.

ensuring that nonincumbent developers are still incentivized to robustly participate in future MISO-administered, competitive transmission solicitations.

I. INTRODUCTION AND EXECUTIVE SUMMARY

Complainant ATC asks the Commission to nullify the outcome of a competitive RFP process conducted by MISO for Project WISE that, though not awarded to ATC, was otherwise administered in compliance with MISO's Commission-approved Competitive Transmission Process under Tariff Attachment FF.[3] The Complaint fails to meet its burden under Section 206 of the FPA to substantiate an unjust and unreasonable tariff application. Rather, the Complaint attempts to skirt the Wisconsin state legislative process, where ATC and other incumbent transmission owners have been unsuccessful in a years-long battle to secure a preferential state right of first refusal ("ROFR") for FERC-jurisdictional transmission projects. After failing to secure a pass on competitive solicitation at the state level, ATC now makes its plea for the same at FERC, and does so in a manner that risks substantial uncertainty to competitive transmission development and MISO's long-range transmission planning at a time when new transmission is needed to ensure resource adequacy and serve burgeoning large loads, while still providing reliable service at the least, reasonable cost to existing customers in the MISO region. ATC also advances litigation positions in this Complaint proceeding that are inconsistent with positions advanced by ATC in other Commission proceedings regarding MISO's transmission planning authority.[4]

Unable to distill its grievances to demonstrate any clear Tariff violation, ATC instead advances a kitchen-sink series of unsupported allegations in an effort to gain more control over transmission planning, despite MISO's clear Tariff-based authority to administer a competitive

[3] *See* MISO FERC Electric Tariff, Attachment FF, effective on October 6, 2020.

[4] *See* Protest of MISO Transmission Owners, FERC Docket No. EL25-109-000, at 9-10 (filed on September 9, 2025).

RFP process that could rightly result in awarding a project or portions of a project to a nonincumbent competitor. The Complaint alleges not that MISO's RFP process is unjust and unreasonable as a whole or even in part, but that MISO acted unjustly and unreasonably in these particular circumstances, concerning ATC's Ozaukee County Transmission Project ("Ozaukee Project"). ATC claims that in prior competitive solicitations, "MISO treated siting and routing completeness, permitting readiness, and substation location relative to planning assumptions as core determinants of execution certainty and incorporated them directly into comparative scoring."[5] But, ATC fails to provide any detailed foundation to support its claim that MISO did not act as such here (other than argumentation as to why ATC should have been awarded the bid). Contrary to ATC's claims, <u>ATC has not shown that MISO</u>, by its administration of the RFP for Project WISE:

- Violated Orders No. 890, 1000, or any other Commission guidance relating to competitive solicitations;
- Violated its own Tariff in its RFP process for Project WISE;
- Violated the Agreement of the Transmission Facilities Owners to Organize MISO ("Transmission Owners Agreement" or "TOA"); or
- Unreasonably departed from its normal course of action in administering RFPs.

Further, contrary to its allegations, ATC has not demonstrated that MISO intentionally or knowingly administered a faulty RFP for Project WISE.[6] In reality, ATC assigns a timeline and a certainty to its Ozaukee Project that has since proven to be inflated.[7] MISO followed the steps

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[5] Complaint at 87.

[6] *See* Complaint at 38 ("MISO chose to proceed with a knowingly flawed RFP rather than amend the RFP in a manner that allowed for the effective evaluation of the Project WISE proposals.").

[7] Just this month, the Wisconsin Public Service Commission ("PSC") revoked ATC's completeness determination for the Ozaukee Project due to increased uncertainty about the project's details – a step that

prescribed in its Tariff, including the timely initiation of its Tariff-based Variance Analysis process[8] to address the issues that later materialized with Project WISE. ATC simply disagrees with MISO's approach because it does not like the outcome.

Because ATC has not met its burden under Step 1 of FPA Section 206 to prove any action of MISO during the RFP for Project WISE was unjust, unreasonable, or unduly discriminatory or preferential, the Commission need not – and lawfully cannot – address Complainant's requested remedy. This Complaint also risks a dangerous precedent – one that could discourage competitive developers from participating in future MISO RFPs and threaten the inherent link between energy affordability and robust competition. Therefore, the Commission should summarily reject the Complaint with prejudice.

II. STATEMENT OF INTEREST OF ETCC

ETCC is a diverse, broad-based, nation-wide coalition focused on electricity affordability through increasing competition in the development and ownership of America's electricity transmission infrastructure.[9] ETCC represents companies and organizations throughout the continental United States, including manufacturing groups, retail electric consumers, state consumer advocates, public power representatives, think tanks, and non-incumbent transmission developers. ETCC members represent entities and individuals that pay hundreds of billions of dollars in electricity rates each year.

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is unprecedented in the PSC's history. *See PoliticoPro*, "Wisconsin tells $1.4B data center power line to start over," August 6, 20206, *available at*, https://subscriber.politicopro.com/article/2026/08/wisconsin-tells-1-4-billion-data-center-power-line-to-start-over 01028018?site=pro&prod=alert&prodname=alertmail&linktype=headline&source=email (last accessed August 12, 2025).

[8] *See* MISO Tariff, Attachment FF, Sec. IX.

[9] *See* https://electricitytransmissioncompetitioncoalition.org/who-we-are/ (last accessed August 12, 2026). ETCC filed a Doc-less Motion to Intervene in this proceeding on July 9, 2026.

The transmission and distribution components of electricity rates represent the fastest rising component of electricity bills,[10] far outpacing inflation,[11] – with ongoing annual escalations expected well into the future to meet the grid's infrastructure needs.[12] "It is long-established that the 'primary aim' [of the Federal Power Act] is the protection of consumers from excessive rates and charges."[13] Comprised of organizations representing residential, commercial, institutional, and industrial loads, ETCC has a vital interest in unleashing competitive processes to protect against ballooning transmission costs.

III. RELEVANT BACKGROUND

A. Project WISE

On December 12, 2024, the MISO Board of Directors approved the MISO Transmission Expansion Plan ("MTEP24"). Shortly after, in February 2025, MISO issued an RFP for Project WISE, in accordance with its tariff-established competitive solicitation process, which ATC and other incumbent developers well understand and have previously navigated. Project WISE is a Multi-Value Project ("MVP") that is part of MISO's Long Range Transmission Plan, or LRTP, Tranche 2.1. The LRTP Tranche 2.1 falls under MTEP24 and was developed to address significant transmission issues identified by MISO in the Midwest subregion. In April 2025, months after MISO's initial issuance of the Project WISE RFP, ATC and MISO met to discuss that three of the

[10] *See, e.g.,* "Transmission Costs Are Rising – Here's What That Means for Your Electric Bill," American for Fair Energy Prices, *available at* https://www.fairenergyprices.org/energy-prices-blog/transmission-costs-are-risingheres-what-that-means-for-your-electric-bill (last accessed August 12, 2026).

[11] *See* "Americans hit with soaring electricity bills at price hikes outpace inflation nationwide," (Feb. 26, 2026), *available at* https://www.foxbusiness.com/economy/americans-hit-soaring-electricity-bills-price-hikes-outpace-inflation-nationwide (last accessed August 12, 2026).

[12] "Investor-owned utilities could spend $1.1T between 2025 and 2029," EEI, Utility Dive, Oct. 9, 2025, *available at* https://www.utilitydive.com/news/investor-owned-utilities-spending-more-than-ever-eei/802315/ (last accessed August 12, 2026).

[13] *Xcel Energy Services v. FERC*, 815 F.3d 947, 952-53 (D.C. Cir. 2016).

Project WISE substations overlapped in vicinity with the Ozaukee Project, which is an ATC transmission project needed for the Ozaukee County Data Center.[14] According to ATC, the three overlapping substations needed to be constructed on an accelerated timeline as compared to Project WISE. In May, MISO issued a revision to the RFP, specifically to Question 150, asking respondents to indicate their ability to accelerate the in-service date for any Project WISE facilities by up to five years. After completing its RFP evaluation process with bidder answers to the revised Question 150, MISO issued its Selection Report naming Viridon Midcontinent LLC ("Viridon") as the selected transmission developer for Project WISE.[15]

Despite ATC's claims that MISO's RFP process was unjust and unreasonable and lacked transparency, the Selection Report for Project WISE summarized the four proposals MISO received to build and operate WISE and explained why MISO selected Viridon. The four proposals were from ATC and Dairyland Power Cooperative (jointly) with WPPI Energy as a Proposal Participant, Longview Infrastructure Midwest LLC with Great River Energy as a Proposal Participant, LS Power Grid Wisconsin Inc., and Viridon. MISO's evaluation scores for the four proposals indicate that Viridon's proposal had the best value across a range of factors, as shown below.[16] Viridon also committed to a number of cost containment provisions that would materially minimize costs to customers as compared to other developers, including ATC.

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[14] Complaint at 27.

[15] *See* Project WISE Competitive Transmission Project January 6, 2026 Selection Report ("Selection Report").

[16] *See* Selection Report at iii.

Figure 3. Evaluation Scores

Proposal	Cost and Design 35%	Project Implementation 30%	Oper. & Maint. 30%	Planning Participation 5%	Score
A (Viridon)	Best	Good (3)	Good (3)	✓	86
C	Good (2)	Better (2)	Best	✓	84
D	Good (4)	Best	Good (3)	✓	78
B	Good (3)	Good (4)	Better (2)	✓	74

In February of 2026, MISO initiated a Variance Analysis in compliance with Attachment FF, Section IX of the MISO Tariff, wherein it reassigned responsibility for the three, aforementioned overlapping substations to ATC.[17] In initiating the Variance Analysis, MISO pointed to the changed circumstances presented by the newly accelerated in-service date required for the three substations based on the urgency of the anticipated data center load of Ozaukee.[18] Accordingly, the question MISO addressed was one of schedule, not of the selected developer's technical or financial capability. MISO further explained that the most suitable outcome determined by MISO's Competitive Transmission Executive Committee would be to reassign the three substations to ATC, therein allowing ATC to construct those substations itself and alleviating the risk of interference with the Ozaukee Project construction timeline.[19] MISO acted timely and in compliance with its Tariff to address the unique Project WISE issues as they arose.

B. Orders No. 890, 1000, And Other Relevant Commission Guidance

The Commission issued Order No. 890 in 2007, noting that the United States had "witnessed a decline in transmission investment relative to load growth," and found that the

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[17] *See* MISO LRTP Tranche 2.1 Project 28 Commencement of Variance Analysis, posted February 27, 2026.

[18] *Id*. at 2.

[19] *See* MISO LRTP Tranche 2.1 Project 28 Notice of Variance Analysis Outcome, posted March 19, 2026.

resulting grid congestion could "have significant costs to consumers."[20] In Order No. 890, the Commission noted that a "lack of coordination, openness, and transparency" existed in transmission planning that "result[ed] in opportunities for undue discrimination" because "participants ha[d] no means to determine whether the plan developed by the transmission provider in isolation is unduly discriminatory."[21] Accordingly, in June 2010, the Commission published a Notice of Proposed Rulemaking entitled Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,[22] which would later become the basis for the Commission to adopt Order No. 1000.[23] The Commission issued FERC Order No. 1000 upon realizing that Order No. 890 on its own was insufficient to implement the transmission planning and cost allocation requirements of Order No. 1000.[24]

The Commission found under Section 206 of the FPA that the requirement for competition was necessary to ensure that Commission jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential.[25] The Commission determined that transmission competition was in consumers' interest and the public interest.[26] The Commission's orders requiring that regional transmission expansion processes have competitive pressures to ensure just and reasonable rates have been upheld by the D.C. Circuit and

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[20] Preventing Undue Discrimination and Preference in Transmission Service, 72 Fed. Reg. at 12,276, 12,318 (2007).

[21] *Id*.

[22] Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, 131 FERC ¶ 61,253, 75 Fed. Reg. 37,884 (2010).

[23] *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 55 (D.C. Cir. 2014) ("South Carolina").

[24] Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, 136 FERC ¶ 61,051, at P 78 (2011).

[25] Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, 136 FERC ¶ 61,051, at P 78 (2011).

[26] *See* Order No. 1000 at P 286.

appellate courts across the country.[27] Order No. 1000 requires each public utility transmission provider participate in a regional transmission planning process, produce a regional transmission plan, and amend their tariffs accordingly.[28]

In Order No. 1000, the Commission reiterated FERC's longstanding responsibility to consider anti-competitive practices and to eliminate barriers to competition, concluding that removing incumbent preferences and ROFR requirements incorporated at the regional transmission organization/independent system operator ("RTO/ISO") level could result in "benefits of competition in transmission development and associated potential savings."[29] Therefore, the Commission directed RTOs/ISOs to remove the federal ROFR from their tariffs. Recognizing areas of historic state jurisdiction regarding siting of interstate transmission, that Commission held: "[n]othing in this Final Rule is intended to limit, preempt, or otherwise affect state or local laws or regulations with respect to construction of transmission facilities, including but not limited to authority over siting or permitting of transmission facilities."[30] ATC here claims Orders No. 890 and 1000 would permit MISO to reconfigure Project WISE and assign the project substations to ATC. While these orders may well permit such revision, that does not mean MISO must revise as ATC now requests.

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[27] *See New York v. FERC*, 535 U.S. 1, 17, 22 (2005); *South Carolina*, 762 F.3d at 55, 65 (D.C. Cir. 2014); *Groton v. FERC*, 587 F.2d 1296, 1301 (D.C. Cir. 1978); *New England Power Generators Ass'n v. FERC*, 881 F.3d 202, at 206 (D.C. Cir. 2018).

[28] Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, 136 FERC ¶ 61,051, at PP 78, 82 (2011); Transmission Planning and Cost Allocation by Transmission Owning and Operating Utilities, 139 FERC ¶ 61,132 (2012); Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities, 141 FERC ¶ 61,044 (2012).

[29] Order No.1000 at PP 285-286, 313.

[30] *Id*. at 287.

Of final note, the MISO Transmission Owners have already sought appellate review of the Commission's decision to require ROFR removal and were unsuccessful.[31] In *MISO Transmission Owners,* the United States Court of Appeals for the Seventh Circuit ("Seventh Circuit") recognized the contract between and among MISO and the incumbent transmission owners for what it was: "a contract in which the parties are seeking to protect themselves from competition from third parties (cartels are the classic example of such contracts)."[32] Finding lawful FERC's abrogation of a federal ROFR, the Seventh Circuit also noted that "if there are indeed good things to be said about the [ROFR] claimed by the petitioners, they are not said in any of the voluminous filings in this case."[33]

C. MISO's Tariff Attachment FF

Attachment FF in MISO's Tariff includes MISO's Transmission Expansion Planning Protocols. Section VIII in Attachment FF establishes MISO's Competitive Transmission Process, including the requirements for RFPs and additional data requests when needed for administration of an RFP.[34] At the outset of Section VIII, MISO establishes the applicability of the Competitive Transmission Process, providing that it is applicable to all transmission facilities and substation facilities located on the Transmission System and included in an Eligible Project.[35]

Section VIII.D.6 of Attachment FF titled Additional Data Requests provides:

> If, during the evaluation of Proposals, the Transmission Provider determines that additional information is required to evaluate the Proposals, the Transmission Provider will request, in writing, the additional data from all RFP Respondents, along with the timeframe that this data must be submitted.

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[31] *MISO Transmission Owners v. FERC*, 819 F.3d 329 (7th Cir. 2016).

[32] *Id.* at 335.

[33] *Id.* at 334.

[34] MISO Tariff, Attachment FF, Section VIII.C Request for Proposals and Section VIII.D Proposals.

[35] MISO Tariff, Attachment FF, Section VIII.A Applicability.

MISO's aforementioned revision to update Question 150 was, therefore, explicitly provided for in Attachment FF, and was helpful in ensuring MISO's determination of the Project WISE RFP was based on all available and necessary information from respondents, going even beyond the scope of what Attachment FF requires.

Additionally, MISO's Business Practice Manual ("BPM") No. 027 relates directly to the competitive transmission process, providing a detailed and technical explanation of implementation procedures. While not in the Tariff, MISO is also required to adhere to its BPMs. Section 6.12 of MISO's BPM No. 027 provides:

> During MISO's evaluation of Proposals, MISO may determine that additional information is necessary to effectively evaluate Proposals that was not requested in the issued RFP. In such circumstances, MISO will request additional information in writing from each RFP Respondent involved in a Proposal, through the primary and secondary contacts designated in the Proposal. Each additional data request for additional information will include: (i) a description of the information being requested; (ii) the date in which the information must be submitted to MISO by, which shall be no earlier than ten (10) Business Days from the date MISO issues the request; and (i) the attestation, similar to that described in Section 7.7. of this BPM-027, that must be submitted by each RFP Respondent submitting additional information.[36]

The Complaint's cornerstone claim – that MISO violated Section 206 of the FPA by its conduct in administering the Project Wise RFP alone – falls apart upon review of the above-referenced sections of the MISO Tariff and BPM. Both intend for and allow for the very sort of additional data request that MISO implemented in Project Wise. ATC attempts to undermine the integrity of the data request, labeling it as "arbitrary" because Question 150 did not "specify the relevant facilities or identify the required 2027 in-service date," and because MISO asked the same question to parties bidding under another competitive project that was part of LRTP Tranche 2.1.[37]

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[36] *See* MISO Business Practice Manual No. 027 at 36.

[37] Complaint at 35.

But MISO is not required to include any details in an additional information request outside of what it did include in Question 150. And, there is nothing in MISO's Tariff prohibiting it from asking the same question to bidders of different RFP projects. ATC's challenges to Question 150 is one of many manufactured attempts of ATC to assign an intent to MISO that ATC cannot prove.

D. Wisconsin State ROFR/Incumbent Preference Law Status

Incumbent utilities have long been attempting to enact a state-level ROFR for high-voltage transmission projects in Wisconsin. Beginning in the 2021 legislative session, and continuing in every subsequent session, incumbent utilities (including ATC) have pushed for legislation to shield them from transmission competition.[38] The incumbent-driven proposed legislation has been unsuccessful at each attempt, meeting with bipartisan rejection rooted in the belief that competition is needed to lower costs, enhance reliability, further expand wholesale electricity markets, and accelerate innovation.[39] In a parallel docket currently before the Commission at Docket No. EL26-58 ("Grid Acceleration Complaint") a group of 12 Wisconsin legislators ("Legislators") filed a letter voicing their opposition to an attempt by incumbent utilities (again, including ATC) to have FERC issue a wholesale moratorium on transmission competition.[40] There, the Legislators make clear that incumbents' underlying objective is to be granted an exclusive first claim on projects so they can build without competitive pressures.[41] The Legislators recognize and prioritize evidence of MISO competitive outcomes that consistently demonstrate a savings of 20–40% or more when

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[38] *See* Letter from Wisconsin Legislators, Opposed to Eliminating Competition for Transmission Projects in MISO, FERC Docket No. EL26-58 (filed on May 27, 2026).

[39] *Id*. at 1.

[40] *See International Transmission Co. et al. v. Midcontinent Independent System Operator, Inc. and Southwest Power Pool, Inc.*, Docket No. EL26-58-000 (filed Apr. 7, 2026) ("Grid Acceleration Complaint").

[41] *Id*. at 2.

utilizing competitive bidding, as well as an increase in innovation in technology and siting.[42] The Legislators urged FERC to reject any efforts that would result in granting incumbents preferential ownership rights, maintaining that Wisconsin has "thrived" without a ROFR.[43]

Such state context tends to expose ATC for a similar underlying motivation here. Unsuccessful in attempts to persuade the Wisconsin legislature, ATC and other incumbent utilities now have adjusted focus to the Commission to grant exclusive ownership rights over transmission – the very ownership rights and control that Orders No. 890 and 1000 were designed to limit.

IV. PROTEST

A. ATC Failed to Meet Its Burden to Demonstrate That MISO Violated Any Tariff Provisions Through Its RFP Process for Project WISE.

1. MISO Acted Reasonably Under the Circumstances in Applying Its Tariff-Approved RFP Process for Project WISE.

ATC asserts that Attachment FF of the MISO Tariff and the TOA,[44] taken together, require the Commission to find that MISO's administration of the Project WISE RFP and its application of the Proposal Evaluation Criteria constituted an unjust and unreasonable application of the MISO Tariff.[45] ATC additionally asserts that MISO administered a non-transparent RFP process that undermined the planning objectives of Orders No. 890 and 1000.[46]

Complainants bear the initial burden under FPA Section 206 to demonstrate that MISO's Tariff (or the application thereof) is unjust and unreasonable.[47] Under FPA Section 206, FERC

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[42] *Id*. at 3.

[43] *Id*.

[44] *See* MISO Tariff, Rate Schedule 1 (Transmission Owners Agreement).

[45] Complaint at 39.

[46] *Id*. at 85.

[47] *See* 16 U.S.C. § 824e(b) (providing that "[i]n any proceeding under this section, the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant.").

may determine that an existing rate (or practice affecting a rate) is unjust, unreasonable, unduly discriminatory or preferential. However, "[o]nly *after* having made the determination that the utility's existing rate fails that test may FERC exercise its section 206 authority to impose a new rate."[48]

ATC's varied attempts throughout the Complaint to challenge MISO's RFP process for Project WISE are ultimately unsuccessful. MISO enjoys discretion to run its Commission-approved RFP process, and FERC has consistently reiterated that flexibility in implementation and development of the Order No. 1000's regional transmission planning process requirements is key for RTOs.[49] As referenced above, MISO created its RFP process, which was later approved by the Commission, to account for instances where situations may materially change such that additional information may be needed.[50] The selection report for Project Wise identifies:

- MISO's evaluation criteria
- The respective weight given to each criterion
- Project scale and scope

[48] *Emera Me. v. FERC, 854 F.3d at 21* (emphasis original).

[49] *See* Order No. 1000 at P 149 ("We decline, however, to specify in this Final Rule a particular set of analyses that must be performed by public utility transmission providers within the regional transmission planning process. . . . We provide public utility transmission providers in each transmission planning region the flexibility to develop, in consultation with stakeholders, procedures by which the public utility transmission providers in the region identify and evaluate the set of potential solutions that may meet the region's needs more efficiently or cost-effectively."); *see also* Midwest Indep. Transmission Sys. Operator, Inc., 133 FERC ¶ 61,221, at P 6 (2010).

[50] *See* infra [8-10].

- A comparative analysis of each proposal
- Cost containment measures proposed by each bidder
- Routing and siting considerations
- Financing and construction abilities.[51]

MISO's Selection Report and RFP for Project WISE were on par with other Selection Reports that have not drawn criticism from bidders who lost out, or any other stakeholders. Importantly, there have been no complaints or formal challenges to MISO's RFP administration to date.

ATC additionally claims MISO did not penalize Viridon for its lack of experience in developing projects.[52] Even if ATC could prove this, which it cannot, that is not a valid basis to show that MISO violated its Tariff. Viridon is a Qualified Developer; if ATC had a problem with MISO certifying Viridon as such, ATC's recourse is not through a challenge to a Viridon-awarded project. For Project WISE, MISO outlined its evaluation of Virdon's experience in the Project Implementation section of the Selection Report, as well as that of all other bidders.[53]

Throughout the Complaint, ATC advances standards that it fails to prove are grounded in Commission precedent, are applicable, or are correct. ATC claims a Variance Analysis "is not a cure," but is instead "confirmation that MISO's course of action was wrong from the outset, and that no procedural correction after the fact can restore the integrity of a competitive process that was fundamentally compromised."[54] At base, MISO's detailed Variance Analysis process *is* indeed a mechanism to correct material issues and intervening circumstances arising out of or associated with an RFP determination, and MISO's BPM No. 027 establishes that entities

[51] *See* Selection Report.

[52] Complaint at 75.

[53] Selection Report at 24-25.

[54] Complaint at 42 (failing to provide any legal citation to substantiate its assertion).

participating in an RFP or selected to construct a Competitive Transmission Facility are subject to Variance Analysis procedures.[55] The Project WISE RFP triggered a Variance Analysis, which MISO used promptly, correctly, and as intended under its Tariff.

Later in its Complaint, ATC asserts that “Orders No. 890 and 1000 require more than mere procedural compliance, they require an open and transparent process.”[56] Despite ATC’s continued lack of Commission precedent to support these standards it advances, ATC did not and cannot prove that MISO unreasonably departed from its standard RFP practice only as it pertains to Project WISE. There is no explicit standard for transparency in MISO’s Attachment FF which it violated, nor does Order No. 890 require any transparency measures beyond what MISO exercised. As ATC included in its Complaint, Order No. 890 requires that transmission providers must “disclose to all customers and other stakeholders the basic criteria, assumptions, and data that underlie their transmission system plans,” and must “reduce to writing and make available the basic methodology, criteria, and processes they use to develop their transmission plans . . . in order to ensure that standards are consistently applied.”[57] MISO did just this through its Selection Report. ATC’s allegation as to a lack of transparency cannot be substantiated when the Project WISE Selection Report mirrors the detail and attention of each of MISO’s other Selection Reports. ATC attempts to paint a picture of noncompliance where it does not exist. MISO administrated this RFP just as it does all others, using its Commission-approved process. ATC has not shown MISO violated any transparency standard in its Tariff or in Order No. 890.

[55] *See* Business Practice Manual No. 027 at 11.

[56] Complaint at 79.

[57] Complaint at 81; citing Order No. 890, 118 FERC ¶ 61,119 at P 471.

MISO's Tariff Attachment FF includes an individual supplemental attachment for interconnection projects that would fall under ATC's local planning process, Attachment FF-ATCLLC.[58] The stated purpose of Attachment FF-ATCLLC is to identify changes, modifications, additions, or extensions of ATC's transmission facilities that are necessary to meet the needs of customers and transmission owners that are interconnected to ATC's transmission facilities, as well as reduce the delivered cost of electric energy in the ATC's service territory.[59] While ATC asserts that the Ozaukee Project is "precisely the kind of local, bottom-up need"[60] that Attachment FF-ATCLLC was designed to protect, ATC does not demonstrate any tangible local reliability and service need that would justify impinging on MISO's regional planning authority for a project that was approved in December 2024. If a transmission owner could simply invoke a proverbial 'local reliability card' anytime it pleased, that would certainly undermine MISO's regional planning efforts and the principles underlying competition in transmission development.

Attachment FF-ATCLLC invokes MISO's MTEP as follows:

> ATCLLC shall, consistent with Appendix B of the ISO Agreement and in accordance with the provisions of the Attachment FF of this Tariff, upon completion of the analysis of any proposed Transmission Facilities project, or upon the completion of the evaluation of its network adequacy, identify to the Transmission Provider those provisional, proposed or planned projects that ATCLLC, in its judgment, has determined should be constructed to meet the needs of its Interconnection and Transmission Customers in order to fulfill ATCLLC's obligation to provide interconnection service and open access transmission service for the benefit of all users of its Transmission Facilities.[61]

Appendix B of the TOA reflects Tariff Attachment FF; both were harmonized to preserve MISO's regional planning authority under Order No. 1000 and promote local planning needs for

[58] *See* MISO FERC Electric Tariff, Attachment FF-ATCLLC at 348.

[59] *Id* at 349.

[60] Complaint at 5.

[61] MISO Tariff Attachment FF at 386.

transmission owners where necessary and appropriate. ATC has failed to demonstrate any internal inconsistency as between Appendix B of the TOA and Tariff Attachment FF, or in MISO's administration of the Project WISE RFP as it relates to Appendix B or Tariff Attachment FF.

Without more, ATC has not met its burden under FPA Section 206 to show that MISO acted unjustly and unreasonably in applying its Tariff. MISO's RFP process accounts for additional data requests and Variance Analysis measures where appropriate. ATC ignores this and requests the Commission order a rerun of the Project WISE RFP in hopes of an outcome in its own favor. In sum, ATC has not shown how any clear legal requirement or principle should override the Tariff-based competitive solicitation process, nor has ATC shown that MISO violated its Tariff in its RFP administration Therefore, the Commission should dismiss the Complaint.

2. ATC Has Not and Cannot Sufficiently Demonstrate MISO's Intent or Knowledge That the RFP Would Require Later Modification.

ATC assigns an intent to MISO that it cannot prove, thereby elevating its already heavy Section 206 burden. ATC claims that "MISO chose to proceed with a knowingly flawed RFP,"[62] and that MISO "formalized a defect it already knew existed" through execution of the Selected Developer Agreement with Viridon.[63] To claim such knowing and purposeful intent requires more than ATC does or can provide under the basic rules of evidence.[64] ATC advances blanket statements that MISO failed to "properly and reasonably administer its own tariff," that the Ozaukee Project constituted an "urgent, local service obligation" that should have de facto usurped MISO's competitive solicitation process, and that MISO elected to "press forward with a flawed RFP" and "select a developer incapable of meeting the projects most time-sensitive

[62] Complaint at 38.

[63] Complaint at 39.

[64] The rule of Scienter, which requires facts giving rise to a strong inference that the defendant acted with a required state of mind. *See Dura Pharms., Inc. v. Broudo,* 544 U.S. 336, 345 (2005).

requirements."[65] Despite raising these grandiose claims throughout the Complaint, ATC fails to produce any compelling factual or legal foundation. ATC does not explain *how* MISO violated its Tariff, or intentionally chose the wrong developer for a flawed RFP, or ignored the directives of this Commission in Order Nos. 890 and 1000. ATC simply disagrees with MISO's approach because it does not like the outcome. This does not satisfy ATC's burden and associated regulatory requirements for a successful Section 206 complaint, let alone meet established rules of evidence for demonstrating a specific level of intent of an adverse party.

ATC alerted MISO to its Ozaukee Project plan after issuance of the Project WISE RFP. The anticipated existence of other infrastructure projects does not necessitate immediate accommodation in an RFP process for a pre-planned competitive solicitation project. The Ozaukee Project load did not provide adequate certainty to justify MISO changing course. When MISO posted Question 150, there was no Expedited Project Request ("EPR") or Certificate of Public Convenience and Necessity for the Ozaukee Project.[66] ATC's submission of an EPR, after issuance of the Project WISE RFP, was the next Tariff-prescribed step. In fact, the Wisconsin Public Service Commission ("PSC") this month rescinded its completeness determination of the Ozaukee Project due to the "many continued changes in the application" making it a "moving target."[67] ATC now must resubmit its Certificate of Public Convenience and Necessity ("CPCN") application for the project, delaying its construction and calling into question ATC's critique here of the Project WISE RFP and its justification for direct assignment of the project. ATC mischaracterizes the events of

[65] Complaint at 2.

[66] *See* Complaint at 11-12.

[67] *PoliticoPro*, "Wisconsin tells $1.4B data center power line to start over," August 6, 20206, *available at*, https://subscriber.politicopro.com/article/2026/08/wisconsin-tells-1-4-billion-data-center-power-line-to-start-over 01028018?site=pro&prod=alert&prodname=alertmail&linktype=headline&source=email (last accessed August 12, 2025).

the Project WISE RFP and Variance Analysis as somehow disingenuous,[68] when in reality, MISO was simply following the steps as prescribed by its Tariff, including the timely initiation of a Variance Analysis for Project WISE.

3. ATC Advances Convenient and Opportune Litigation Positions That Are Inconsistent with Its Positions Advanced in Docket EL25-109 Regarding MISO's Transmission Planning Authority.

ATC's legal positions with respect to MISO's transmission planning authority are inconsistent with recent positions advanced by ATC before the Commission. In a Protest filed by the MISO Transmission Owners (including ATC) just last year, ATC advances the same arguments in defense of MISO's Tranche 2.1 MVP portfolio planning process that it now attacks in the immediate Complaint.[69] There, ATC and the MISO Transmission Owners assert that MISO has the ultimate responsibility for transmission planning, as well as that MISO's Tariff affords MISO "significant flexibility with respect to transmission planning."[70] ATC and the Transmission Owners continued:

> As transmission planning is a tariff obligation of the transmission provider, "[i]t would not be appropriate to allow customers and others that do not bear the responsibility for tariff compliance to have coequal control over the planning process."[71]

ATC there claimed Complainants failed to demonstrate MISO's actions amounted to a tariff violation or were unreasonable as Complainants were "armed with only preferences,"[72] and therefore could not satisfy the requisite burden for a successful Section 206 complaint. While the

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[68] Complaint at 2, 36-39.

[69] *See* Protest of MISO Transmission Owners, at FERC Docket No. EL25-109-000 (filed on September 9, 2025).

[70] *Id*. at 9-10.

[71] *Id*. at 10.

[72] *Id*. at 44.

complaint in EL25-109 attacked assumptions underlying MISO's long-range transmission planning for Tranche 2.1 and while this Complaint concerns the competitive RFP process for one of those Tranche 2.1 projects, it is difficult to meaningfully differentiate the nature of Complainants' arguments in EL25-109 from those ATC uses as the basis of its Complaint here. ATC invokes the discretion and flexibility of MISO in its transmission planning processes when the outcome is favorable to ATC, but ATC rebuffs such discretion and flexibility when the outcome is unfavorable to ATC.

B. ATC Fails to Show MISO Violated the Transmission Owners Agreement.

ATC invokes a handful of provisions in the TOA to claim that MISO's "approach" violated the TOA in that MISO "improperly subordinat[ed] ATC's ability to serve load through a local project to the competitive solicitation process."[73] First, ATC fails to cite to any state or local law that even applies here to local service obligations. Second, ATC fails to show that such local or state service obligations apply to (or somehow override) the FERC-jurisdictional transmission planning process.[74] Instead, ATC alludes to the "division of responsibility"[75] between MISO and ATC and invokes a generic provision in the TOA regarding the duty of a transmission owner to carry out its planning responsibilities to meet the reliability needs of loads connected to the transmission owner's system.[76] Notably, the referenced TOA provision does not impose any

[73] *See* Complaint at 45-47; *see also* Complaint at 5-6.

[74] Of ATC's three supporting witnesses, Lundberg, McKee, and Dagenais, none testify as to any local reliability or service need. McKee describes Attachment FF-ATCLLC's separate local planning processes but does not demonstrate how the Ozaukee project would have qualified (*See* Affidavit of Robert McKee at 8-9.).

[75] Complaint at 45.

[76] *See* Complaint at 46 (citing TOA, Appendix B, Section I).

specific duty or obligation on MISO. Here is the TOA provision in full context (which was omitted by ATC):

> **The planning of all Non-transferred Transmission Facilities, as well as all distribution facilities, shall be done by the Owners**. Furthermore, each Owner, in carrying out its planning responsibilities to meet the reliability needs of all loads connected to the Owner's transmission facilities and to pursue projects that will promote expanded trading in generation markets, to better integrate the grid and to alleviate congestion may, as appropriate, develop and propose plans involving modifications to any of the Owner's transmission facilities which are part of the Transmission System. All such plans developed by the Owners may be incorporated into the MISO regional plan, as described in Section VI of this Appendix B. Plans developed by the Owners that involve only Non-transferred Transmission Facilities may be incorporated into the MISO regional plan, as appropriate. The Owners shall continue to have planning responsibilities for meeting their respective transmission needs in collaboration with MISO subject to the requirements of applicable state law or regulatory authority.[77]

Accordingly, the above TOA provision is focused on the planning of distribution facilities and non-transferred transmission facilities and retaining the duty to pursue generation projects and relieve congestion. Attachment FF governs the regional planning process for Eligible Projects, including the MVPs in Tranche 2.1, such as Project WISE, which are cost-allocated across the entire MISO north/central region. If successful, ATC's unsupported application of the above provision about the importance of meeting "reliability needs of all loads" would have no limiting principle, as an incumbent transmission owner could invoke that provision at any time there is a new customer/load request in the vicinity of a forthcoming or pending project that is subject to the Attachment FF Competitive Transmission Process. Moreover, ATC has not shown that MISO interfered with or impaired ATC's ability to serve any load by a set deadline. ATC also does not

[77] TOA, Appendix B, Section I (emphasis added).

argue or show that any emergency need, such as an Immediate Need Reliability Project under Section VIII.A.3., applies here and should override the Competitive Transmission Process.[78]

ATC further argues that the TOA's recognition of Transmission Owners "serving load" is consistent with appellate precedent around protecting a Load Serving Entity's ("LSE") ability to serve load.[79] ATC highlights the Congressional directive to the Commission in the Energy Policy Act of 2005, that transmission planning should "facilitate the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of load-serving entities," and "enable load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs."[80] Therefore, according to ATC, that statutory section would be deemed violated if the Commission exercised its authority that did not please the needs of LSEs.[81] This is a selective reading of both the Energy Policy Act and D. C. Circuit precedent.

First, not all MISO Transmission Owners directly serve end-use consumers and not all MISO Transmission Owners are affiliated with LSEs that serve end-use consumers or load. Instead, MISO Transmission Owners provide transmission service to LSEs and transmission-dependent distribution utilities who, in turn, provide service to end-users or load. Here, Wisconsin Electric Power Co. (*i.e.*, WE Energies) is the distribution utility with the load-serving obligation

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[78] It is telling that nowhere in ATC's protest or supporting testimony does ATC argue that its service to the proposed data center constitutes an immediate need or is necessary to address or resolve a reliability violation or constraint on the system.

[79] Complaint at 46 (citing *S.C. Pub. Serv. Authority v. FERC*, 762 F.3d 41, 90 (D.C. Cir. 2014)).

[80] Complaint at 16 (citing 16 U.S.C. § 824q(b)(4).).

[81] Complaint at 16 (citing *S.C. Pub. Serv. Authority v. FERC*, 762 F.3d 41, 90 (D.C. Cir. 2014)).

to the end-use retail customer.[82] Moreover, ATC's attempt to analogize a passing provision in the TOA on the importance of "reliability needs of all loads connected to" transmission facilities to the D.C. Circuit's holding in *South Carolina* is unavailing. In *South Carolina*, the Court upheld FERC's determinations in Order No. 681 and merely explained that an LSE's ability to meet its service obligation depends on its ability to deliver power when needed.[83] The Court's adjudication in *South Carolina* focused on upholding FERC's determinations regarding the Commission's own obligation to facilitate the planning of a reliable grid.[84] *South Carolina* is simply not applicable to the instant scenario in this Complaint involving Project WISE, the competitive transmission solicitation process, and a large load request in Wisconsin. Not only is *South Carolina* an unsuccessful parallel, it is the only case ATC cites as the foundation for its dissatisfaction with MISO's adherence to the TOA. It is also one of only about three cases ATC cites throughout its entire Complaint. As a result, ATC's arguments struggle to find legal footing.

1. ATC Undermines and Overlooks Order No. 1000 and Governing Precedent

Fundamentally, ATC has not shown that the circumstances involving Project WISE justify preempting or overriding Order No. 1000, appellate precedent upholding Order No. 1000, or MISO's Order No. 1000-compliant process in Tariff Attachment FF. The Commission was clear in Order No. 1000 that the need for a competitive test to ensure just and reasonable rates crossed all transmission drivers, rejecting calls for an exclusion for reliability projects,[85] and extending the

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[82] *See* "Ozaukee Co. Distribution Interconnection Project," Docket ID 137-CE-221, Application Summary, *available at* https://psc.wi.gov/Pages/CommissionActions/CasePages/OzaukeeTransmission.aspx (last accessed Aug. 10, 2026).

[83] *See South Carolina*, 762 F.3d at 90.

[84] *Id*.

[85] *See* Order No. 1000 at P 266; Order No. 1000-A at P 428.

competitive requirement to projects needed to meet public policy requirements.[86] As such, the Commission's national directive in Order No. 1000 to remove anti-competitive, self-granted, incumbent preferences applies fully to the transmission needed to address increases in load from data center expansion. Such foundation makes Order No. 1000 explicitly applicable here.

Notably, ATC fails to request any kind of waiver from Order No. 1000. The Commission has the authority to waive certain regulations if such waiver is "consistent with the language and objective of the statute under which the regulation was promulgated."[87] The Commission has previously waived regulations preventing infrastructure construction where a "pressing nationwide near-term demand" exists.[88] Such circumstances do not exist here, which may offer explanation as to why ATC has not acknowledged, much less addressed, the Commission's four-part test for tariff waivers. FERC's waiver test requires the asking party to show: 1) they have acted in good faith, 2) the waiver is limited in scope, 3) existence of a concrete problem that would be remedied by the requested relief, and 4) that granting the waiver would have no undesirable consequences.[89] As ATC has advanced no specific tariff violation, it is unlikely ATC would be successful under prong 3. Additionally, ATC could not successfully prove the final prong. Interfering with the RFP process undermines the integrity of competitive transmission processes, which would invariably

[86] *See* Order No. 1000 at P 166.

[87] *Interstate Nat. Gas Ass'n of Am.,* 191 FERC ¶ 61,209 (2025) ("*INGAA"), reh'g dismissed,* 193 FERC ¶ 61,119 (2025).

[88] *Id.* at n.22.

[89] *See CPV Shore, LLC,* 168 FERC ¶ 61,048 (2019) ("The Commission uses satisfaction of all four criteria as a guide to when it may be appropriate to grant waiver. If the Commission identifies a criterion that by itself makes waiver inappropriate, it need not continue to analyze other criteria before it denies waiver." (footnotes omitted). *See also Dominion Energy Servs., Inc.,* 192 FERC ¶ 61,214 at P 22 (2025) (explaining that the Commission's policy fosters regulatory certainty because "regulatory certainty is achieved by ensuring that tariff provisions are only waived when such requests satisfy all four of the waiver prongs").

create a wave of undesirable consequences for competitive transmission developers, ratepayers, and other interested stakeholders.

Setting aside the four-part test, the remedy ATC proposes (a rerun of the RFP process due to its own dissatisfaction with the outcome rather than any legal basis) goes well beyond what is appropriate for a tariff waiver as it essentially seeks to "create an entire process that is not in the tariff,"[90] by allowing for full rerun of an RFP at the request of one incumbent developer.

ATC errs procedurally in its failure to request a waiver of Order No. 1000's requirements but would likely fail at such request in any case. Attachment FF to MISO's Tariff prescribes the procedure for RFP administration, including the procedure to follow when subsequent information from bidders becomes necessary, as well as the details of its Proposal Evaluation Criteria. ATC had the opportunity by its Complaint to advance legitimate facts that demonstrate MISO's unjust or unreasonable action in its RFP administration, but was ultimately unable to do so.

2. ATC Concedes That MISO's Variance Analysis Was Procedurally Proper

ATC recognizes that MISO's actions were procedurally proper through MISO's implementation of the Variance Analysis pursuant to the Order No. 1000-A reevaluation requirement.[91] Therefore, ATC confirms it cannot actually demonstrate any express violation of the TOA by MISO; instead, ATC plays Monday Morning Quarterback and argues that MISO committed a fatal omission because "MISO *should have acted* to halt the competitive solicitation process for the original Project WISE scope in April 2025 when it was clear that ATC would need the Ozaukee County Substations to be in-service by December 2027 to serve substantial new data

[90] *ISO New England Inc.*, 164 FERC ¶ 61,003 at P 47 (2018).

[91] *See* Complaint at 46.

center load."[92] Notably, ATC does not provide – let alone apply – any caselaw to support its argument that MISO's omission here constitutes a Tariff violation or TOA violation.

3. ATC Fails to Show That MISO Violated Good Utility Practice

Tellingly, ATC also fails to apply any standards of review in the TOA itself, including the Good Utility Practice standard included in the preface of the TOA. The TOA defines Good Utility Practice as:

> Any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather to be a range of acceptable practices, methods, or acts generally accepted in the region.[93]

Here, ATC does not argue, let alone show that MISO failed to exercise reasonable judgment or that MISO's actions were not within the range of acceptable practices, method, or acts.

4. ATC's Factual Underpinnings for Its Complaint Have Been Eroded by Virtue of Recent Actions by the Public Service Commission of Wisconsin

Finally, as a practical matter, ATC's factual underpinnings for its Complaint have gone by the wayside, as the recent developments on the ground in the state of Wisconsin strongly indicate that the December 2027 in-service date will not be happening.[94] On August 6, 2026, the Wisconsin PSC revoked the completeness determination for ATC's application for a CPCN for the Ozaukee Project.[95] As a result, public hearings scheduled for August 18-19, 2026 were cancelled, thus

[92] *See* Complaint at 46-47 (emphasis added).

[93] TOA, Section G.

[94] *See* https://wtmj.com/news/2026/08/07/state-regulators-deliver-massive-setback-to-port-washington-data-center-power-lines/ (last accessed Aug. 12, 2026).

[95] *See id.* (referencing August 6, 2026 Press Release of the PSC of Wisconsin).

jeopardizing any likelihood of a December 2027 in-service date. Of note, such a move by the Wisconsin PSC has been described as the first of its kind in the PSC's 95-year history.[96] The PSC determined that the public's ability to comment and Commission staff's ability to adequately analyze the project were hampered by a multitude of changes to the Ozaukee Projects in a span of a few months.[97] ATC in this Complaint contends that a sure-fire project has been detrimentally impacted by MISO's RFP process, but to the Wisconsin PSC the project development at issue is representative of "a cautionary tale of when unrealistic and unreasonable speed to power expectations collide with a deliberative regulatory process."[98]

C. Because ATC Has Not Met Its Burden Under FPA Section 206, FERC Need Not Address ATC's Requested Remedy.

Complainants bear the initial burden under FPA Section 206 to demonstrate that MISO applied its Tariff in an unjust and unreasonable manner.[99] Under FPA Section 206, FERC may determine that an existing rate (or practice affecting a rate) is unjust, unreasonable, unduly discriminatory or preferential. However, "[o]nly *after* having made the determination that the utility's existing rate fails that test may FERC exercise its section 206 authority to impose a new rate."[100] In pursuit of ATC's preferred solution (insulation from competitive pressures in the RFP process) under step 2 of FPA Section 206, the Complaint asks for a redo of the RFP.[101] But in

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[96] *PoliticoPro*, "Wisconsin tells $1.4B data center power line to start over," August 6, 20206, *available at*, https://subscriber.politicopro.com/article/2026/08/wisconsin-tells-1-4-billion-data-center-power-line-to-start-over 01028018?site=pro&prod=alert&prodname=alertmail&linktype=headline&source=email (last accessed August 12, 2025).

[97] *Id.*

[98] *Id.*

[99] *See* 16 U.S.C. § 824e(b) (providing that "[i]n any proceeding under this section, the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant.").

[100] *Emera Maine v. FERC*, 854 F.3d 9, 21 (D.C. Cir. 2017) (emphasis original).

[101] Complaint at 9.

doing so, the Complaint does not make the required demonstration under step 1 of FPA Section 206 to show that the existing rate or process is unjust, unreasonable, or unduly discriminatory or preferential. The D.C. Circuit has explained:

> [A] finding that an existing rate is unjust and unreasonable is the "condition precedent" to FERC's exercise of its section 206 authority to change that rate. Section 206 therefore imposes a "dual burden" on FERC. Without a showing that the existing rate is unlawful, FERC has no authority to impose a new rate.[102]

Instead of providing a sound, analytical basis to establish that MISO violated its Tariff in the administration of its RFP for Project Wise, the Complaint rests on a kitchen-sink approach, making a multitude of vague claims rather than advancing any one persuasive claim with sufficient specificity and substantiation.

As explained above, Complainants have failed to demonstrate that MISO unjustly, unreasonably applied Attachment FF of its Tariff. Accordingly, because Complainants have failed to satisfy their threshold burden under Section 206 of the FPA, the Commission need not – and lawfully cannot – consider the relief sought in the Complaint,[103] and the Complaint should be summarily rejected. Even assuming *arguendo* that Complainants' vague and isolated claims were sufficient to carry their burden, there would still be no basis for adopting the remedy requested in

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[102] *Emera Maine*, 854.F3d at 25 (cleaned up); *see also Pub. Serv. Elec. & Gas Co. v. FERC*, 989 F.3d 10, 13 (D.C. Cir. 2021).; *see also* recent FERC orders rejecting Complaints for failing to meet the burden under Section 206 of the FPA: Affirmed Energy LLC, 195 FERC ¶ 61,044 (2026), Adam Gaal, 195 FERC ¶ 61,222 (2026), *Indep. Mkt. Monitor for PJM*, 194 FERC ¶ 61,227 (2026).

[103] *See* 16 U.S.C. § 824e(a) (2018) (providing that the Commission shall fix a replacement rate where it has found an existing rate to be unjust, unreasonable, unduly discriminatory or preferential); *Emera Maine v. FERC*, 854 F.3d 9, 24 (D.C. Cir. 2017) (explaining that Section 206 of the FPA "mandates a two-step procedure that requires FERC to make an explicit finding that the existing rate is unlawful before setting a new rate"); *id.* at 25 ("Without a showing that the existing rate is unlawful, FERC has no authority to impose a new rate." (citation omitted)); *American Gas Ass'n v. FERC*, 912 F.2d 1496, 1504 (D.C. Cir. 1990) (stating that "the directive to impose a just and reasonable rate or provision is triggered only by the Commission's finding that the existing one is 'unjust, unreasonable, unduly discriminatory, or preferential'").

the Complaint, which would effectively render moot an RFP process lawfully administrated by MISO pursuant to Order No. 1000.[104]

D. ATC's Requested Remedy Would Unduly Interfere with MISO's Commission-Approved Solicitation Process, Threatening Competition Principles Which Are Integral to Maintaining Affordability in Today's Energy Landscape.

ATC advances seven arguments in its Complaint, all of which rest of shaky legal bases, and some of which actively threaten competition principles that FERC has consistently prioritized. ATC's arguments 3 through 6 challenge MISO's expertise in administering its own tariff, rather than advancing any legitimate legal claim. ATC argues MISO 1) misapplied the Cost and Design criterion in its RFP evaluation, 2) unreasonably applied the Project Implementation criterion in its RFP evaluation, 3) unreasonably applied the Operations and Maintenance criterion in its RFP evaluation, and 4) exercised a "check-the-box" approach to awarding credit for Planning Participation in its RFP evaluation.[105] While it may wish otherwise, ATC cannot apply its own, self-interested critique to otherwise reasonable actions of MISO, and summarily declare such MISO action unjust and unreasonable in violative of FPA Section 206. If such unsupported legal attacks are permitted to occur, a breakdown of the competitive RFP process may ensue, with nonincumbents and new entrants disincentivized to even participate. As a result, the price-

[104] *See, e.g.*, Order No. 1000, 136 FERC ¶ 61,051 at P 7 (finding that "leaving federal rights of first refusal in place for these facilities would allow practices that have the potential to undermine the identification and evaluation of a more efficient or cost-effective solution to regional transmission needs, which in turn can result in rates for Commission-jurisdictional services that are unjust and unreasonable or otherwise result in undue discrimination by public utility transmission providers"); *id.* at P 284 (explaining that "granting incumbent transmission providers a federal right of first refusal with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation effectively restricts the universe of transmission developers offering potential solutions for consideration in the regional transmission planning process" and holding that "[t]his is unjust and unreasonable because it may result in the failure to consider more efficient or cost-effective solutions to regional needs and, in turn, the inclusion of higher-cost solutions in the regional transmission plan.").

[105] Complaint at 6-8.

lowering pressures of competition will be removed and escalations in transmission prices will persist in the near and long-term.

Additionally, asking the Commission to force a rerun of a completed RFP process will result in extensive delay and waste of resources, as well as uncertainty among competitive developers. While this Complaint pertains to transmission and not FERC-jurisdictional markets, ATC has not shown how its requested relief is viable, let alone consistent with longstanding analogous FERC policy declining to rerun or resettle electricity markets given the reliance on operational decisions in those markets and the economic uncertainties and disincentives arising if market outcomes cannot be relied on (and are always subject to further challenge).[106] ATC cannot ask the Commission to inflict such consequence without providing a clear legal basis for a tariff violation. ATC's quest for preferential rights, planning control, and insulation from competition does not make a successful complaint under Section 206, nor does it compel Commission interference in MISO's Tariff-compliant RFP process.

E. The Complaint Should Be Denied as It Fails to Comply with Various Regulatory Requirements Under Section 206.

Under Rule 206(b)(6), ATC is required to address any other pending proceedings currently before the Commission that involve the issues raised in the immediate Complaint. In its Complaint, ATC briefly addresses the Grid Acceleration Coalition Complaint in Docket No. EL26-58, characterizing that complaint as "complementary" to the instant docket.[107] To call it complementary is to undersell the similarities of both factual and legal claims and issues raised in both proceedings. ATC claims the allegations in the immediate complaint focus on MISO's

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[106] *See Ameren v. FERC*, 739 Fed.Appx. 646, 649-652 (D.C. Cir. 2018); *XO Energy MA, LP v. FERC*, 77 F.4th 710, 716-717 (7th Cir. 2023); *Midwest Indep. Transmission Sys. Operator, Inc*., 162 FERC ¶ 61,173, at P 19 (2018).

[107] *See* Complaint at 90.

actions specific to Project WISE and the relief sought is limited to a remedy only as applied to this individual situation.[108] What ATC does not connect is that the remedy requested in EL26-58 encompasses the issue alleged and remedy requested here. The Grid Acceleration Complaint requests a moratorium for a set number of years on the competitive solicitation practices of MISO and SPP.[109] The adjudication of that complaint is directly relevant to and raises similar issues as the immediate Complaint. Specifically, the Grid Acceleration Complaint already attacked MISO's competitive RFP process for Project WISE by complaining that "ATC could have commenced development upon the MISO Board's approval in December 2024" and that the project "was assigned to a nonincumbent developer" with little experience.[110] The Grid Acceleration Complaint even included a supporting affidavit from an ATC corporate official that complained at length about Project WISE and MISO's associated competitive solicitation process.[111]

Additionally, ATC argues under Rule 206(b)(3) that MISO's assignment of Project WISE to Viridon constitutes a "foregone investment opportunity" for ATC and other bidders.[112] But bidders are not entitled to victories and so ATC cannot legitimately depend on an RFP for economic gain, as it is simply bidding for a project, with no guarantee of success. Nor can ATC claim legitimate economic harm when it is not awarded a potential RFP. ATC fails to show it is entitled to any foregone investment opportunity under either federal or state law. Rather, under the fundamental principles of competition, success must be earned, not assumed by virtue of incumbency or position.

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108 Complaint at 90.

109 Grid Acceleration Complaint at 75-76.

110 Grid Acceleration Complaint at 43-44.

111 *See* Grid Acceleration Complaint, Exhibit B (Direct Testimony of Robert J. McKee).

112 Complaint at 89.

V. CONCLUSION

ATC has failed to demonstrate that MISO acted in an unjust or unreasonable manner in applying its Competitive Transmission Process in Attachment FF of the MISO Tariff. Nor has ATC demonstrated that MISO violated the TOA or any applicable Commission rule or regulation. The Competitive RFP process is integral to the spirit and letter of Order No. 1000. Complainants' attempt to advance a one-time attack against MISO's administration of its solicitation process is an attempt to secure a competitive bid for itself after losing out to a non-incumbent developer. The Complaint threatens a dangerous precedent for the competitive transmission process. The Complaint and ATC's requested relief run contrary to the Commission's intent in Orders No. 890 and 1000; the Commission must reject Complainant's effort by timely rejecting the Complaint with prejudice.

Respectfully Submitted,

/s/ Kenneth R. Stark
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Counsel to the Electricity Transmission Competition Coalition

Date: August 12, 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 12th day of August, 2026.

/s/*Kenneth R. Stark*

Counsel to the Electricity Transmission Competition Coalition