

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

<i>Midcontinent Independent System Operator, Inc.</i>	Docket Nos.	ER26-1538-000 ER26-1538-001 ER26-1676-000 ER26-1676-001 ER26-1761-000 ER26-1761-001
<i>Commonwealth Edison Company</i>		ER26-1683-001
<i>Duke Energy Ohio, Inc.</i>		ER26-1765-000 ER26-1765-001
<i>PJM Interconnection, L.L.C.</i>		ER26-1804-001 ER26-1851-001

**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 Practice and Procedure,¹ the Electricity Transmission Competition Coalition (“Competition Coalition”) and the Industrial Energy Consumers of America (“IECA”) hereby submit this Motion for Leave to Answer and Answer (“Answer”) to the answer filed by the Midcontinent Independent System Operator, Inc. (“MISO”) on September 30, 2026 to the September 14, 2026 Request for Rehearing and Request for Stay of the Competition Coalition and IECA.

As discussed herein, a stay is appropriate in this case because the Commission’s August 14, 2026 order, which allows several billion dollars in MISO-planned transmission to avoid the competition required by Commission and court precedent, causes irreparable harm that cannot be

¹ 18 C.F.R. §§ 385.212 and 385.213.

undone if the Commission's orders are vacated on review. At consumers' expense, the inappropriately assigned projects are racing forward toward development² notwithstanding that Commission precedent requires that those projects be competed. MISO's forty-plus qualified developers, several of which are Competition Coalition members, are deprived of the opportunity to submit proposals to develop the needed transmission. The harm to consumers from the lack of competition and the lost opportunities for qualified developers cannot be remedied if the orders are revised by the Commission on rehearing or vacated on review.

I. MOTION FOR LEAVE TO ANSWER

IECA and the Competition Coalition respectfully request leave to file this Answer to MISO's Answer. Rule 213(a)(2) generally prohibits answers to answers unless such answers have been authorized by the decisional authority.³ However, the Commission exercises its discretion to grant motions for leave to submit answers when doing so will clarify the issues, assist in the Commission's decision-making processes, or otherwise ensure an accurate and complete record.⁴

On September 14, 2026, IECA and the Competition Coalition filed a Request for Rehearing of the Commission's Order Accepting Tariff Revisions and Certificates of Concurrence, and Conditionally Accepting Cost Recovery and Funding Agreements issued on August 14, 2026 ("August 14 Order").⁵ The August 14 Order approved MISO's after-the-fact amendments to

² See *Commonwealth Edison Company Formula Rate Tariff Revisions and Request for Order Authorizing Abandoned Plant Incentive and CWIP Incentive*, Docket No. ER27-5-000 (filed Oct. 1, 2026) (seeking recovery of 100% of prudently incurred costs associated with investment if the MISO Tranche 2.1 direct assignment project is abandoned or cancelled in whole or in part for the reasons beyond the control of Commonwealth Edison).

³ 18 C.F.R. § 385.213(a)(2).

⁴ See, e.g., *PJM Interconnection, L.L.C.*, 145 FERC ¶ 61,035, at P 32 (2013); *Wisconsin Pub. Serv. Corp.*, 144 FERC ¶ 61,093, at P 27 (2013); *Iberdrola Renewables, Inc.*, 137 FERC ¶ 61,185, at P 17 (2011); *Virginia Elec. and Power Co.*, 125 FERC ¶ 61,391, at P 26 (2008).

⁵ See Order Accepting Tariff Revisions and Certificates of Concurrence, and Conditionally Accepting Cost Recovery and Funding Agreements, FERC Docket No. ER26-1538, *et al.*, (issued August 14, 2026).

MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff ("Tariff"), retroactively legitimizing MISO's decision not to subject greenfield, tie-line MISO Multi-Value Projects ("MVP Projects") to Tariff-mandated competition.⁶ The Request for Rehearing argued that the August 14 Order arbitrarily and capriciously accepted MISO's *post hoc* rationale to create a new exemption from competitive solicitations for developing the greenfield, tie-line MVP Projects at issue, contrary to the Tariff's Competitive Transmission Process,⁷ which was accepted by the Commission⁸ as MISO's compliance with Order No. 1000.⁹ Because of the irreparable harm to MISO customers and MISO-qualified developers, IECA and the Competition Coalition sought a stay of the August 14 Order.

On September 30, 2026, MISO filed an answer¹⁰ ("MISO Answer"), one day out of time, to the Request for Rehearing and Request for Stay. Although the Commission's rules prohibit answers to rehearing requests,¹¹ MISO nonetheless filed its Answer, mischaracterizing it as solely an answer to the Competition Coalition and IECA's Request for Stay. The Competition Coalition and IECA did not file a Request for Stay alone, but rather in conjunction with their Request for

⁶ Proposed Revisions to MISO Tariff to Implement Agreements with External Transmission Owners, Docket No. ER26-1538-000 (Feb. 27, 2026) ("MISO Filing"). MISO requests an effective date for its proposed changes of May 28, 2026.

⁷ Tariff, Attachment FF, VIII, Competitive Transmission Process.

⁸ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215 (2013) (FERC's first order pertaining to MISO compliance with Order No. 1000); *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,127 (2014) (FERC's second order pertaining to MISO compliance with Order No. 1000); *Midwest Independent Transmission System Operator, Inc.*, 150 FERC ¶ 61,037, at P 25 (2015) (FERC's third order pertaining to MISO compliance with Order No. 1000).

⁹ *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).

¹⁰ See Motion for Leave to File Answer One Day Out of Time and Answer of the Midcontinent Independent System Operator, Inc. in Opposition to Request for Stay of the Electricity Transmission Competition Coalition and Industrial Energy Consumers of America, FERC Docket No. ER26-1538, et al, (filed Sept. 30, 2026) ("MISO Answer").

¹¹ See 18 C.F.R. § 385.213(a)(2).

Rehearing and on the strength of that rehearing request.¹² On October 15, 2026, the Commission issued a Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, wherein the Commission indicated that the August 14 Order would be addressed in a future order of the Commission.¹³ To clarify the issues and content raised by MISO (and to be afforded an opportunity to respond to an unauthorized answer),¹⁴ the Competition Coalition and IECA, therefore, ask the Commission to consider this Answer in issuing an order in this proceeding.

II. ANSWER

A. The Competition Coalition and IECA Have Demonstrated Irreparable Harm.

In the MISO Answer, MISO incorrectly asserts that the Commission’s August 14 Order “does not create any irreparable harm,”¹⁵ and that “there is not legal or factual basis for the relief requested” by the Competition Coalition and IECA.¹⁶ MISO characterizes the Competition Coalition and IECA’s stay request as speculative, general, and failing to meet the necessary requirements.¹⁷ Not so. The Competition Coalition and IECA’s Request for Rehearing explained that, based on the Commission’s clear errors of law in the August 14 Order, justice requires a stay of the effectiveness of that Order, including the CRAF Agreements, while Commission and

¹² Section 313(c) of the Federal Power Act provides: “The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission’s order.” 16 U.S.C. § 825l(c). Therefore, IECA and the Competition Coalition expressly requested a stay in the context of their rehearing request.

¹³ See Notice of Denial of Rehearing By Operation of Law and Providing For Further Consideration, FERC Docket No. ER26-1538, *et al* (filed October 15, 2026).

¹⁴ MISO recognizes in its answer, the Commission’s rules prohibit answers to rehearing requests. See MISO Answer at FN 9; see 18 C.F.R. § 385.213(a)(2); see also 18 C.F.R. § 385.713(d)(1) (“The Commission will not permit answers to requests for rehearing”). Despite its own acknowledgment that answers to rehearing request are prohibited, MISO proceed to comment on the merits of the rehearing request: “For avoidance of doubt, MISO believes that the August 14 Order was correctly and timely decided, and the ETCC/IECA’s rehearing request, which merely restates the Movants’ previously rejected arguments and positions, is without merit.” MISO Answer at FN 9.

¹⁵ MISO Answer at 2.

¹⁶ *Id.* at 6.

¹⁷ MISO Answer at 7.

appellate review determines whether the MISO Filing, which provides the sole basis for approval of the CRAF Agreements, violates MISO's existing Tariff and the competition requirements established by the Commission in Order No. 1000 and binding appellate precedent.¹⁸

Further, if an appellate court finds that the Commission committed an error of law in approving MISO's Filing and the associated CRAF Agreements, a stay serves the public interest by protecting the ability to compete the projects that should have been competed in December 2024 upon MISO Board approval. The August 14 Order allows MISO "to exclude approximately \$1.95 billion of predominantly greenfield, Tranche 2.1 projects in Illinois and Indiana from competition, including an otherwise-competitive \$600 million greenfield transmission project in Northern Illinois, with an in-service date of June 2034."¹⁹ Pertinent to the demonstration of irreparable harm, these are projects for which MISO's forty-plus Qualified Transmission Developers would otherwise be eligible to bid. While the vast majority of the Competition Coalition's ninety-plus members are electricity consumers that are harmed by the lack of competition, three member affiliates, LS Power Midcontinent, LLC, Viridon Midcontinent LLC, and NextEra Energy Transmission Midwest, LLC ("Member Developers"), are active Qualified Transmission Developers that are eligible to participate in MISO's competitive transmission developer selection process.²⁰

The Competition Coalition's Qualified Transmission Developer members establish that the August 14 Order causes an injury that is "certain and great," as well as "actual and not

¹⁸ Request for Rehearing at 42.

¹⁹ Request for Rehearing at 42 (citing quoting ETCC/IECA Protest at 3).

²⁰ See MISO Qualified Transmission Developers, available at https://cdn.misoenergy.org/MISO_Qualified_Transmission_Developers_List82330.pdf

theoretical.”²¹ To adopt language from the D.C. Circuit Court of Appeals in a prior proceeding involving MISO Qualified Transmission Developers’ Article III standing, the Competition Coalition’s Member Developers have been “walled off from an entire category of projects” for which they are qualified, prepared, and eager to compete.²² The D.C. Circuit Court of Appeals there found that such exclusion from opportunity amounted to an injury adequate to create standing to challenge. That very same irreparable harm exists here. The Competition Coalition has identified specific projects for which its Qualified Transmission Developer members would have been eligible to submit a competitive bid but for MISO’s Tariff violation and *post hoc* designation of these projects as PJM Supplemental Projects. There is nothing speculative about the harm underlying the Competition Coalition and IECA’s request for stay. The injury is not that the Qualified Transmission Developer members *may* be deprived of a competitive opportunity; they already have been categorically excluded and, as such, denied the opportunity. This is not harm that is merely likely to occur; it is the specific intent behind MISO’s Filing, and the August 14 Order codified and ratified that harm. To prevent irreparable harm, a stay of the August 14 Order is thus required.

Throughout its answer, MISO frequently cites *Tenaska Clear Creek Wind, LLC v. Southwest Power Pool, Inc.*²³ The *Tenaska* case is distinguishable from the instant case. There, the Commission denied a request for rehearing and stay because Tenaska’s irreparable harm argument was based solely on a claim that certain facility construction costs were an expense it could not bear.²⁴ The Commission held that such economic harm, without more, is not considered

²¹ See MISO Answer at 7 (citing See *Tenaska*, 182 FERC ¶ 61,084 at P 60 (quoting from *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985)).

²² See *Coalition of MISO Transmission Customers et al., v. FERC*, 45 F.4th 1004, 1016 (D.C. Cir. 2022).

²³ See *Tenaska Clear Creek Wind, LLC*, 182 FERC ¶ 61,084 (2023) (“*Tenaska*”); MISO Answer at 6, 7, 8, 10, 11.

²⁴ *Tenaska*, 182 FERC ¶ 61,084 at P 49.

irreparable injury sufficient to support granting a stay.²⁵ Here, the Qualified Transmission Developer members suffer more than economic harm alone. Rather, they have been entirely deprived of the competitive opportunity preserved for them under the Commission’s Order No. 1000 and MISO’s tariff-established Competitive Transmission Process.²⁶ Indeed, the Commission supported Order No. 1000’s required removal of self-granted incumbent preferences based on the harm to nonincumbent developers caused by their exclusion from the opportunity to develop needed transmission. The Commission in *Tenaska* also asserted that “recoverable monetary loss may constitute irreparable harm only when the loss threatens the very existence of the movant’s business[.]”²⁷ Here, as Qualified Transmission Developers, the Qualified Transmission Developer members’ businesses existentially depend on the ability to compete for FERC-jurisdictional transmission projects. The August 14 Order excludes them from that very opportunity, which was mandated by the existing Tariff. To use MISO’s own language from the case law, the harm here is “certain and great” and “actual and not theoretical.”²⁸

MISO’s claim that a stay causes regulatory uncertainty²⁹ is misplaced because it was MISO’s actions and filing, and the August 14 Order, that created regulatory uncertainty. The existing MISO Tariff required competition for regionally planned and cost allocated projects, whether those projects are regional or interregional. MISO’s filing – occurring over a year after MISO Board approval of the projects in December 2024 – was geared to create an after-the-fact escape route from that mandated competition based on the unsupported and farcical assertion that

²⁵ *Id.*

²⁶ See MISO Tariff, Attachment FF, Section VIII.

²⁷ *Tenaska* at P 49.

²⁸ MISO Answer at 7.

²⁹ *Id.* at 6.

greenfield tie lines, with one end connected to MISO, were located in another region, but not interregional. MISO's filing and the August 14 Order punctured the existing regulatory framework and completely rewrote the Supplemental Project definition and cost allocation provisions in PJM. Thus, "regulatory uncertainty" is a product of MISO's actions and the August 14 Order. A stay merely maintains the Tariff status quo pending review.

MISO also fails to demonstrate that requesting a stay through a rehearing request is inappropriate. The D.C. Circuit Court of Appeals has previously granted a stay to ensure that an agency action did not "impose unrecoverable losses of millions of dollars."³⁰ There, the court required FERC to fulfill its basic requirement of a reasoned explanation for revoking the petitioner's authorization to sell electricity from a natural gas-fueled power plant, which was worth "millions of dollars."³¹ The D.C. Circuit further emphasized: "financial injury [can be] irreparable where no 'adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation.'"³² The Competition Coalition and IECA here request a stay of MISO's Tranche 2.1 project designations for the projects at issue in this proceeding, as the project designations similarly exclude the Qualified Transmission Developer members from nearly \$2 billion in greenfield project opportunities that would otherwise be included in MISO's competitive transmission process.

Finally, MISO's Answer actually demonstrates why a stay is appropriate in this case. MISO claims "movants and their members are free to utilize the respective PJM Transmission Owner's formal challenge process or FPA section 206 to challenge any cost inputs that they believe

³⁰ *In re NTE Connecticut, LLC*, 26 F.4th 980, 991 (D.C. Cir. 2022).

³¹ *Id.* at 987.

³² *Id.* at 990 (citing *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015)).

are excessive, imprudent or unjust and unreasonable.”³³ A formal challenge opportunity arises only after the facilities authorized by the August 14 Order are developed and in service. Those challenges allow no opportunity for the consumer members of IECA or the Competition Coalition to challenge excess rates arising from the lack of competition and certainly offer no opportunity for the Qualified Transmission Developer members to be assigned those projects. Likewise, rehearing and appellate review, not FPA section 206, are the appropriate procedural mechanisms to challenge the August 14 Order. As demonstrated above, because the PJM Transmission Owners that were improperly assigned projects as a result of the August 14 Order are actively developing those projects, a stay is the only mechanism to prevent ongoing harm to the consumer and Qualified Transmission Developer members of the Competition Coalition.

B. MISO Fails to Demonstrate Harm to Third Parties.

MISO cursorily contends there will be harm to third parties if the CRAF Agreements at issue are suspended or do not become effective.³⁴ Without explanation, MISO blankly asserts that such action will deprive “scores” of MISO customers, including Competition Coalition’s own members, of the benefits associated with timely placement of the facilities at issue.³⁵ As IECA and the Competition Coalition demonstrated in their Rehearing Request, “the in-service dates (“ISD”) for the subject projects are not until 2032 or 2033.”³⁶ MISO does not cite any specific customers and/or how they would be deprived or “benefits” for projects not expected for six or seven years.

³³ MISO Answer at 10-11.

³⁴ MISO Answer at 11.

³⁵ *Id.*

³⁶ Rehearing Request at 5.

Further, MISO ignores the lost benefits from competition, benefits that MISO details in each of its competitive selection reports.³⁷

MISO also does not demonstrate any entitlement or right of the PJM Transmission Owners to MISO planned projects paid for exclusively by MISO customers. IECA and the Competition Coalition are not challenging the need for the greenfield projects themselves as part of the Tranche 2.1 portfolio. Instead, they are challenging the means by which the projects are assigned. Competition Coalition and IECA are not, as MISO claims, “hold[ing] LRTP Tranche 2.1 hostage” through “litigation tactics.”³⁸ This is an *ad hominem* attack that MISO similarly fails to substantiate. MISO sat on its filing during “a year-long, intensive arms-length negotiation process”³⁹ for its own litigation benefit. Parties affected by MISO’s efforts to circumvent its Tariff and the Commission’s Order allowing that *post-hoc* Tariff revision are statutorily entitled to challenge FERC orders by filing rehearing requests under Section 313 of the Federal Power Act (“FPA”)⁴⁰ and are permitted to protest FPA Section 205 FERC applications.⁴¹ Here, a stay of the August 14 Order is an essential component to protecting the value of that statutory review right.

C. Granting the Request for Stay Is in the Public Interest.

Even if MISO had meaningfully substantiated its claims of third-party harm, such harm is minimal compared to the public interest concerns necessitating a stay. MISO states that the

³⁷ Here are links to a few more recent reports: [WISE Selection Report734486.pdf](#); [DZTM 345 kV Selection Report632383.pdf](#); [BECI Selection Report734487.pdf](#); and [STIW Selection Report758478.pdf](#) (last accessed Oct. 23, 2026).

³⁸ MISO Answer at 12.

³⁹ *Id.* at 4.

⁴⁰ 16 U.S.C. § 824l(b) (Review of orders); 18 C.F.R. § 385.713

⁴¹ 18 C.F.R. § 385.211.

Commission disfavors stays because they can result in regulatory uncertainty.⁴² But it is MISO's Section 205 Filing and the August 14 Order that deviated from MISO's Tariff-based process that has triggered challenges by parties seeking to protect their rights and opportunities. The existing MISO Tariff required competition for regionally planned and cost allocated projects, whether those projects are regional or interregional. MISO's filing over a year after MISO Board approval of the projects was geared to create an after-the-fact escape route from that mandated competition based on the farcical assertion that greenfield tie lines, with one end connected to MISO, were physically located in another region, but not interregional. The filing, and the August 14 Order also completely rewrote the Supplemental Project definition in PJM's Tariff and cost allocation provisions for those projects. Thus, "regulatory uncertainty" is a product MISO's actions and the August 14 Order, nothing else. A stay merely maintains the Tariff status quo ante pending review.

Moreover, uncertainty would arise if a stay is not granted and a later appeal of the August 14 Order is successful, after project construction has already begun. The practical effect of the August 14 Order and the CRAF Agreements is to grant a de-facto right of first refusal to incumbent PJM transmission owners for MISO regionally planned transmission projects whose costs are regionally allocated only to MISO customers. The Commission rejected contractually self-granted rights of first refusal as not in the public interest.⁴³ The MISO Tariff revisions in combination with the CRAF Agreements resurrects rights of first refusal, violating the Commission's prohibition on rights of first refusal in order to protect competition as it found that it was unable to ensure just and reasonable rates without that competition. Transmission competition protects consumers from

⁴² MISO Answer at 6.

⁴³ *Emera Maine v. FERC*, 854 F.3d 662, 665 (D.C. Cir. 2017); see also *MISO Transmission Owners v. FERC*, 819 F.3d 329, 333 (7th Cir. 2016)(referring to such agreements as cartel-like).

the cost excesses that arise without such competition. More regulatory uncertainty accrues in the absence of a stay, and the public interest dictates that a stay is appropriate in this instance.

III. CONCLUSION & REQUEST FOR RELIEF

WHEREFORE, the Electricity Transmission Competition Coalition and Industrial Energy Consumers of America respectfully request that the Commission grant this Motion for Leave to Answer and consider this Answer when issuing an order in this proceeding.

Respectfully submitted,

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Date: October 23, 2026

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated this 23rd day of October 2026.

/s/ Rebecca Kimmel
*Counsel to the Electricity Transmission
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