

STATE OF MICHIGAN  
IN THE SUPREME COURT  
Appeal from the Michigan Court of Appeals

*In re* RELIABILITY PLANS OF ELECTRIC  
UTILITIES FOR 2017-2021.

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ASSOCIATION OF BUSINESSES ADVOCATING  
TARIFF EQUITY,

Appellee,

v

SC: 158305  
COA: 340600  
MPSC: 00-018197

CONSUMERS ENERGY COMPANY,

Appellant,

and

MICHIGAN PUBLIC SERVICE COMMISSION,  
ENERGY MICHIGAN, INC., and MICHIGAN  
ELECTRIC AND GAS ASSOCIATION,

Appellees.

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ENERGY MICHIGAN, INC.,

Appellee,

v

SC: 158306  
COA: 340607  
MPSC: 00-018197

CONSUMERS ENERGY COMPANY,

Appellant,

and

MICHIGAN PUBLIC SERVICE COMMISSION  
and MICHIGAN ELECTRIC AND GAS  
ASSOCIATION,

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ASSOCIATION OF BUSINESSES ADVOCATING  
TARIFF EQUITY,

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SC: 158307  
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MICHIGAN PUBLIC SERVICE COMMISSION,

Appellant,

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MICHIGAN, INC., and MICHIGAN ELECTRIC AND  
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ENERGY MICHIGAN, INC.,  
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MICHIGAN PUBLIC SERVICE COMMISSION,  
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SC: 158308  
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***AMICUS CURIAE BRIEF***  
**OF THE MIDCONTINENT INDEPENDENT SYSTEM OPERATOR, INC.**

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**INDEX OF AUTHORITIES**

*Midwest Independent Transmission System Operator, Inc., 122 FERC ¶ 61,283 (2008).*

*Midwest Independent Transmission System Operator, Inc., 139 FERC ¶ 61,199 (2012).*

MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff Module E-1, Resource Adequacy.

MISO Resource Adequacy Business Practices Manual 011-Resource Adequacy.

Michigan Public Service Commission Case No. U-18197.

**INVITED AMICUS BRIEF**

The Midcontinent Independent System Operator, Inc. (“MISO”) files this *amicus curiae* brief in response to the invitation of this Court in its June 21, 2019 Order.

**STATEMENT OF BASIS OF JURISDICTION**

MISO adopts by reference the Statement of Basis of Jurisdiction contained in the brief of Appellant Michigan Public Service Commission.

**QUESTION PRESENTED FOR REVIEW**

Did the Court of Appeals err by holding that the Michigan Public Service Commission cannot impose individual local clearing requirements on alternative electric suppliers per Section 6w of Act 342 of 2016?

ANSWER: MISO does not take a position on the legal issues before this Court.

## STATEMENT OF INTEREST OF AMICUS CURIAE<sup>1</sup>

### **I. Introduction**

The Midcontinent Independent System Operator, Inc. (“MISO”) is offering this *amicus curiae* brief to provide further clarity around its resource adequacy processes, specifically whether the application of its annual Local Clearing Requirement (“LCR”) to Load Serving Entities, including Alternative Electric Suppliers, is inconsistent with the manner in which the Michigan Public Service Commission (“MPSC”) proposes to apply its forward-looking local clearing requirement. Alternative Electric Suppliers are entities that have undertaken an obligation to serve load for end-use customers, and are considered Load Serving Entities under MISO’s Tariff. Because MISO is an independent entity, it does not take a position on the legal bases for the July 12, 2018 ruling by the Michigan Court of Appeals, nor does MISO advocate for a particular outcome before the Supreme Court of Michigan. As an independent Regional Transmission Organization, MISO is not interpreting state law or any regulatory order issued by a state agency. However, to the extent that the Michigan Court of Appeals’ decision is based on an interpretation of MISO’s resource adequacy requirements, MISO seeks to clarify the record to be reviewed by the Supreme Court of Michigan.

### **II. MISO's resource adequacy processes recognize and complement state resource adequacy processes**

As noted in MISO’s initial brief,<sup>2</sup> MISO’s Tariff recognizes and accounts for the independent authority of the states with respect to resource adequacy. The resource adequacy

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<sup>1</sup> Quarles & Brady LLP authored this *amicus curiae* brief in whole, and did not make a monetary contribution intended to fund the preparation or submission of the brief. No monetary contributions intended to fund the preparation or submission of the brief were made by any parties required to be identified under Michigan Court Rule 7.212(H)(2).

<sup>2</sup> MISO *Amicus Curiae* Br. at 2-5.

provisions of its Tariff require MISO to take account of state initiatives in its resource adequacy and market processes. *See* MISO Tariff Module E-1, Section 68A. Specifically, MISO's resource adequacy and market mechanisms should neither affect nor alter state actions over entities under state jurisdiction. *Id.* Therefore, MISO's resource adequacy processes are complementary to the resource adequacy mechanisms of the states.

Among its many other functions relating to the conduct of its annual Planning Resource Auction, MISO conducts an annual transfer analysis study to determine how much capacity may be reliably imported into each Local Resource Zone. As part of this analysis, MISO considers the ability to both import generation into, and export generation from, the Local Resource Zone from areas outside of that Zone. The results of this study are used to establish annual Local Clearing Requirements for each Local Resource Zone. *See* MISO Tariff Module E-1 at 68A.6. Local Clearing Requirements thus reflect the minimum amount of resources that must be located in the Local Resource Zone each MISO Planning Year in order to meet system reliability standards. For Load Serving Entities (including Alternative Electric Suppliers) that elect to purchase capacity through MISO's Planning Resource Auction, MISO's auction clearing process ensures that the sum of capacity purchased within a Local Resource Zone is greater than or equal to the Local Clearing Requirement.<sup>3</sup> Importantly, the Local Clearing Requirement established by MISO establishes a constraint imposed on all Load Serving Entities under MISO's *annual* resource adequacy market design.

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<sup>3</sup> Load Serving Entities (including Alternative Electric Suppliers) that elect to utilize a Fixed Resource Adequacy Plan must designate a sufficient volume of resources located in the same Local Resource Zone to meet the Local Reliability Requirement. *See* MISO Resource Adequacy Business Practices Manual at Section 5.3. The amount of resources that must be sourced from within a Local Resource Zone to satisfy the Local Clearing Requirement is equal to the load ratio share of the Load Serving Entity's Planning Reserve Margin Requirement, multiplied by the total Local Clearing Requirement for the Local Resource Zone. *Id.*

### III. The MPSC's forward Local Clearing Requirement does not conflict with MISO's annual Local Clearing Requirements

In its July 12, 2018 ruling, the Court of Appeals stated that: “[A] review of the entire statute suggests that the MPSC is obligated to apply the local clearing requirement in a manner consistent with MISO.”<sup>4</sup> The Court further stated that:

[Section] 6w(6) [of MCL 460] constrains the MPSC from assessing any capacity charge in a manner “that conflicts with a federal resource adequacy tariff, when applicable,” and § 6w(8)(c) requires that the MPSC set any planning reserve margin or local clearing requirements “consistent with federal reliability requirements.” These provisions militate against the MPSC’s imposition of any local clearing requirements beyond what MISO has established and instead impose on the MPSC a continuing obligation to observe MISO’s general practice of imposing local clearing requirements on a zonal, not an individual, basis. Thus, reading MCL 460.6w as a whole indicates that the MPSC must impose a local clearing requirement on alternative electric suppliers in a manner consistent with MISO—that is, on a zonal basis and not individually.<sup>5</sup>

Thus, the Court, in part, based its determination on whether the MPSC's application of its statutory authority was consistent with the requirements established by MISO.

MISO wishes to clarify for this Court that it perceives no conflict between MISO’s *annual* Local Clearing Requirement (which is generally imposed on Load Serving Entities, including Alternate Electric Suppliers on an aggregate basis) and the proposed *forward* local clearing requirement (to be applied on an individual Alternate Electric Supplier in order to meet the State of Michigan’s four-year forward state reliability mechanism). By their very nature, MISO’s resource adequacy requirements and the Michigan state reliability mechanism are designed to meet separate but complementary goals. MISO’s construct is designed to ensure

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<sup>4</sup> Court of Appeals opinion at 10.

<sup>5</sup> *Id.* at 11.



resource adequacy on an *annual* basis, while further taking into consideration the need to ensure that local requirements are being met. The Michigan state reliability mechanism, on the other hand, is intended to ensure that resource adequacy needs are being met over a longer, four-year forward, basis. For purposes of meeting these needs, the MPSC has determined it is necessary and appropriate to require Alternate Electric Suppliers to demonstrate they meet their forward-looking Local Clearing Requirement on an individual, rather than an aggregate, basis. This MPSC requirement, however, does not conflict with MISO's requirements; an Alternate Retail Supplier in Michigan can simultaneously meet *both* of its obligations.

As noted in MISO's initial brief, an Alternate Retail Supplier that decides to meet its MISO annual resource adequacy requirements by submitting a Fixed Resource Adequacy Plan must designate a sufficient volume of resources located in the same Local Resource Zone to meet the Local Reliability Requirement. *See* MISO Resource Adequacy Business Practices Manual at Section 5.3. The amount of resources that must be sourced from within a Local Resource Zone to satisfy the Local Clearing Requirement is equal to the load ratio share of the Load Serving Entity's Planning Reserve Margin Requirement ("PRMR"), multiplied by the total Local Clearing Requirement for the Local Resource Zone. *Id.* These MISO requirements are substantially the same as those that the MPSC is proposing to apply, further demonstrating the consistency between them.

Moreover, MISO perceives no conflict between the proposed state resource adequacy local clearing requirement and federal resource adequacy requirements established in the MISO Tariff. In MISO's footprint, where vertically-integrated utilities and cost-of-service regulation predominate, resource adequacy is primarily a state responsibility. Federal Energy Regulatory Commission ("FERC") precedent recognizes state authority to ensure the safety, adequacy, and

reliability of electric service within a state's jurisdiction.<sup>6</sup> For the MISO footprint, FERC has rejected the notion of a one-size fits all approach to addressing resource adequacy.<sup>7</sup>

Conversely, MISO notes the coordination between it and the MPSC, both generally and as part of the implementation requirements associated with the state reliability mechanism. Specifically, MCL 460.6w(8)(c) requires the Commission to work with MISO in setting the LCR and PRMR:

In order to determine the capacity obligations, request that the appropriate independent system operator provide technical assistance in determining the local clearing requirement and planning reserve margin requirement.

Likewise, Section 6w(8)(d) requires the MPSC to ask for MISO's technical assistance to "determine if resources put forward will meet such federal reliability requirements." As noted by the Michigan PSC in its September 15, 2018 Order in Case No. U-18197,<sup>8</sup> the MPSC requested and received MISO's technical assistance to "determine[e] the PRMR and LCR for purposes of determining capacity obligations," and it requested "continued technical assistance from MISO, the applicable independent system operator, to assist with determining whether resources meet federal reliability requirements as part of the Section 6w capacity demonstration review process."<sup>9</sup> The Commission directed Staff to "coordinate with MISO accordingly."<sup>10</sup> Such communication and coordination between the MPSC and MISO further helps ensure consistency between the requirements being established by the two organizations.

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<sup>6</sup> *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,283, at P 52 (2008).

<sup>7</sup> *Midwest Independent Transmission System Operator, Inc.*, 139 FERC ¶ 61,199, at P 38 (2012). FERC also recognizes that MISO is different from other RTOs that consist of predominately retail choice jurisdictions. *Id.*

<sup>8</sup> See <https://mi-psc.force.com/sfc/servlet.shepherd/version/download/068t0000001UVSoAAO>.

<sup>9</sup> *Id.* at pp. 48 – 49.

<sup>10</sup> *Id.* at p. 49.

MISO reiterates the deference that is paid to the states that may choose to apply different resource adequacy requirements than those applied under the MISO Tariff. *See* MISO Tariff Module E-1, Section 68A. Where, as here, the MPSC has chosen to impose a state resource adequacy requirement that is complementary to that required by the MISO Tariff, MISO defers to the state with respect to how it chooses to implement its state reliability mechanism, consistent with its FERC-accepted Tariff and FERC precedent.

#### **IV. Conclusion**

MISO appreciates the opportunity to provide clarity around its resource adequacy processes and how these processes relate to Load Serving Entities and Alternative Electric Suppliers in the State of Michigan.

WHEREFORE, MISO respectfully requests that this Court consider the issues discussed above.

Respectfully submitted,

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