UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

LSP TRANSMISSION HOLDINGS II, LLC, LS POWER MIDCONTINENT, LLC, CENTRAL TRANSMISSION, LLC, and LS POWER GRID DRS HOLDINGS, LLC	)	
Complainants	)	Docket No. EL25-55-000
v.	)	
MIDCONTINENT INDEPENDENT SYSTEM OPERATOR, INC.	)	

Respondent

COMMENTS OF THE INDUSTRIAL ENERGY CONSUMERS OF AMERICA, THE COALITION OF MISO TRANSMISSION CUSTOMERS, THE RESALE POWER GROUP OF IOWA, AND THE WISCONSIN INDUSTRIAL ENERGY GROUP IN SUPPORT OF THE COMPLAINT AND REQUEST FOR EXPEDITED RULING

Pursuant to the Federal Energy Regulatory Commission's ("Commission") Rules of Practice and Procedure and the Commission's Combined Notice of Filings #1 issued on February 5, 2025, the Industrial Energy Consumers of America ("IECA"), the Coalition of MISO Transmission Customers ("CMTC"), the Resale Power Group of Iowa ("RPGI"), and the Wisconsin Industrial Energy Group ("WIEG"), (collectively, "Consumer Alliance") hereby submit these comments in support of the above referenced complaint requesting fast track processing ("Complaint") and filed by LSP Transmission Holdings II, LLC, LS Power Midcontinent, LLC, Central Transmission, LLC, and LS Power Grid DRS Holdings, LLC (collectively, "LS Power" or "Complainants") against the Midcontinent Independent System

Operator ("MISO"). The Consumer Alliance respectfully asks this Commission to expeditiously grant this Complaint by March 11, 2025 prior to MISO's next board meeting.

I. BACKGROUND

A. The Consumer Alliance's Interest in This Proceeding.

The Consumer Alliance's members consume large amounts of electricity throughout MISO's footprint and pay electric transmission rates that are charged by the MISO transmission owners. Every day, Consumer Alliance members experience first-hand the economic consequences of regulatory failures to maximize competition and establish conditions that facilitate the provision of electric service at least reasonable cost. Consumer Alliance members have strongly supported the Commission's competition initiatives arising out of Order No. 1000.[1] Several Consumer Alliance members also actively participate in the Electricity Transmission Competition Coalition,[2] which has advocated for competition in Commission proceedings[3] and before legislators and policy decision-makers. Consumer Alliance members all have facilities in the MISO North/Central region and will pay the costs of the Indiana-based Multi-Value Project ("MVP") charges that are cost allocated regionally across MISO North/Central pursuant to Attachment MM (MVP Charge) of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff ("Tariff").

[1] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000 at PP 332, 335, FERC Stats. & Regs. ¶ 31,323 (2011) ("Order No. 1000"), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132 ("Order No. 1000A"), *order on reh'g*, 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) ("Order No. 1000").

[2] The Electricity Transmission Competition Coalition's web site is available here: ETC Coalition – ETC Coalition (electricitytransmissioncompetitioncoalition.org) (last accessed Feb. 24, 2025).

[3] *See, e.g.*, "Comments of the Electricity Transmission Competition Coalition," *Building for the Future Through Regional Transmission Planning and Cost Allocation and Generation Interconnection*, Docket No. RM21-17-000 (filed Oct. 12, 2021).

1. ***Industrial Energy Consumers of America.*** IECA is a nonpartisan association of leading manufacturing companies with $1.3 trillion in annual sales, over 12,000 facilities nationwide – and with more than 1.9 million employees. IECA was founded on the belief that a robust, diverse and affordable supply of energy is required to sustain economic growth, quality of life for our citizens, and the competitiveness of industry. IECA promotes the interests of manufacturing companies through advocacy and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA membership represents a diverse set of industries including: defense industries, chemicals, plastics, steel, iron ore, aluminum, paper, food processing, fertilizer, insulation, glass, industrial gases, pharmaceutical, consumer goods, building products, automotive, independent oil refining, and cement all of which use tremendous amounts of electricity in their industrial processes. IECA has members in every state, including Indiana. Most IECA member companies are energy intensive trade exposed, which means that relatively small increases in the price of electricity can have relatively high negative impacts to their global competitiveness – directly impacting jobs and investment. The industrial sector's ability to maintain and reshore jobs and increase U.S. investment is tied directly to electricity costs. IECA companies compete directly with China state owned enterprises whose electricity prices are subsidized by their government. Manufacturers open, close, and relocate their businesses due in large part to the cost of energy and the regulatory environment of a particular area.

2. ***Coalition of MISO Transmission Customers.*** CMTC members are also being deprived of the benefits of competition for the development and ownership of MISO Long-Range Transmission Plan ("LRTP") projects and the loss of efficiencies, innovation, and cost containment strategies delivered through competitive solicitation. CMTC members support vibrant competition, including in the development of new transmission projects that can provide substantial and proven cost savings to consumers. CMTC has actively supported competition for transmission projects within the MISO stakeholder process, before FERC, and in United States Courts of Appeals and Supreme Court. Incumbent preferential and right of first refusal ("ROFR") laws adopted by states in the MISO region prevent the efficiency and price-lowering benefits of competition for transmission projects. CMTC's members include manufacturers and other energy-intensive consumers. Increased energy costs impair CMTC members' competitiveness and have directly contributed to elevated risks of facility closures and job losses.

3. ***Resale Power Group of Iowa.*** RPGI is a special-purpose governmental entity organized in 1986 pursuant to Iowa law to purchase electric supply, transmission, and related services as agent for its members. RPGI's members are 24 Iowa municipal utilities, one cooperative, and one privately-owned utility that (with one exception)[4] are exempt from the Commission's jurisdiction under Section 201(f) of the Federal Power Act.[5] RPGI is legally separate and fiscally independent from other state and local governmental entities.

The electric transmission rates paid by most RPGI members are determined primarily according to the Network Integration Transmission Service ("NITS") Schedule 9 formula rate for ITC Midwest set forth in MISO's OATT.[6] RPGI's members that do not receive NITS from ITC Midwest purchase that service from MidAmerican Energy Transmission Company at rates that are

[4] The Amana Society Service Company is a small transmission-dependent electric utility that is privately owned by the Amana Society and provides service only to retail customers within the service territory of the Amana Society in Iowa. Its current annual sales are 81,000 MWh and its peak load is 13 MW. Because of its size, it is not subject to rate regulatory authority of the Iowa Utilities Board.

[5] 16 U.S.C § 824f.

[6] These members pay ITC Midwest's Joint-load Zonal rate, which is slightly lower than the ITC Midwest-only NITS rate. The zonal rate is an average rate that is calculated based on a weighted average of the NITS rates of ITC Midwest and seven small transmission utilities that are in the ITCM Transmission Joint-load Rate Zone. The ITC Midwest-only rate represents approximately 85% of the Joint-load Rate Zone.

a relatively small fraction of ITCM's NITS rates. Other RPGI members located outside MISO are pseudo-tied into MISO where they purchase MISO Schedule 7 Point to Point ("PTP") transmission service. Over the past 15 years, RPGI's members have experienced staggering increases in transmission rates that have eliminated any benefit of reduced purchased power costs or congestion relief from new infrastructure projects and have created such significant rate disparities among Iowa transmission providers that some members have bypassed ITC Midwest's system, choosing to incur significant new interconnection facility costs rather than continuing to pay ITC Midwest's higher rates.

4. ***Wisconsin Industrial Energy Group.*** WIEG is a voluntary member association consisting of large industrial and commercial customers in the State of Wisconsin, including manufacturing industries in paper, printing, malting, automobile, food processing, chemical, metal casting, and fabricating. WIEG members collectively employ roughly 35,000 people in Wisconsin and consume 5.3 billion kilowatt-hours of electricity each year. Electric transmission charges paid by most WIEG members are passed through by transmission dependent utilities via formula rate schedules for American Transmission Company LLC in MISO's FERC-jurisdictional tariff. Transmission dependent utilities also pass through transmission costs of projects that are cost shared throughout the MISO region. WIEG is very concerned about affordability and the impact the rising trend in transmission costs will have on customers. WIEG strongly opposed the Wisconsin legislation proposing preferential rights for incumbent utilities during the 2021-2022 and 2023-24 legislative sessions.

B. MISO Tranche 2.1, the Competitive Transmission Process in MISO Attachment FF, and MISO's Application of the Indiana Legislation

On December 12, 2024, MISO approved a $30 billion annual plan, the largest portfolio of transmission projects in the nation's history.[7] The 2024 plan[8] includes Tranche 2.1, a $21.8 billion investment for 24 Multi-Value Projects that will be cost allocated throughout the MISO north/central region, including more than a billion dollars in projects that connect to Indiana incumbent utility facilities ("Indiana Projects").[9] MISO's actions with respect to the Indiana Projects are the subject of the instant Complaint.

Although competition for the development of the Indiana Projects is the default rule under MISO's Tariff, Attachment FF authorizes MISO to invoke one of three exceptions to the Competitive Transmission Process: 1) State or Local Rights of First Refusal (Section VIII.A.1); 2) Upgrades to Existing Transmission Facilities; and 3) Immediate Need Reliability Projects (Section VIII.A.3). The Consumer Alliance has expressed longstanding concerns that MISO's application of these exceptions continue to dwarf the rule, thereby removing the only effective mechanism of cost discipline for transmission projects in MISO's Tariff – the Competitive Transmission Process. Here, MISO invoked the Indiana House Enrolled Act 1420, Ind. Code § 8-1-38-9 ("HEA 1420") to indicate assignment of the Indiana Projects to the incumbent utilities, thereby bypassing the Competitive Transmission Process, even though enforcement of HEA 1420 was preliminarily enjoined and being litigated at the Seventh Circuit Court of Appeals.

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[7] "MISO Board Approves Historic Transmission Plan to Strengthen Grid Reliability," MISO (Dec. 12, 2024), *available at* https://www.misoenergy.org/meet-miso/media-center/2024/miso-board-approves-historic-transmission-plan-to-strengthen-grid-reliability/ (last accessed Feb. 24, 2025).

[8] *See* MTEP24 Report, *available at* https://cdn.misoenergy.org/MTEP24 Full Report658025.pdf (last accessed Feb. 24, 2025) (hereinafter "MTEP24 Report").

[9] *See* "Long Range Transmission Planning: Tranche 2.1 – Approved") *available at* https://www.misoenergy.org/planning/long-range-transmission-planning/ (last accessed Feb. 24, 2025).

II. COMMENTS IN SUPPORT OF COMPLAINT

A. The Billions of Dollars in Planned Spending on Electric Transmission Projects in the MISO Region Obligates the Commission to Maximize Transmission Competition, Where Possible, To Ensure Just and Reasonable Rates for Consumers.

As the Commission knows, utilities have been substantially increasing their spending on electric transmission,[10] nearly tripling total spending from 2003 to 2023.[11] Transmission developers invested approximately $20-$25 billion annually in transmission facilities in the United States from 2013-2020.[12] In Order No. 1920, the Commission found that "transmission investment is likely to substantially increase in coming years"[13] and there will be "**sustained transmission spending through at least 2050**."[14] Transmission costs have become an increasing share of customers' overall electricity bills, underscoring the importance of ensuring that transmission investments are efficient and cost-effective.[15] And MISO is spending faster and more robustly than other RTOs and ISOs, having approved $10.30 billion in LRTP Tranche 1[16] in July 2022, a $9 billion transmission plan in December 2023, and the record-breaking $30 billion in December

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[10] "Utilities continue to increase spending on the electric transmission system," U.S. Energy Information Administration (Sep. 30, 2021), available at https://www.eia.gov/todayinenergy/detail.php?id=47316 (last accessed Feb. 24, 2025).

[11] "Grid infrastructure investments dive increase in utility spending over the last two decades," U.S. Energy Information Administration (Nov. 18, 2024), *available at* https://www.eia.gov/todayinenergy/detail.php?id=63724 (last accessed Feb. 24, 2025).

[12] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, FERC Order No. 1920, 187 FERC ¶ 61,068 at P 46, 89 Fed. Reg. 49,280 (June 11, 2024) ("Order No. 1920").

[13] Order No. 1920 at P 93.

[14] *Id.* at P 93 (emphasis added).

[15] Order No. 1920 at P 92.

[16] MISO Draft MTEP21, Chapter 3, at 6, available at MTEP21 Addendum-LRTP Tranche 1 Report with Executive Summary625790.pdf (last accessed Feb. 24, 2025). Of the $10.3 billion in planned investment, only about $1 billion was subjected to a competitive solicitation process due to MISO's application of the state ROFR/preference law and upgrade exemptions. "Competitive Transmission Update," MISO, the System Planning Committee of the Board of Directors (June 15, 2022) at Slides 2,5, *available at* Current and Emerging Technologies Update (misoenergy.org) (last accessed Feb. 24, 2025).

2024, including $21 billion in long-range projects in Tranche 2.1.[17] Given the absence of any other effective cost containment mechanisms, maximizing opportunities for transmission competition is vital to protecting consumers and ensuring just and reasonable rates.

Granting this Complaint – which demonstrates a straightforward tariff violation – gives the Commission an opportunity to demonstrate to consumers and the regulated community that, at an all-time high of electric transmission spending, including the recent authorization of $30 billion in transmission project spending by MISO on December 12, 2024, the Commission is taking some action to fulfill its statutory mandate under the Federal Power Act to protect consumers from excessive rates and charges.[18]

B. MISO Violated Its Tariff By Failing to Account for the Preliminary Injunction Staying Enforcement of HEA 1420.

HEA 1420 is designed to circumvent the Competitive Transmission Process in the MISO Tariff to insulate incumbent transmission owners from competition and to provide those incumbent transmission owners with an automatic right to claim the rights to develop, own, and construct interstate transmission projects that are cost allocated beyond the State of Indiana to consumers in states throughout the MISO north/central region.

On October 2, 2024, Complainants filed a complaint in federal district court in Indiana, challenging the legality of HEA 1420 and seeking injunctive relief against enforcement of HEA 1420. On December 6, 2024, the federal district court granted a preliminary injunction ("Preliminary Injunction") that first stayed enforcement of HEA 1420. On December 12, 2024, the Seventh Circuit Court of Appeals, in response to the December 11, 2024 emergency request

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[17] *See* MTEP24 Report.

[18] *NextEra Energy Res. v. FERC*, 898 F.3d 14, 21 (D.C. Cir. 2018); *Xcel Energy Services v. FERC*, 815 F.3d 947, 952-53 (D.C. Cir. 2016).

by the Indiana incumbent utilities, stayed the Preliminary Injunction. Also on December 12, 2024, the MISO Board approved MISO's LRTP Tranche 2.1, including the Indiana Projects. After argument and briefing, on January 12, 2025, the Seventh Circuit Court of Appeals lifted the December 12, 2024 stay, allowing the Preliminary Injunction – halting the enforcement of HEA 1420 – to be reinstated.[19]

The Preliminary Injunction remains in effect. Yet, on January 22, 2024, MISO filed an *amicus curiae* brief with the Seventh Circuit, taking the position that the Preliminary Injunction does not preclude MISO from assigning the Indiana Projects to the Indiana incumbent utilities.[20] Of note, MISO asserts, without any citation to any authority or rationale, that "MISO's Tariff continues to compel MISO to give effect to HEA 1420"[21] even though HEA is currently enjoined and even if HEA 1420 is permanently rendered invalid.[22] Therefore, MISO has informed the regulated community indirectly through its *amicus curiae* brief that MISO has already assigned or will assign the Indiana Projects to the Indiana incumbent utilities.

MISO has violated its Tariff because it has taken the untenable, absolute position that MISO is wholly justified in applying legislation that is not legally effective to preclude initiation of the default rule in Attachment FF, Section VIII.A., the Competitive Transmission Process. Tariff Attachment FF contains three exceptions to the Competitive Transmission Process: 1) a duly promulgated State ROFR Law; 2) an Upgrade; and 3) an Immediate Need. MISO's Tariff does not authorize MISO to give effect to a law whose enforcement has been enjoined. MISO is

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[19] *See* Complaint at 18-19.

[20] *See* Complaint, Attachment 1 (MISO *Amicus Curiae* Brief) at 14-15 (contending that the Preliminary Injunction has no legal impact on MISO), 16- (contending the Preliminary Injunction does not alter HEA 1420 as being an Applicable Law authorizing the Indiana Projects for the Indiana incumbent utilities).

[21] Complaint, Attachment 1 (MISO *Amicus Curiae* Brief) at 16.

[22] Complaint, Attachment 1 (MISO *Amicus Curiae* Brief) at 19 (contending that MISO is obligated to give effect to HEA 1420

not permitted to invoke the State ROFR Law exception in its Tariff because HEA 1420 is not legally in effect, and therefore, HEA 1420 is not a duly promulgated, Applicable Law at this time. Notably, the Tariff's definition of Applicable Laws and Regulations is broad and requires consideration of all legally relevant actions:

> ***Applicable Laws and Regulations:*** All duly promulgated **applicable federal**, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, **directives**, or **judicial** or administrative **orders**, permits and other duly authorized actions of any Governmental Authority having jurisdiction over the Parties, their respective facilities and/or the respective services they provide.[23]

As to canons of construction and matters of statutory interpretation, context matters, and the entire legal context regarding the status of HEA 1420 must be evaluated. MISO cannot isolate HEA 1420 and apply HEA 1420 in a vacuum as an Applicable Law as though HEA 1420 was never challenged in court and never subjected to a Preliminary Injunction. Rather, to the extent that HEA 1420 is an Applicable Law, then so too are any applicable federal directives and federal judicial orders pertaining to the legal effect of HEA 1420. Notably, HEA 1420 is not just under question in litigation and currently being challenged; the legal effect and enforcement of HEA 1420 has been stayed. When reasonably interpreting and applying its Tariff to determine whether or not a particular state or local law is an Applicable Law granting a right of first refusal, MISO must account for the entire legal context surrounding the application of the law or legislation in question. When analyzing and interpreting a statute, one must evaluate whether the statute in question is good law and whether any judicial decisions impact and guide one's evaluation of that statute.[24]

MISO's determination that the Preliminary Injunction is entirely irrelevant is unjust and

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[23] MISO Tariff, Module A (Common Tariff Provisions) (Definitions – A) (emphasis added).

[24] *See* "A Guide to Reading, Writing and Interpreting Statutes, the Georgetown University Law Center (2017), *available at* A Guide to Reading, Interpreting and Applying Statutes (last accessed Feb. 24, 2025).

unreasonable, thereby giving rising to MISO's Tariff violation. It is of no moment that MISO is not a party to the underlying litigation concerning HEA 1420 or directly subject to any court order, including the Preliminary Injunction.[25] The Preliminary Injunction is relevant to MISO because, had MISO considered the Preliminary Injunction in MISO's statutory analysis and application of HEA 1420, MISO would not have been able to reach the conclusion that HEA 1420 is an Applicable Law because HEA 1420 currently has no legal effect as a result of the Preliminary Injunction. Accordingly, when the Preliminary Injunction is considered, it becomes clear that, because HEA 1420 is not legally effective, HEA 1420 is not an Applicable Law. **Because HEA 1420 cannot be applied and enforced, HEA 1420 is not an Applicable Law. It's not that complicated**.

The Complaint ably demonstrates that a preliminary injunction has the same force and effect as a permanent injunction. The Consumer Alliance emphasizes the importance of an injunction – both at its preliminary and final stage – to protecting a party against irreparable harm. Federal Courts have long characterized the goal of a preliminary injunction as preservation of the *status quo* until a court makes a final decision on the merits.[26] Additionally, Courts have held that a preliminary injunction, despite its temporary nature, carries the full force of a permanent injunction during its effective period.[27] A preliminary injunction is generally effective

[25] To help preserve the rule of law, all persons and non-parties must recognize the legal effect of a preliminary injunction, even if the preliminary injunction does not issue a directive to that particular person or entity. MISO's application of its Tariff undermines the rule of law because MISO's failure to account for the Preliminary Injunction disregards the purpose of the Preliminary Injunction – the prevention of irreparable harm to the litigant that has obtained the injunction. *See* Complaint at 3 (alleging substantial harm due to MISO's Tariff violation to prevent the application of the Competitive Transmission Process for over $1 billion in interstate transmission projects originating at facilities in Indiana).

[26] *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981); A*cierno v. New Castle Cnty.*, 40 F.3d 645, 647 (3d Cir. 1994).

[27] *See Paschall v. Kansas City Star Co.*, 441 F. Supp. 349, 355 (W.D. Mo. 1977).

until the trial on the merits concludes or the matter is dismissed.[28] Thus, the preliminary injunction here remains in full effect, and MISO must account for it.

Courts often employ the canon of statutory interpretation that exceptions to a general proposition should be construed narrowly.[29] In a provision where a general provision is qualified by an exception, courts practice the habit of reading the exception narrowly in order to preserve the primary operation of the provision.[30] The United States Supreme Court has even held that extending an exemption too broadly is to abuse the interpretive process and frustrate the will of the people.[31] Here, MISO's invocation of the State ROFR law exception to bypass the default rule for competition – despite the existence of the Preliminary Injunction – is an overbroad and unsupported application of the exception to nullify the main rule.

MISO's Tariff does not delineate the timing by which MISO effectuates assignment of projects that are approved in an LRTP. The details and decision-making process by MISO as to such project assignment, such as whether and how exceptions to the Competitive Transmission Process will be applied, remain fairly non-transparent.[32] But MISO has made it clear that it will assign the Indiana Projects to the incumbent utilities, despite HEA 1420 not currently having the force of law. MISO's actions are unjust and unreasonable because there is no Tariff basis supporting its application of HEA 1420 to preclude the Competitive Transmission Process.

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[28] *See Cypress Barn, Inc. v. W. Elec. Co.*, 812 F.2d 1363, 1364 (11th Cir. 1987); *Venezia v. Robinson*, 16 F.3d 209, 211 (7th Cir. 1994).

[29] *See In re Woods*, 743 F.3d 689, 699 (10th Cir. 2014).

[30] *See Comm'r v. Clark*, 489 U.S. 726, 739 (1989)

[31] *See A.H. Phillips, Inc. v. Walling*, 324 U.S. 490, 493 (1945).

[32] *See* Complaint at 4, 7, 39 (highlighting lack of clarity as to formal assignment of Tranche 2.1 projects). For LRTP Tranche 1, MISO eventually posted a spreadsheet on its website showing the formal assignment of Tranche 1 projects. No such spreadsheet effectuating assignment of Tranche 2.1 projects is posted to MISO's website, as of February 23, 2025.

Further, no compelling circumstances obligate MISO to render a final interpretation and application of its Tariff when and in the manner that it did. The Indiana Projects have in-service dates of 2032-2034[33] and the Seventh Circuit Court of Appeals appears to be on a fast track to adjudicate the Preliminary Injunction and status of HEA 1420. The Complaint should be granted and MISO should be directed to recognize the legal effect of federal court injunctions that directly implicate the application of MISO's Tariff.

C. MISO Unduly Discriminated Against Competitive Transmission Developers in Favor of Incumbent Transmission Owners Without Justification

A FERC-regulated public utility may not "grant any undue preference or advantage" "with respect to any transmission or sale subject to" FERC's jurisdiction.[34] The Federal Power Act only prohibits "undue" discrimination.[35] Undue discrimination arises when similar classes or groups that are similarly situated are treated differently without justification.[36]

In Order No. 1000, the Commission sought to establish a level playing field between incumbent utilities and non-incumbent transmission developers for purposes of the development regional transmission projects in an RTO/ISO's regional transmission plan subject to regional cost allocation. The Commission held that "a nonincumbent transmission developer of a transmission facility selected in the regional transmission plan for purposes of cost allocation have the same opportunity as an incumbent transmission developer to allocate the cost of such transmission facilities through a regional cost allocation method or methods."[37] Therefore, for purposes of the Attachment FF Competitive Transmission Process, incumbents and non-

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[33] *See* MTEP24 Report at p. 162.

[34] 16 U.S.C. § 824d(b).

[35] *See N.J. Bd. of Public Utilities v. FERC*, 744 F.3d 74, 106 (3d Cir. 2014).

[36] *See Dynegy Midwest Generation v. FERC*, 633 F.3d 1122, 1125-1129 (D.C. Cir. 2011).

[37] Order No. 1000 at PP 332, 335.

incumbents are similarly situated at the outset (prior to application of any exceptions to the Competitive Transmission Process) – both entities undergo an approval process to become Qualified Transmission Developers and are provided an opportunity to compete for regional transmission projects that are regionally cost allocated and included in Appendix A of MISO's Transmission Expansion Plan.[38] MISO publishes its list of Qualified Transmission Developers, which includes incumbents and non-incumbents.[39] Both incumbents and non-incumbents must undergo a substantial prequalification process to be certified by MISO as an Attachment FF Qualified Transmission Developer.[40] To remain qualified, each Qualified Transmission Developer must recertify every second calendar year.[41] Additionally, Qualified Transmission Developers are subject to several general requirements outlined in Section VIII.B.4 in Attachment FF. And so incumbents and non-incumbents are similarly situated.

The exceptions in Attachment FF Section VIII.A. do discriminate against non-incumbents by preventing them from competing to build projects 1) subject to a State ROFR law (Section VIII.A.1.); 2) that fall within the definition of Upgrades to Existing Transmission Facilities (Section VIII.A.1); and 3) Immediate Need Projects (Section VIII.A.3.). A valid exception provides justification to discriminate.[42] Here, MISO had no justification to discriminate because MISO should have never applied the State ROFR law exception. MISO's application of its

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[38] *See* Attachment FF at Section VIII.

[39] *See* https://cdn.misoenergy.org/MISO%20Qualified%20Transmission%20Developers%20List82330.pdf (last accessed Feb. 15, 2025).

[40] *See* Attachment FF at Section VIII.B.2. (Prequalification Process).

[41] Attachment FF at Section VIII.B.3. (Biennial Recertification Process).

[42] The Consumer Alliance recognizes that certain instances may require the application of the Upgrade and Immediate Need exemptions, and that the validity of the ROFR Law exception is subject to a pending complaint in Docket No. EL22-78. For purposes of these comments, the Consumer Alliance will not weigh on these exceptions other than to note that the application of these exceptions is prone to abuse, to the detriment of the Competitive Transmission Process and ensuring the most efficient, cost-effective projects for consumers.

Tariff directly and unduly discriminated against any potential non-incumbent transmission developers interested in competing for the Indiana Projects *without justification* because there exists no Tariff basis for MISO's determination that HEA 1420, which is preliminary enjoined, is an Applicable Law under Section VIII.A.1. As a result, MISO unduly discriminated against a class of non-incumbent competitive transmission developers and specifically against the Complainants (to whom MISO was aware of their complaint alleging irreparable harm).[43]

Questions around undue discrimination raise questions as to MISO's independence and compliance with 18 CFR § 35.34(j)(1) requiring a regional transmission organization to ensure its decision-making process is "is independent of control by any market participant or class of participants,"[44] *i.e.*, the incumbent Indiana utilities that helped form MISO by transferring the operational control of their transmission assets to MISO. Importantly, though, to grant this Complaint, the Commission just needs to find that MISO violated the plain language in the Tariff by not accounting for the Preliminary Injunction. The Consumer Alliance highlights these issues regarding undue discrimination and independence to further support the gravity and clarity of MISO's Tariff violation, and the need for the Commission to expeditiously step in to grant the Complaint and issue any necessary directives to MISO.

III. CONCLUSION

WHEREFORE, the Consumer Alliance respectfully requests that, because MISO has violated Tariff Attachment FF, Section VIII.A, the Commission issue an order granting the Complaint and any necessary relief as expeditiously as possible.

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[43] The minutes for the December 11, 2024 MISO Advisory Committee meeting show that MISO was aware of the civil litigation regarding HEA 1420 and was evaluating the impact of that litigation on MISO. *See* December 11, 2024 Advisory Committee Minutes, Section 1.d (Legal Update), *available at* 20250205 AC Item 01c Minutes 20241211667826.pdf (last accessed Feb. 24, 2025).

[44] 18 CFR § 35.34(j)(1)(ii).

Respectfully submitted,

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Wisconsin Industrial Energy Group

Date: February 24, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, via first-class mail or electronic transmission, the foregoing upon each person designated on the official service list compiled by the Secretary in this proceeding

Dated this 24th day of February, 2025.

/s/ Kenneth R. Stark
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