UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

	)	
Consumers Energy Company	)	
v.	)	**Docket No. EL25-90-000**
Midcontinent Independent	)	
System Operator, Inc.	)	
	)	

COMMENTS OF THE ENVIRONMENTAL LAW AND POLICY CENTER, PUBLIC CITIZEN, INC., THE SUSTAINABLE FERC PROJECT, NATURAL RESOURCES DEFENSE COUNCIL, VOTE SOLAR, UNION OF CONCERNED SCIENTISTS, ECOLOGY CENTER, CITIZENS ACTION COALITION OF INDIANA, CITIZENS UTILITY BOARD OF ILLINOIS, CITIZENS UTILITY BOARD OF MINNESOTA, CITIZENS UTILITY BOARD OF WISCONSIN, URBAN CORE COLLECTIVE, ENVIRONMENTAL DEFENSE FUND, EARTHJUSTICE, SIERRA CLUB, AND CLEAN WISCONSIN

Pursuant to Rule 211 of the Commission's Rules of Practice and Procedure,[1] the Environmental Law & Policy Center, Public Citizen, Inc., the Sustainable FERC Project, Natural Resources Defense Council, Vote Solar, Union of Concerned Scientists, the Ecology Center, Citizens Action Coalition of Indiana, Citizens Utility Board of Illinois, Citizens Utility Board of Minnesota, Citizens Utility Board of Wisconsin, Urban Core Collective, Environmental Defense Fund, Earthjustice, Sierra Club, and Clean Wisconsin (Public Interest Organizations or PIOs) submit this response to the complaint of the Consumers Energy Company (Consumers Energy) against the Midcontinent Independent System Operator (MISO) filed with the Commission on June 6, 2025 (Complaint).

Consumers Energy filed the Complaint in response to the May 23, 2025, Department of Energy (Department) order requiring the continued operation of the J.H. Campbell power plant

[1] 18 CFR § 385.211 (2024).

(Campbell, or Campbell Plant) in West Olive, Michigan (Order). The Department issued the Order just one week before the long-scheduled decommissioning of the 60-year-old Campbell Plant. The Order requires the plant to continue operating until August 21, 2025. Consumers Energy's Complaint seeks revisions to the MISO tariff in order to "ensure that there is a mechanism for Consumers Energy to obtain such rate recovery as is available pursuant to FPA section 202(c) at the appropriate time in the future, likely after the DOE Order expires."[2] Consumers Energy requests that the Commission direct MISO to allocate costs of the Campbell Plant to MISO Zones 1-7, which encompasses parts of Michigan, Indiana, Kentucky, Illinois, Missouri, Iowa, Wisconsin, Minnesota, North Dakota, South Dakota, and Montana.[3]

PIOs recognize at the outset that the Department's Order has placed Consumers Energy in a difficult position. The Order requires Consumers Energy to incur substantial costs in an effort to maintain a plant it was days away from shuttering. Yet the Order gave Consumers Energy very little guidance as to how it should recover the costs of continuing to operate Campbell. The Department does not identify the scope of the purported emergency giving rise to its Order, or which utility ratepayers, if any, will benefit from the Order. Indeed, all available evidence indicates that the Department's Order will *not* benefit ratepayers in Michigan, since, as Consumers Energy recognizes, those ratepayers "are already paying for the cost to fulfill [their] capacity needs."[4] As discussed below, the same is true of ratepayers in other MISO states.

This proceeding does not require the Commission to re-assess the Order's findings,[5] as the validity and sufficiency of the Order will be addressed through pending requests for

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[2] Complaint at 2.
[3] Complaint at 5.
[4] Complaint at 6.
[5] *See*, *e.g.*, Department of Energy Referral Letter at 2, Docket No. EL25-90-000 (June 16, 2025), Accession No. 20250616-4000 ("DOE is not referring to the Commission any other matters, including, but not limited to, DOE's finding of an emergency, the prescription of conditions of service, or any other matter arising from DOE's exercise of its authority under section 202(c).").

rehearing and, potentially, litigation thereafter. Instead, as we explain below, on this record, the Commission lacks a basis to determine which, if any, utility ratepayers will materially benefit from the Campbell Plant's operation pursuant to the Department's Order. Ratepayers in Michigan, Iowa, Missouri, Wisconsin, and other MISO states have met, and are already paying for, their resource adequacy obligations under MISO's Commission-approved framework for the Order's period. And the Order does not establish any additional benefits or identify the purported beneficiaries of the steps that Consumers Energy and MISO are required to take under the Order. Accordingly, the Commission cannot approve Consumers Energy's cost allocation under section 202(c) as "just and reasonable."[6] Instead, the Commission should either deny the Complaint or defer action until a future date.

I. COMMENTS

A. Forcing MISO Customers to Pay for a Coal Plant That Does Not Benefit Them Would Violate the Federal Power Act's Cost Causation Requirement.

Rates established by the Commission pursuant to Section 202(c) must be "just and reasonable."[7] One component of the just and reasonable standard is the cost causation principle that "all approved rates reflect to some degree the costs actually caused by the customer who must pay them."[8] In *Illinois Commerce Commission v. FERC*, the 7th Circuit held that, "FERC is not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities

[6] 16 U.S.C. § 824a(c).
[7] 16 U.S.C §§ 824a(c)(1), 824d(a). Section 202(c) permits the Commission to "prescribe by supplemental order such terms as it finds to be just and reasonable, including the compensation or reimbursement which should be paid to or by any such party."
[8] *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992). *K N Energy* arose under Section 4 of the Natural Gas Act, which contains the same "just and reasonable" standard as Section 202(c) of the Federal Power Act. Courts generally regard cases applying the just and reasonable standard of the Natural Gas Act (NGA) as binding precedent in Federal Power Act disputes. *See, e.g., Ky. Util. Co. v. FERC,* 760 F.2d 1321, 1325 n.6 (D.C. Cir. 1985) ("It is, of course, well settled that the comparable provisions of the Natural Gas Act and the Federal Power Act are to be construed in *pari materia*"). *See also Morgan Stanley Cap. Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash.*, 554 U.S. 527 (2008) (applying NGA cases to FPA just and reasonable standard).

from which its members derive no benefits, *or benefits that are trivial in relation to the costs sought to be shifted to its members.*"[9] The "cost causer pays" principle and the "beneficiary pays" principle are two sides of the same coin, with courts applying them interchangeably.[10] The bottom line is that the Commission cannot allocate a facility's costs to ratepayers who receive no material benefit from the facility.

Approving Consumers Energy's proposal to allocate the costs of running the Campbell Plant "proportionally to load in MISO Zones 1 through 7"[11] would violate that rule because there is no evidence that customers in Michigan, North Dakota, Iowa, or any other MISO state will benefit from the Department's Order. With respect to ratepayers in Zone 7 (*i.e.* the Lower Peninsula of Michigan), Consumers Energy correctly notes in the Complaint that "Consumers Energy customers are already paying for the cost to fulfill the capacity needs of Zone 7."[12] Consumers Energy meets the capacity needs of Zone 7 customers through two separate processes. First, Consumers Energy participates in MISO's Planning Resource Auction (PRA). As this Commission has explained in approving changes to the PRA, "MISO administers Tariff-defined resource adequacy requirements to ensure that LSEs are able to serve peak demand and maintain a sufficient margin of excess capacity."[13] As a participant in the MISO PRA, Consumers Energy must obtain sufficient capacity to satisfy those resource adequacy requirements. In the most recent PRA, Zone 7 easily met its capacity requirement and thereby

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[9] *Illinois Com. Comm'n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009) (emphasis added).
[10] *See Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) (courts should "evaluate compliance [with the cost causation principle] by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party").
[11] Complaint at 5.
[12] Complaint at 6.
[13] *Midcontinent Independent System Operator, Inc.*, 187 FERC ¶ 61,202, at P 3 (2024)

ensured the Zone's resource adequacy in Summer 2025, with each of the Michigan utilities (including Consumers Energy) paying a proportional share.[14]

Second, Consumers Energy ensures its resource adequacy through Integrated Resource Plans (IRPs) filed with the Michigan Public Service Commission (Michigan PSC). The Campbell decommissioning is the result of a settlement reached in Consumers Energy's 2021 IRP proceeding. Under that settlement agreement, Consumers Energy planned to replace Campbell's capacity with a mix of oil, gas, renewable, and storage resources.[15] The Michigan PSC's order approving the plan found that Consumers Energy had provided "a reasonable and prudent plan for meeting resource adequacy requirements."[16] Consumers Energy has so far complied with its obligations to do so, in part by acquiring the 1,176 MW New Covert gas plant. Responding to the Department's Order, the Chair of the Michigan PSC stated that "[w]e currently produce more energy in Michigan than needed. As a result, there is no existing energy emergency in either Michigan or MISO."[17]

Because Consumers Energy has already obtained sufficient capacity for this summer, through both the IRP process and the MISO PRA, there is no evidence that Consumers Energy's customers in Michigan will materially benefit from the additional capacity Campbell may provide over the summer. Requiring Consumers Energy's customers to pay for continued availability of the Campbell Plant would therefore violate the "beneficiary pays" principle.[18]

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[14] MISO 2025-26 PRA Results at 18. Available at https://cdn.misoenergy.org/2025%20PRA%20Results%20Posting%2020250529_Corrections694160.pdf
[15] MPSC Filing No. U-21090-0901 (June 23, 2022, Order).
[16] *Id.* at 91.
[17] Trump Administration Forces West Michigan Coal Plant to Stay Open, CBS News, May 27, 2025, https://www.cbsnews.com/detroit/news/trump-administration-west-michigan-coal-plant/.
[18] By contrast, the Commission-approved MISO Tariff provides a mechanism that incorporates the "beneficiary pays" principle for allocating the costs associated with the operation of generating units needed to maintain transmission system reliability. In that context, the costs associated with the operation of these units, referred to as System Support Resources" under the Tariff, are "to the Market Participants serving Load that benefits from the operation of the SSR Unit." *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,237, at P 146 (2012).

The same is true of ratepayers in the remainder of MISO Zones 1-7, which have likewise fully satisfied their capacity needs for the summer through the MISO Planning Resource Auction.[19] In fact, the PRA for summer 2025 exceeded MISO's "reliability target," establishing a planning reserve margin of 9.8%—well above MISO's target of 7.9%. Hence, ratepayers across MISO's footprint are already paying for *more* capacity than MISO concluded they will need to maintain resource adequacy this summer.[20] As the Commission stated just one year ago, the MISO PRA "ensure[s] that MISO procures sufficient capacity to meet its resource adequacy requirements."[21] Hence, by the Commission's reasoning, the results of the 2025-2026 PRA are definitive: MISO, including Zones 1-7, does not have a resource adequacy shortfall for this summer.

MISO's June 19, 2025, Answer in this docket underscores that point: while MISO states that it "does not oppose the addition of a cost recovery schedule" for the Order costs, it also explains that "existing processes have cleared sufficient electric generating capacity across MISO for the periods of time covered by the Order."[22] MISO notes "the diligent efforts of MISO's members, Market Participants, Relevant Electric Retail Regulatory Authorities (RERRA) and the Federal Energy Regulatory Commission (FERC) to establish policies and processes that address both immediate, and future capacity requirements" and concludes that "these collaborative efforts do not require further intervention and will help ensure the region

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[19] MISO 2025-26 PRA Results at 18. Available at https://cdn.misoenergy.org/2025%20PRA%20Results%20Posting%2020250529_Corrections694160.pdf

[20] To the extent that any party argues that Campbell provides incremental grid security by increasing the reserve margin beyond the level established through the PRA, such an additional increase in the reserve margin would, at most, provide benefits that are "trivial in relation to the costs sought to be shifted to" ratepayers. *Illinois Com. Comm'n v. FERC*, 576 F.3d at 476.

[21] *Midcontinent Indep. Sys. Operator, Inc.*, 187 FERC ¶ 61,202 (2024).

[22] Answer of the Midcontinent Independent System Operator, Inc., Docket No. EL 25-90-000, at 2, 5 (June 19, 2025).

continues to procure sufficient capacity to meet demand."[23] MISO's Answer echoes its 2025 Summer Readiness Assessment, issued in May 2025, which concluded that "adequate resources are available to serve summer demand," based on a finding that "peak demand could reach nearly 123 GW, with about 138 GW of regularly available generation expected across the MISO footprint."[24]

In sum, owing to the efforts of MISO, load-serving entities, state regulatory authorities, other market participants, and this Commission, load-serving entities and their ratepayers in Zones 1-7 have established sufficient resource adequacy for the summer and will not materially benefit from the additional capacity that the Campbell Plant could supply. Because the Department did not provide evidence that these captive ratepayers would otherwise benefit from the continued operation of Campbell, the Commission cannot require them to pay Campbell's costs.[25]

B. The Department Has Not Provided Evidence to Support a Reasoned Cost Allocation Determination.

Consumers Energy suggests that, "under section 202(c), costs should be allocated based on the scope and nature of the emergency that prompted issuance of the order in question."[26] Consumers Energy proposes to allocate costs to MISO Zones 1-7 because "[t]he DOE Order's emergency declaration is substantially based on concerns about resource adequacy in MISO generally, and the northern and central regions in particular."[27] In essence, Consumers Energy's

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[23] *Id.* at 2.
[24] Press Release, Midcontinent Independent System Operator, MISO projects adequate resources are available to serve summer demand amid rising risks (May 8, 2025), *available at* https://www.misoenergy.org/meet-miso/media-center/2025---news-releases/miso-projects-adequate-resources-are-available-to-serve-summer-demand-amid-rising-risks/
[25] *Illinois Com. Comm'n v. FERC*, 576 F.3d at 476.
[26] Complaint at 4.
[27] *Id.* at 4-5.

proposed cost allocation arises from a determination that the Department has declared a resource adequacy emergency in MISO Zones 1-7.

However, the Order does not declare an emergency specific to MISO Zones 1-7. In fact, nothing in the Order specifies the scope of the Order's emergency declaration. The Order variously identifies MISO as a whole,[28] the state of Michigan,[29] and MISO's northern and central zones[30] as facing resource adequacy "risks," but does not specify which of these, if any, amounts to an emergency. Likewise, a referral letter that the Department filed with the Commission on June 16, 2025 states that the Department found "an emergency existed in portions of the Midwest region of the United States" but does not provide additional detail on the region or the nature of the emergency.[31] Confusing matters further, the Referral Letter states that "the Campbell plant shall not be counted as a capacity resource," suggesting that Consumers Energy should *not* receive compensation for maintaining Campbell's availability to provide power.[32]

In the final analysis, the Department has not provided sufficient information for the Commission to act in this proceeding. The Order does not provide a basis for the Commission to determine which utility ratepayers, if any, will benefit from Campbell's continued operation. Absent this information, the Commission cannot make a reasoned decision on the appropriate cost allocation for the Order costs; any decision would necessarily be arbitrary, capricious, and

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[28] *See* Order at 1 ("The Midcontinent Independent System Operator (MISO) faces potential tight reserve margins during the summer 2025 period . . . .").
[29] *See id.* ("Multiple generation facilities in Michigan have retired in recent years.").
[30] *See id.* ("MISO's Planning Resource Auction Results for Planning Year 2025-26, released in April 2025, note that for the northern and central zones, which includes Michigan, 'new capacity additions were insufficient to offset the negative impacts of decreased accreditation, suspensions/retirements and external resources.'").
[31] Department of Energy Referral Letter, Docket No. EL25-90-000 (June 16, 2025), accession no. 20250616-4000.
[32] *Id.*

contrary to law. Therefore, the Commission should either deny Consumer Energy's complaint or defer action until a future date.[33]

II. CONCLUSION

The Department of Energy's Order forces Consumers Energy to incur costs for an uneconomic plant beyond its planned decommissioning. Consumers Energy is reasonably seeking assurance that it will receive compensation for the costs it incurs meeting the Department's demands. But that compensation cannot come from ratepayers who do not materially benefit from the Plant's continued operation. The Commission must reject or defer action on Consumers Energy's proposal to allocate the costs of the Campbell Plant to ratepayers in MISO Zones 1-7.

Respectfully submitted, Dated: June 20, 2025

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[33] Consumers Energy has committed to making "a section 202(c) filing after the conclusion of the extended service required by the DOE Order in which it will present, explain, and support what it believes are its just and reasonable costs associated with running the Campbell Plant from the date of the DOE Order." Complaint at 2. Such a filing will necessarily present a better opportunity to evaluate the appropriate cost allocation for Consumers Energy's costs.

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