

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Entergy Services, LLC)	Docket No. ER23-1140-000
Entergy Arkansas, LLC)	
Entergy Mississippi, LLC)	

PROTEST OF PUBLIC INTEREST ORGANIZATIONS

February 27, 2023

Pursuant to Rules 212 and 214 of the Rules of Practice and Procedure of FERC, 18 CFR §§ 385.212 and 385.214, and FERC’s February 17, 2023 Notice of Filing and February 22, 2023 Errata Notice Shortening Comment Period, the Natural Resources Defense Council, Public Citizen, Inc., Sierra Club, Southern Renewable Energy Association, and Sustainable FERC Project (collectively, “Public Interest Organizations” or “PIOs”) respectfully protest the waiver request in the above captioned proceeding.

I. Argument

PIOs protest the limited waiver request (“Waiver Request”) submitted by Entergy Services, LLC (“Entergy”) on behalf of Entergy Arkansas, LLC (“EAL”) and Entergy Mississippi, LLC (“EML”), to the operation of provisions in the new seasonal capacity accreditation regime proposed by the Midcontinent Independent System Operator (“MISO”) and approved by this Commission (the “Seasonal Construct”).¹ As Entergy notes, the Commission grants waiver requests only when “(1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.”² Entergy has not met its burden to show that the Waiver Request should be granted.

Entergy has requested a limited waiver of the requirement in Schedule 53 of the Seasonal Construct that MISO, as part of its new Seasonal Accredited Capacity (SAC) calculation process, assign a value of zero to a thermal resource’s availability in historical Resource Adequacy Hours (RA Hours) when a resource was offline with a startup time longer than 24 hours. The Waiver Request relates to MISO’s use of historical data during the 2023/2024 Planning Year, the 2024/2025 Planning Year, and the 2025/2026 Planning Year.

¹ Order Accepting Proposed Tariff Revisions Subject to Condition, FERC ER22-495-000 (Aug. 31, 2022) (hereinafter “Seasonal Construct Order”).

² *E.g.*, *Virginia Elec. and Power Co.*, 173 FERC ¶ 61,129, P 30 (2020) (citing *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, P 13 (2016)).

As explained in more detail below, Entergy's Waiver Request does not meet the Commission's standards for a waiver as outlined in *Virginia Electric*.³ For starters, it does not contain enough information for the Commission to make an informed determination that Entergy has acted in good faith when it suggests that it can change existing generators' operational timeframes. Entergy's Waiver Request additionally fails the requirement that the waiver be of limited scope and have no undesirable consequences. Together with at least three other waiver requests that have been submitted by parties objecting to the results of MISO's new seasonal accreditation standards, it threatens to undermine the operational incentives those standards were designed to create, and would hurt the accreditation of every other thermal unit in the MISO region. Entergy has also not shown that the waiver addresses a concrete problem: it has not established that regular operation of MISO's Seasonal Construct will impose any undue costs on either EAL or EML. Finally, Entergy has not shown that its waiver will not have undesirable consequences on third parties, in particular other thermal generators in the MISO region.

Finally, PIOs object to Entergy's request for expedited action in this matter. Entergy offers no valid reason for its delay in filing this waiver request until the month before the annual Planning Resource Auction, considering that the Commission approved MISO's capacity accreditation construct in August of last year. Entergy's choice to file this waiver request at the last possible moment means that the deficiencies identified above cannot be corrected in time for the waiver to be granted for the forthcoming planning year. Thus, because Entergy has not established any of the facts necessary to obtain a waiver, the Commission should deny Entergy's request as to the 2023/2024 Planning Year and request additional information before making any determination as to the 2024/2025 Planning Year and 2025/2026 Planning Year.

A. Entergy Has Not Demonstrated that It is Acting in Good Faith or that Its Claimed Operational Improvements Are Real

Entergy has not established that it is acting in good faith, as required by the four-part test it articulates. The basis of Entergy's waiver request is that while it previously reported start up times of greater than 24 hours to MISO, "Entergy Services, EAL, and EML have, following field verification, adjusted the startup times below 24 hours."⁴ Entergy explains that "[t]he startup times for the Resources during the hours at issue in this waiver request were consistent with MISO rules and reflected the preferred operation of the Resources under the rules in effect at the time."⁵ Thus it is clear that MISO correctly calculated the accreditation values for those units.

³ *Virginia Elec.*, 173 FERC at ¶ 61,129.

⁴ Request for Limited Waiver, et al. of Entergy Services, LLC, FERC ER23-1140 (Feb. 17, 2023), at 4 (hereinafter "Entergy Waiver Request").

⁵ *Id.*

Entergy seeks to change that outcome merely because it has realized that the use of historical startup times “will have significant effect on the Resources’ accreditation values.”⁶

However, this result was among the anticipated potential outcomes in the proceeding approving this provision of the tariff. In its order approving MISO’s seasonal construct, the Commission rejected arguments that “it is inappropriate to accredit resources based on their prior availability under an entirely different capacity accreditation construct.”⁷ Here, Entergy is essentially asking FERC to waive a tariff because it produced results that were predictable just last year when the tariff was approved. It would be improper for the Commission to now undermine that approval by granting piecemeal waivers to individual utilities.

Further, the crux of Entergy’s Request centers on its claim about asserted future actions - that it has “adjusted” the startup times at the Generating Facilities “to be less than 24 hours.”⁸ Entergy further claims that this “adjustment” was made “following field verifications”; and this constitutes the entirety of the support Entergy offers for its claim that the Generating Facilities are now capable of startup periods shorter than it previously indicated they were capable of.⁹ Even if the Commission were to consider Entergy’s argument that it should be granted waiver of the tariff because it does not like the result, Entergy’s filing does not include any affidavits, expert statements, or other technical information supporting its contention that the facilities can be safely and reliably made operational in any given less-than-24-hour period. Entergy also makes no mention of when the “field verifications” were made, nor whether such verifications were made in each of the four individual seasons to warrant a waiver. In effect, Entergy’s waiver attempts to circumvent MISO’s use of three years’ worth of operational data, and instead replace those data with self-conducted, self-reported field verifications during ideal conditions, not during Resource Adequacy hours when generation units are exposed to extreme heat or cold. This lack of evidence is startling.

It is very possible that Entergy has achieved operational improvements necessary to allow the Generating Facilities to maximize their capacity accreditation under the Seasonal Construct; but if so, it would run counter to Entergy’s previous statements regarding the feasibility of a 24-hour cold startup for many resources. As Entergy explained in its recent protest to MISO’s seasonal capacity filing:

A 24-hour cold startup time would be impractical for many otherwise valuable resources due to either physical limitations, or, more often, constraints and costs of contracting firm natural gas supply and delivery to those resources. As such,

⁶ *Id.*

⁷ Seasonal Construct Order at Para. 112, 275; *see also* Order Addressing Arguments Raised on Rehearing and on Compliance, FERC ER22-495-000, at Para. 57 (Feb. 6, 2023).

⁸ Entergy Waiver Request at 8.

⁹ *Id.*

the SAC proposal would likely result in substantial increased self commitment of comparatively inefficient resources to avoid loss of accreditation and potentially significant increased fixed contractual costs for fuel.¹⁰

Thus, the Commission should not approve this waiver without requiring sufficient information from Entergy regarding its claimed operational improvement to confirm the operational change.

B. The Requested Waiver Is Not Limited in Scope

Entergy's waiver is not limited in its scope, because it would impact a significant portion of the Generating Units' operating hours, and impose a large capacity shift on MISO's Seasonal Construct just as it is getting off the ground. Entergy described its Waiver Request as "limited" because it only applies to "a small under [sic] of hours of the three-year lookback period."¹¹ But Entergy's list of hours that would be affected by its Requested Waiver includes multiple days- or even weeks-long time segments over that three-year period, encapsulating thousands of hours of potential operation.¹² This does not constitute a limited waiver.

C. The Requested Waiver Will Have Undesirable Consequences; Together with Other Similar Requests It Threatens to Undermine the Purpose of MISO's New Seasonal Construct Before It Begins

Entergy's request, along with other similar requests, threatens to undermine MISO's Seasonal Construct before it gets off the ground. Entergy is not the only utility to seek a waiver from MISO's new Seasonal Construct based on the inability of its units to achieve maximum capacity accreditation under the new rules. At least three other entities have sought similar waivers in the first two months of 2023: 1) Southern Minnesota Municipal Power Agency, for Sherco Unit 3¹³; 2) Arkansas Electric Cooperative Corporation, for John L. McClellan Generating Station, White Bluff Steam Electric Generating Station Units 1 and 2, and Independence Steam Electric Generating Station Units 1 and 2;¹⁴ and 3) Cleco Cajun LLC, for Big Cajun II Units 1 and 3.¹⁵ Each of these requests clearly have undesirable consequences – they threaten to undermine the fair and proper operation of MISO's Seasonal Construct.

¹⁰ Protest of Entergy Services LLC, Arkansas Electric Cooperative Corporation, and Cleco Power LLC, FERC ER22-495-000, at 8 (Jan. 14, 2022).

¹¹ Entergy Waiver Request at 8.

¹² *Id.* at Attachment A.

¹³ Request for Limited Waiver, et al. of Southern Minnesota Municipal Power Agency, FERC ER23-837 (Jan. 13, 2023).

¹⁴ Request for One-Time Limited Waiver of Arkansas Electric Cooperative Corporation, et al., FERC ER23-1154 (Feb. 21, 2023).

¹⁵ Request for Limited Waiver, et al. of Cleco Cajun LLC, FERC ER23-1103 (Feb. 10, 2023).

The danger such waiver requests pose is twofold. First, if facilities facing capacity accreditation reductions due to historic poor performance during the most constrained Resource Adequacy hours are allowed to bypass these restrictions based on unsupported claims of operational improvements, it could undermine the impact of the Seasonal Construct MISO proposed and this Commission approved last summer. In general, the Commission should carefully review all requests to waive tariff provisions that are structured specifically to encourage facilities to shift operational choices; granting waivers to facilities that have not demonstrated that they deserve them can undermine the incentives those provisions were designed to create. And that is particularly true here, because the Seasonal Construct is still in the early, sensitive stages of its implementation.

Second, granting extra capacity accreditation to units receiving waivers from MISO's rules will reduce the accreditation of every other Schedule 53 Resource in the MISO region. Under the capacity accreditation regime MISO submitted and the Commission approved, each unit's individual capacity accreditation based on RA Hours is then modified by a ratio that ensures the overall accreditation granted to thermal units is equivalent to the combined UCAP values for those units. This means that if one thermal plant has lower accreditation due to its failure to show up during critical RA Hours, another thermal plant that did show up during those critical RA Hours will receive more accredited capacity. Thus, any reduction in Entergy's accreditation will be accounted for in increased accreditation elsewhere; and conversely, any unearned accreditation given to Entergy will take away capacity from more deserving units.

D. The Waiver Does Not Address a Concrete Problem: Entergy Has Not Provided Any Evidence that the Balance of Potential Harm Requires the Commission to Conduct a Rushed or Incomplete Review of Its Waiver Request

Entergy has requested action from the Commission by March 7, which would be in time to allow a waiver to be implemented in the 2023/2024 Planning Year Planning Resource Auction ("PRA"). Its basis for this requested expedited treatment is "to limit the potential for irreparable harm"¹⁶—but Entergy has not established that its requested waiver is needed to "address a concrete problem," as required by the waiver test. Entergy's Request does not offer the Commission evidence of meaningful harm. The utility describes the potential impacts of Commission inaction as follows:

EAL and EML are facing dramatic decreases in the capacity accreditation values of the Resources [between 5% and 30%] due to the application of MISO's new capacity accreditation methodology. In the case of EML, it is projected to be in a deficit position relative to its PRMR requirement for multiple Seasons, and Gerald

¹⁶ Entergy Waiver Request at 12.

Andrus (subject to an approximate reduction of 25% in accreditation value due to the new accreditation rules) is one of its largest generating resources.¹⁷

Notably absent from this statement is a claim that EAL would be in deficit; thus, the Commission must assume that the sizable reductions to the capacity accreditation of White Bluff 1 and 2, and Independence 1 and 2, do not affect EAL's ability to satisfy its PRMR requirement for the coming planning year. Similarly, and equally important, Entergy's filing also does not quantify the expected size of EML's deficit or provide any indication that it would be significant, or costly for the utility to cover.

Entergy has not adequately argued, much less demonstrated, any harms to its revenues or costs associated with these reduced capacity accreditation values. And any marginal harms they would suffer from reduced accreditation are a natural outgrowth of MISO's new Seasonal Construct that the Commission approved just last year: MISO determines the RA hours based on a three-year historical lookback period. Even if the Commission were inclined to accept Entergy's concern about this foreseen result, there is no indication from the filing that these impacts would be significant.

Finally, any impact to Entergy will be further limited to the 2023-2024 Planning Year if Entergy comes back with more tangible evidence that its waiver request should be granted for the 2024-2025 Planning Year and 2025-2026 Planning Year. If Entergy has in fact successfully changed the operation of its units to better meet MISO's accreditation standards, then it will reap those benefits in future capacity planning years; it should have come to FERC in a much less urgent timeframe, or provided more information up front, to receive special treatment for the 2023-2024 Planning year.

II. Conclusion

For the reasons discussed above, FERC should deny Entergy's Waiver Request as to the 2023-2024 Planning Year and seek more information from Entergy before deciding on the request as to the 2024-2025 Planning Year and 2025-2026 Planning Year.

Respectfully submitted,

/s/ Gregory E. Wannier

Senior Attorney
Sierra Club Environmental Law Program
2010 Webster St., Suite 1300
Oakland, CA 94612
(415) 977-5646
greg.wannier@sierraclub.org

¹⁷ *Id.* at 2-3.

/s/ Elizabeth Toba Pearlman

Renewable Energy Advocate/Senior Attorney
Natural Resources Defense Council
20 North Wacker Drive, Suite 1600
Chicago, IL 60606
(312) 995-5907
tpearlman@nrdc.org

/s/ Tyson Slocum

Energy Program Director
Public Citizen, Inc.
1600 20th St NW
Washington, DC 20009
(202) 588-1000
tslocum@citizen.org

/s/ Simon Mahan

Executive Director
Southern Renewable Energy Association
11610 Pleasant Ridge Rd., Suite 103 #176
Little Rock, AR 72223
337-303-3723
simon@southernwind.org

/s/ John N. Moore

Senior Attorney and Director
Sustainable FERC Project
20 North Wacker Drive, Suite 1600
Chicago, Illinois 60606
(312) 651-7927
moore.fercproject@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document has been served on this day or the next upon each person designated on the official service list compiled by the Secretary for this proceeding.

Dated February 27, 2023.

/s/ Brittany Blinder

Legal Assistant

Sierra Club

1536 Wynkoop St., Suite 200

Denver, Colorado 80202

brittany.blinder@sierraclub.org