UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

North Dakota Public Service Commission	)	
Montana Public Service Commission	)	
Arkansas Public Service Commission	)	
Mississippi Public Service Commission	)	
Louisiana Public Service Commission	)	
Complainants,	)	**Docket No. EL25-109**
	)	
v.	)	
	)	
Midcontinent Independent System Operator	)	
Respondent.	)	

MOTION TO DISMISS AND PROTEST OF XCEL ENERGY SERVICES INC. AND INTERNATIONAL TRANSMISSION COMPANY D/B/A ITC*TRANSMISSION*, MICHIGAN ELECTRIC TRANSMISSION COMPANY LLC, ITC MIDWEST LLC, AND ITC GREAT PLAINS, LLC

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INTRODUCTION

Even as doubters fret that the AI race with China "may already be over" given concerns about U.S. "grid limitations,"[1] and even as the Administration's AI Action Plan calls for a "comprehensive strategy to enhance and expand the power grid,"[2] utilities in the Midcontinent Independent System Operator, Inc., ("MISO") are already building the grid of the future. In December 2024, MISO's Board of Directors approved Tranche 2.1, a $22 billion portfolio that will build a high-voltage transmission backbone—today's answer to the Eisenhower interstate highway system. Just as those highways built the foundation of America's 20th century hegemony and unleashed unprecedented growth and prosperity, Tranche 2.1 will support load growth from data centers, AI, cryptocurrency, and reindustrialization, and enable the Midwest to support 587 TWh in increased demand now anticipated by 2044.[3] It will also reduce severe congestion and line overloading, enhance reliability, promote economic development, and support fuel diversification. And it will help address the "significant shortfalls[] [in] key reliability metrics" recently identified by the Department of Energy in its *Resource Adequacy Report*—which specifically noted "possible benefits from transmission" given that "[s]ubregions in … MISO[] … met thresholds."[4] Those concerns echo MISO's own assessment that helped spur Tranche 2.1 in the first place, including that "[w]idespread retirements of dispatchable resources, lower reserve margins, more frequent and severe weather events and increased reliance on weather-dependent

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[1] Eva Roytburg, *AI Experts Return from China Stunned: The U.S. Grid is so Weak, the Race May Already be Over*, Fortune (Aug. 14, 2025), https://fortune.com/2025/08/14/data-centers-china-grid-us-infrastructure/.

[2] Exec. Off. of the President of the United States, *Winning the Race: America's AI Action Plan* 15 (July 2025), https://www.whitehouse.gov/wp-content/uploads/2025/07/Americas-AI-Action-Plan.pdf.

[3] *See* MISO, *MISO 2024 Load Forecast and Process Enhancements Workshop* 16 (Dec. 2024), https://cdn.misoenergy.org/20241218%20Medium%20and%20Long%20Term%20Forecast%20Workshop%20Presentation667265.pdf.

[4] U.S. Dep't of Energy, *Resource Adequacy Report* 8, 20 (July 2025), https://www.energy.gov/sites/default/files/2025-07/DOE%20Final%20EO%20Report%20%28FINAL%20JULY%207%29_0.pdf.

resources and emergency-only resources have altered the region's historic risk profile, creating risks in times that rarely posed challenges in the past."[5] NERC agrees.[6] As we speak, MISO's utilities have already invested in undertaking Tranche 2.1's critical work—knowing that, at this pivotal moment for our country, time is of the essence.

MISO developed Tranche 2.1 by following its Tariff-designated process. Two years of effort, and 40,000 hours of staff work, yielded a rigorously tested and exhaustively vetted plan. MISO held more than 300 meetings and discussions with stakeholders,[7] and it solicited written feedback and responded thoughtfully—including changing its assumptions and approach. That included, at the behest of Complainant North Dakota Public Service Commission ("NDPSC"), assuming the siting of an additional 14.8 GW of wind in North Dakota (because NDPSC complained that it "has one of [MISO's] best wind resources …, which enhances the reliability, reduces intermittency, and increases the efficiency of wind generators in North Dakota"[8]) and adding 29 GW of "Flex Units" to its model (based in part on NDPSC's feedback that "[d]ispatchable resources, even if they aren't being planned by MISO utilities, need to be modeled in order to reflect a system that is reliable longterm and has the transmission infrastructure needed to support this essential generation").[9] MISO's planning assumptions and proposed approach to measuring costs and benefits were developed in 2023 and largely set by June 2024. And while

[5] MISO, *MTEP24 Executive Summary* 3 (Sept. 2025).

[6] *Midcontinent Indep. Sys. Operator, Inc.*, 192 FERC ¶ 61,064, at P 82 (2025) ("MISO's risk classification [for resource adequacy] for the years 2028-2031 … remains in the 'high risk' category.").

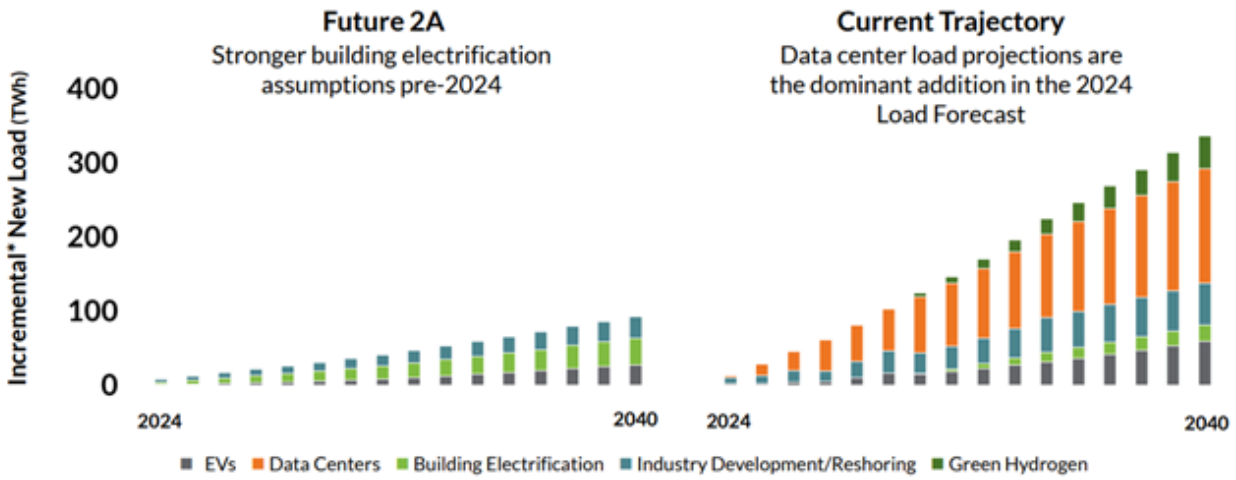
[7] Michelle Wilson, *Transforming the Grid: MISO's $21.8 Billion LRTP Tranche 2.1 Portfolio*, MISO (Sept. 25, 2024), https://www.misoenergy.org/meet-miso/media-center/miso-matters/transforming-the-grid-misos-$21.8-billion-tranche-2.1-transmission-portfolio.

[8] N.D. Pub. Serv. Comm'n Comment on Future 2A Expansion and Preliminary Siting (Mar. 30, 2023), https://www.misoenergy.org/engage/stakeholder-feedback/2023/lrtp-formal-feedback-future-2a-expansion-and-preliminary-siting-20230310/.

[9] *Id.*

MISO of course could not accept every piece of stakeholder feedback, none of the Complainants invoked MISO's Tariff-designated dispute resolution processes or (as the Tariff also contemplates) filed a Section 206 Complaint with the Commission before the Board approved Tranche 2.1 and utilities began implementation.

Now nearly a year later, Tranche 2.1 is—if anything—more essential and more urgent. Load forecasts have continued to balloon and expected development in the Midwest of data centers, artificial intelligence, and the like are now "approximately three times higher than previously forecast" in the "Future 2A" scenario on which MISO premised Tranche 2.1:



Source: MISO, *MISO 2024 Load Forecast and Process Enhancements Workshop* at 18 (Dec. 2024).

NDPSC and the other Complainants now seek to halt Tranche 2.1's essential work in its tracks, via a years-late Complaint filed after project development is already underway. Having failed to invoke the Tariff's dispute resolution provisions, they instead filed their Complaint on July 30, 2025—more than two years after MISO disclosed the benefits metrics about which NDPSC now complain, more than a year after MISO finalized its specific methodology, nearly a year after the draft of Tranche 2.1 was released, and nearly eight months after the MISO Board approved Tranche 2.1. NDPSC is joined by state commissions that either effectively sat out the

Tranche 2.1 planning process (Montana) or else have *no* concrete stake in Tranche 2.1 because the Tariff allocates no costs to MISO South (Arkansas, Mississippi, Louisiana). And many of NDPSC's current criticisms, like the extent of renewable resources that MISO (at states' behest) assumed in its models, and MISO's reliance on "Flex Units," attack decisions that NDPSC *urged on MISO*.[10] Meanwhile, the Complaint attempts to conjure a Tariff violation out of Complainants' disagreement with what benefits MISO picked and how MISO measured them—an issue that MISO's Commission-approved Tariff deliberately and expressly leaves to MISO. The Complainants, moreover, base their second-guessing on the views of a Harvard professor whose declaration is long on economic theory but divorced from the realities of transmission planning or what MISO's Tariff requires.

Although the Complaint is utterly meritless, the best thing the Commission could do for infrastructure development in this country is to reject it without reaching the merits. The state commissions with no concrete stake in Tranche 2.1 should be dismissed from this proceeding, lest the Commission encourage Section 206 complaints from bystanders with axes to grind. All Complainants, moreover, failed to invoke MISO's Tariff-provided dispute resolution process or otherwise seek relief from the Commission until long after MISO's Board approved Tranche 2.1 and after transmission owning utilities across the Midwest began developing these projects.

The Commission has often rejected complaints from parties that have failed to turn square corners. And here, doing so is not just a matter of enforcing the rules but of avoiding enormous

[10] *E.g.*, *id.*; *see also Organization of MISO Statement of Principles re Long-Range Transmission Planning*, OMS, Principle 1 (June 2019), https://www.misostates.org/images/stories/Filings/Board_comments/2019/Letter_to_John_Bear_REgarding_Long_Range_Planning_Principles_for_website.pdf ("The long-range planning must incorporate and account for the changing resource mix that is well underway and projected to continue, based on robust input from the states (including, when available, state integrated resource plans and other state planning processes)."); *id.* at 2 n.1 (noting support from the Montana Public Service Commission and the North Dakota Public Service Commission).

on-the-ground harm. MISO designed its planning process so that each step builds on the one before (while, again, providing ample opportunities for input, negotiation, and Commission challenges). In the many months since MISO's Board approved Tranche 2.1, MISO has relied on Tranche 2.1 in creating its Commission-approved Expedited Resource Addition Study ("ERAS") process and in its Expedited Project Reviews. The ERAS process is poised to facilitate the addition of up to 26.5 GW of capacity—and of the 47 projects across 12 states that have submitted ERAS applications, 74% are dispatchable natural gas and 14% battery storage (along with 4% wind, 4% solar, and 3% nuclear). Meanwhile, MISO Expedited Project Reviews will facilitate load interconnections, including data centers that today are trying to come online in MISO. And with Tranche 2.1 set, development is proceeding on Tranche 2.2—which will be equally essential in cementing the backbone the Midwest needs to meet the challenges of data centers, AI, electrification, and reshoring of American manufacturing. Entertaining the Complaint would send all those critical efforts back to the drawing board and inflict untold harm on our Nation's competitiveness.

The Complaint's substance is just as dangerous to the Nation's energy-dominance priorities. Dressed-up in rhetoric about renewables development is a theory that will, if accepted, cripple the foundations of infrastructure development. MISO's Tariff expressly empowers MISO—in assessing whether Tranche 2.1 has the required benefit-cost ratio—to take into account "[a]ny other financially quantifiable benefit" it identifies, without limiting what benefits MISO may identify or how it must measure those benefits.[11] That is a good thing, because it enables infrastructure developers to *go forth and build*, without endless trips back to the Commission or nonstop second-guessing. Yet the Complaint asks the Commission to set aside the already-

[11] MISO Tariff, Attachment FF § II.C.5.e.

proceeding Tranche 2.1. It makes this extraordinary demand based on Complainants' preference that MISO's Tariff should be more constraining and a claim from an economist that MISO's calculations did not match his view of the theoretical ideal (an ideal that, by the way, MISO could not have achieved without violating its Tariff and the federalism principles it embodies).

Under settled precedent, such arguments are impermissible collateral attacks on MISO's Tariff (because they complain, at bottom, that MISO's Tariff should have precluded the approach MISO picked). The relief they seek violates the filed rate doctrine (by seeking to reopen decisions that, under MISO's Tariff, were closed). And Complainants fail to carry their burden under Section 206 (because Dr. Hogan's theoretical disagreements, on an issue MISO's Tariff left open, do not amount to a Tariff violation).

Worse: Complainants' arguments, if accepted, will yield the NEPA-fication of transmission planning. The Commission knows well the harm that excess procedures and boundless litigation have imposed on project development. If the Commission endorses Complainants' second-guessing here, it will be stuck with the same approach the next time a state, a consumer or environmental group, or a competitor flyspecks the technical modeling choices of an RTO or the Commission or another government agency. The message to the investment community will be unmistakable: Do not bank on approvals, because federal agencies continue to proliferate the procedural roadblocks that stop needed infrastructure from actually *getting built*—roadblocks that may crop up years after decisions, to all appearances, were done and dusted. Investment will not happen if the cost of capital is too high—and nothing drives up the cost of capital like uncertainty and instability. The energy progress our nation needs, and the competition with China that depends on that progress, cannot survive that stability-destroying approach.

Risking that outcome is especially unwarranted because even if the Commission entertained the request to second-guess MISO's modeling, no substance supports the Complaint's claims. The Complaint, stripped to its essence, contends that MISO itself should have planned generation and transmission together and developed a model to identify the least-cost combination. But under its Tariff and the Federal Power Act, MISO is not and cannot be the Soviet-style central planner that the Complaint and Dr. Hogan posit. States ultimately decide what generation should be built and where, based on their own processes, and MISO's Tariff requires MISO to take those choices as given—which is what MISO did with Tranche 2.1. That pro-federalism approach has protected and will continue to protect states that choose to rely more heavily on dispatchable generation built closer to load, even as Complainants' approach would invite MISO in the future to impose a different view that (for example) relying on solar or wind would be less costly. Indeed, for that same reason, Complainants' harping on Tranche 2.1's decarbonization benefits is irrelevant: Even if one valued those benefits *at zero* (which neither Complainants nor Dr. Hogan urge), Tranche 2.1 is still cost-justified with room to spare—and it remains so unless one accepts Dr. Hogan's Tariff-violating and federalism-destroying view that MISO should not have taken its members' resource plans as given.

Meanwhile, the submissions of Complainants and Dr. Hogan are full of facially implausible claims, including that the Tranche 2.1 765-kV superhighway will provide *no* benefits in avoiding capacity costs or enhancing reliability. When academic theories rebel against what common sense and experience show, smart money says the theories have gone awry. The grievances of Complainants and Dr. Hogan also echo certain criticisms of the Department of Energy's *Resource Adequacy Report*. Much as some parties have claimed that the Department "outlined an implausible reliability crisis" by not assuming that some (unidentified) "future

planning by utilities, states and communities" would address the reliability issues the Department had found,[12] Complainants and Dr. Hogan posit that MISO overstated reliability benefits and should have assumed that *someone else* will eventually take action "to prevent [the] future load shed" MISO identified.[13] The answer to both criticisms is the same: Those responsible for reliability cannot pass the buck and assume some *deus ex machina* will save the grid, particularly from consequences as severe as load shed. The attached Affidavit of Christopher J. Russo of Charles River Associates describes in detail these and many other ways that the theories of Complainants and Dr. Hogan do not match the realities of transmission planning and utterly fail to show that MISO acted unreasonably or violated its Tariff.

The Commission should reject the Complaint and allow Tranche 2.1's essential work to continue to support our Nation's urgent energy goals.[14]

BACKGROUND

I. Tranche 2.1 Is Essential Infrastructure for Reindustrializing the Midwest and Winning the AI Race.

Tranche 2.1 is designed to deploy a 765 kV backbone to the Upper Midwest—effectively creating the Eisenhower Interstate System for electricity for the region. This system will power key national priorities over the coming decades, including new factories, large data centers, and other large load. As MISO observed, "[l]arge spot power demand is growing rapidly because of

[12] Request for Rehearing of The Clean Energy Organizations 46–47, *Resource Adequacy Protocol, Evaluating the Reliability and Security of the United States Electric Grid* (Dep't of Energy Aug. 6, 2025), https://cleanpower.org/wp-content/uploads/2025/08/2025-08-06-Resource-Adequacy-Rehearing-Request-FINAL.pdf.

[13] *N. Dakota Pub. Serv. Comm'n et al. v. Midcontinent Indep. Sys. Operator*, Docket No. EL25-109-000, Complaint of the Concerned Commissions and Requests for Expedited Action and Fast Track Processing at 37 (filed July 30, 2025) ("Complaint").

[14] Xcel Energy Services Inc. ("Xcel") and International Transmission Company ("ITC") d/b/a ITC*Transmission*, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and ITC Great Plains, LLC, submit this protest and motion to dismiss pursuant to Rules 211 and 212 of the Commission's Rules of Practice and Procedure. 18 C.F.R. §§ 385.211, 385.212.

significant growth in data centers and other energy-intensive facilities to support today's economy and the future of technologies like artificial intelligence, electrification and the resurgence of manufacturing in the United States"—demand that Tranche 2.1 is poised to help meet.[15] More than that, Tranche 2.1 will establish a platform to support regional and national needs into the next century. And it will do so efficiently: A single 765 kV line can safely carry as much load as three 500 kV lines or six 345 kV lines; costs less than half as much to construct per MW-mile than 345 kV lines; and will result in fewer losses once it is constructed.[16] The economic benefits for the region will be transformative.

Complainants could not be more wrong in suggesting that Tranche 2.1 is anything less than essential for American energy dominance in the 21st century. MISO considered a broad range of factors, including expected generation siting based on state-led plans, in developing Tranche 2.1. And those uses are just the beginning. Like interstate highways, 765 kV lines are a platform—they enable the flow of large quantities of power either direction, adapting as new developments occur along the line. The 765 kV lines are no more tied to current uses than interstates were tied to families traveling in Studebakers or trucks full of typewriters, rotary phones, and Elvis albums. With a 765 kV line, the states in the Upper Midwest will be able to promote the large-scale development of new generation, be it gas, nuclear, or some future technology, and support large loads even if they are distant from generation. Each of these are essential as the Nation is simultaneously racing both to develop new dispatchable generation while adding historic levels of new load. Utilities across the country are looking to developing 765 kV backbones for the same reasons.[17]

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[15] MISO, *MTEP24 Transmission Portfolio* 4 (Sept. 2024).

[16] *Id.* at 35–36.

[17] Electric Reliability Council of Texas ("ERCOT"), *2024 Regional Transmission Plan (RTP) 345-kV Plan & Texas 765-kV Strategic Transmission Expansion Plan Comparison* (Jan. 2025), https://www.ercot.

The need for flexible ultra-high voltage transmission is even more acute now than when MISO began developing Tranche 2.1 a few years ago. Led by the proliferation of data centers and focus on bringing manufacturing back to this country, MISO's incremental load projection for 2040 has roughly *quadrupled*—and on the high end, may require an additional 587 TWh of energy by 2044.[18] That's nearly *double* the current level across the region.[19] And expected load growth from data centers is particularly concentrated in the northern states of MISO, including North Dakota and Montana, as Mr. Russo points out.[20] A 765 kV backbone will provide MISO the flexibility to serve this new load reliably and efficiently, providing customers with even greater benefits than originally projected.[21]

Because the benefits of this type of backbone are so vast, MISO's quantitative calculations if anything undercount the benefits. Mr. Russo explains that MISO now expects demand to increase between 1.1 – 2.0 percent per year until 2044, as compared to the 0.82 percent growth previously assumed for Tranche 2.1.[22] And as the Commission observed long ago, quantitative metrics "entirely fail to capture many of the benefits of long-lived high-voltage transmission lines" and "studies regarding projects qualifying under Criterion 2 will . . . understate by design both the level of economic benefits that an MVP will provide to the Midwest ISO region and the length of

com/files/docs/2025/01/27/2024-regional-transmission-plan-rtp-345-kv-plan-and-texas-765-kv-strategic-transmission-expans.pdf; PJM Inside Lines, *PJM Board Approves New Transmission Projects to Support Grid Reliability* (Feb. 26, 2025); Robert Walton, *SPP OKs $7.7B Transmission Plan Targeting 'Generational Challenges' with Power Supply and Demand*, Utility Dive (Oct. 30, 2024).

[18] MISO, *MISO 2024 Load Forecast and Process Enhancements Workshop* at 16; Russo Aff. at 44.

[19] *Id*.

[20] Russo Aff. at 44.

[21] *See id*. ("Significant new load from data centers for AI will require commensurately significant transmission investment. Said differently, new transmission investment will likely help attract new data center loads to MISO's territory.").

[22] *Id.* at 46.

time for which the benefits will be realized."[23] That is especially true here, where the benefits of the 765 kV backbone will be felt across a broad swath of the country for a half-century or longer.

II. MISO's Tariff Creates a Detailed, Integrated, and Collaborative Process for Developing MISO Transmission Expansion Plans and Grants MISO Significant Discretion in Planning Multi-Value Projects.

MISO's Tariff creates a detailed process for formulating each MISO Transmission Expansion Plan ("MTEP"), including Long Range Transmission Plans ("LRTPs") and Multi-Value Projects ("MVPs"). This process affords MISO substantial discretion to achieve its members' goals while providing ample opportunities for stakeholder input. This section explains MISO's planning process, describes the numerous mechanisms for stakeholder feedback and dispute resolution, and lays out what happens after the Board approves a transmission portfolio.

A. MISO Plans Transmission to Achieve Its Members' Generation Plans, Relying on Its Tariff-Conferred Discretion to Develop Models and Assess Benefits.

MISO has hewed carefully to its role in planning transmission. With its footprint largely composed of vertically integrated utilities, MISO's constituent states decide what generation sources their load-serving entities ("LSEs") will use for resource adequacy.[24] Taking these plans as a given, MISO plans the transmission needed. In particular, MISO uses the annual MTEP process to identify and spur the development of cost-effective transmission infrastructure to ensure reliability, realize the goals of its members, and support a healthy and competitive electricity market.[25] MISO's Tariff establishes that the MTEP process is "performed through a continuous

[23] *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,074 at PP 131, 133 (2011), *aff'd in part, vacated in part sub nom., Ill. Com. Comm'n v. FERC*, 721 F.3d 764 (7th Cir. 2013).

[24] *Midcontinent Indep. Sys. Operator, Inc.*, 192 FERC ¶ 61,064 at PP 35, 200 (2025).

[25] MISO, *MTEP24 Transmission Portfolio* at 24; *see also* Russo Aff. at 12.

series of planning cycles,"[26] with each roughly 18-month planning cycle overlapping so an MTEP report is released annually, followed by approval by the MISO Board.[27]

Since 2020, MISO has used its LRTP initiative to develop "backbone" projects that support large geographic areas and address strategic challenges on a 20- to 40-year time horizon.[28] These projects will provide broad reliability, economic, and public-policy benefits throughout a wide geographic area.[29] MISO and its stakeholders are just short of halfway through planning four LRTP "tranches." Tranches 1 and 2 have targeted the Midwest Subregion; Tranche 3 will address the South Subregion and Tranche 4 will allow greater transfers between the Midwest and South.[30]

MISO folds its given LRTP into the annual MTEP as MVPs.[31] MVPs are projects that are developed as part of a portfolio to "address a common set of Transmission Issues," with benefits "spread broadly across the MISO system-wide footprint" or one of MISO's cost-allocation subregions—namely, the Midwest or South.[32] MISO's portfolio-based approach with MVPs allows the RTO to capture the myriad forms of value that large-scale transmission infrastructure can provide and reflects that the benefits of a group of projects can exceed the sum of their parts.[33] The Commission emphasized that "it can be difficult, and controversial, to identify which types of benefits are relevant for cost allocation purposes, which entities are receiving those benefits, and

[26] MISO Tariff, Attachment FF § I.C.1.b.

[27] *Id.* Attachment FF § I.C.1; MISO, *MTEP24 Transmission Portfolio* at 24.

[28] MISO, *MTEP24 Transmission Portfolio* at 11, 21–21.

[29] *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER22-995, MISO Transmittal Letter at 6 (filed Feb. 4, 2022); MISO Tariff, Attachment FF § II.C.1.

[30] *Midcontinent Indep. Sys. Operator, Inc.*, 181 FERC ¶ 61,219 at P 11 (2022).

[31] MISO, *MTEP24 Transmission Portfolio* at 21–22; *Midcontinent Indep. Sys. Op., Inc.*, 181 FERC ¶ 61,219 at PP 10–12.

[32] MISO Tariff, Attachment FF § II.C.1.

[33] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 at P 3 (2010) ("MVP Order"), *on reh'g*, 137 FERC ¶ 61,074 (2011), *aff'd in part, vacated in part sub nom.*, *Ill. Com. Comm'n v. FERC*, 721 F.3d 764 (7th Cir. 2013).

the relative benefits that accrue to various beneficiaries in an integrated transmission grid"—and that "an MVP will always provide some enhancement to system robustness and will thereby make the system more resilient to unforeseen contingencies threatening the reliable delivery of service to customers."[34]

The Tariff requires MVP projects to meet one of three criteria:

1) Enable the transmission system to economically and reliably deliver energy in furtherance of state or federal energy policies;

2) Provide multiple kinds of economic value across multiple geographic zones, with project benefits exceeding their costs (i.e., a benefit-to-cost ratio higher than 1.0); or

3) Address an identified transmission reliability issue that provides value to multiple geographic zones (again, with benefits exceeding the costs).[35]

Here, Complainants allege that MISO "incorrectly determined that the Tranche 2.1 projects qualified as MVPs under Criterion 2."[36]

The Commission has repeatedly affirmed that MISO retains significant discretion in implementing the details of this framework given the uncertainties, complexity, and sheer scale of the long-term transmission planning process.[37] For example, the Tariff affords MISO latitude to conduct a cost-benefit analysis considering broad categories of economic value, such as savings from reduced transmission congestion or lower planning reserve margins or "*[a]ny other financially quantifiable benefit* to Transmission Customers resulting from an enhancement to the

[34] *Id.* at P 202 (internal quotation marks removed).

[35] MISO Tariff, Attachment FF § C.2.a–c. MVP projects must also be large, with voltages of 100 kV or above and total capital costs of $20 million or more. *Id.* at Attachment FF § II.C.3(d), (e).

[36] Complaint at 11.

[37] MVP Order, 133 FERC ¶ 61,221 at PP 65–72, 209–210 (rejecting criticism by intervenors that MISO's MVP proposal was too broad and afforded the RTO too much discretion); *see also Midcontinent Indep. Transmission Sys. Operator, Inc.*, 179 FERC ¶ 61,124 at PP 70, 77 (2022) (acknowledging that MISO has discretion to decide between regional or subregional cost allocation, but the process will still "ensure that the costs of transmission facilities in an MVP portfolio are at least roughly commensurate with the estimated benefits thereof"), *order on reh'g*, 181 FERC ¶ 61,219 (2022).

Transmission System and related to the provisions of Transmission Service."[38] The Tariff does not limit what types of financially quantifiable benefits MISO may consider or how it must measure them.

B. MISO's Planning Process Ensures Rigorous Vetting.

MISO reviews all MVP portfolios—including those developed through MISO's LRTP initiative, like Tranche 2.1—under the Tariff's MTEP process.[39] To fulfill the Tariff's cycle milestones, MISO has deployed an iterative, seven-step process for each MVP's development, including building its models, identifying transmission issues and testing solutions, and allocating costs, all with opportunities for stakeholder feedback.[40] We describe the key components below.

Developing Futures Scenarios and Planning Models. The Tariff directs that "[e]ach cycle *commences* with regional model development."[41] At this stage, MISO develops long-term forecasts (called "Futures") and planning models to paint a robust vision of the future grid's dynamics and stressors—such as faster or slower interconnection or retirements of generation, or greater or smaller increases in load.[42] All subsequent MTEP steps—from identifying transmission needs, to project selection, to cost allocation—build on and flow from the development of the underlying models.[43] Two key principles underly MISO's forecasting and modeling decisions.

First, MISO is not a resource planner; it must look to the resource plans, expected system conditions, and policy goals of its member utilities and states—including both *what* new

[38] MISO Tariff, Attachment FF § C.5 (emphasis added).

[39] *Midcontinent Indep. Transmission Sys. Operator, Inc.*, 181 FERC ¶ 61,219 at P 3 (citing MISO Tariff, Attachment FF § II.C.1); MISO, *MTEP24 Transmission Portfolio* at 1, 22.

[40] MISO, *MTEP24 Transmission Portfolio* at 24.

[41] MISO Tariff, Attachment FF § I.C.1.b (emphasis added).

[42] MISO, *MTEP24 Transmission Portfolio* at 27.

[43] MISO Tariff, Attachment FF § I.C.1.b.i.(a)–(g).

generation will be built and *where*.[44] The Tariff expressly requires as much, mandating that MISO "seek guidance from Transmission Owners [and] states and local regulatory authorities . . . [on] the development of future scenarios to be modeled and analyzed in long-term planning studies,"[45] and specifying that MISO must model "additional generation as determined with stakeholder input, as necessary to adequately and efficiently meet demand forecasted through the planning horizon and to facilitate compliance with statutory or regulatory mandates."[46] This forecasting process, therefore, requires intensive stakeholder feedback on generation siting.[47]

Second, because the Tariff requires MISO to plan MTEPs continuously while accounting for evolving member goals, MISO must constantly revise and improve its planning models, metrics, and projections into ever-sharper forecasts of the future grid.[48]

Identifying Transmission Problems and Developing Solutions. Armed with these future grid forecasts, MISO identifies potential transmission problems and develops portfolios of regional solutions to meet those challenges.[49] Stakeholders comment on MISO's proposals and suggest alternative solutions,[50] which MISO uses to refine its portfolios.

Evaluating the Benefits and Cost-Effectiveness. MISO tests the robustness of its proposed solutions both in addressing the reliability needs of the grid and delivering economic benefits that exceed the costs of investment.[51] As indicated above, the Tariff grants MISO

[44] MISO, *MTEP24 Transmission Portfolio* at 28 (2024).

[45] MISO Tariff, Attachment FF § I.C.2.b; *see also id.* § I.C at items (i)–(x); *id.* Attachment FF § I.C.7 (requiring MISO to incorporate load forecasts of members and member-planned projects when predicting "expected system conditions for the planning horizon").

[46] MISO Tariff, Attachment FF § I.C.8.c

[47] MISO, *MTEP24 Transmission Portfolio* at 29.

[48] *See* MISO, *MTEP24 Transmission Portfolio* at 26–28.

[49] MISO Tariff, Attachment FF § I.C.1.b, d; MISO, *MTEP24 Transmission Portfolio* at 25.

[50] MISO Tariff, Attachment FF § I.C.9; *MTEP24 Transmission Portfolio* at 25.

[51] MISO Tariff, Attachment FF § I.C.1.c; MISO, *MTEP24 Transmission Portfolio* at 24.

significant discretion as to which benefits to consider and how to measure those benefits when "develop[ing] expansion plans to meet the needs of the system."[52]

C. MISO's Process Provides Many Avenues for Stakeholder Input and Dispute Resolution Prior to Board Approval.

MISO maintains a rigorous and open stakeholder process throughout the entire MTEP cycle—from developing the models to refining the project portfolio—during which any number of parties, especially states, can raise concerns and objections to MISO's attention.[53] Indeed, the MTEP's public engagement process is mandatory under MISO's Tariff. For example, the Tariff requires MISO to:

- Solicit feedback specifically on the planning models at the outset of the MTEP, stating MISO "*will* provide an opportunity for stakeholders to review and comment on the posted models *before* commencing planning studies."[54]
- "[F]acilitate discussions" with stakeholders on "Transmission issues and solutions" via regular planning committee meetings.[55]
- Evaluate alternative transmission solutions submitted by stakeholders.[56]

[52] MISO Tariff, Attachment FF § I.D.

[53] *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,074 at P 113 ("In fulfilling this mission, Midwest ISO utilizes its stakeholder and committee processes to ensure that issues of importance to stakeholders are voiced and weighed equitably. Issue-related committees, task forces and working groups have their end products reviewed by the sector-weighted Advisory Committee before being sent to the independent Board of Directors for final approval. Finally, Midwest ISO submits changes or additions to its Tariff for review and approval by the Commission. In this manner, all stakeholders can be assured of having their arguments heard and acted upon in an independent and neutral way.").

[54] MISO Tariff, Attachment FF § I.C.7 (emphases added).

[55] *Id.* Attachment FF § I.C.2.

[56] *Id.* Attachment FF § I.C.9.

- "[S]eek feedback on the proposed MTEP … from [its] stakeholders and the [Organization of MISO States] Committee" after "the MTEP report for a specific planning cycle has been completed but *prior* to recommendation to the [] Board."[57]

States receive their own distinctive rights within the MTEP process. For example, the Tariff provides that, "with respect to the MTEP process, the OMS Committee may provide input" on MISO's "planning principles," "planning objectives," scope, modeling assumptions, cost-benefit analyses, or other "[c]oncerns about general or specific issues," from the "start of a planning cycle" and "as they arise during the planning year."[58]

To the extent that disagreements cannot be resolved through the stakeholder process, there are three tracks available for resolution:

- Informal Dispute Resolution: MISO maintains an informal MTEP dispute resolution process that members may pursue prior to invoking the formal Tariff resolution mechanisms. Disagreements are referred to an appropriate committee and evaluated by a working group, which recommends resolutions to MISO and stakeholders.[59]
- Formal Dispute Resolution: The Tariff provides that MISO "*shall* resolve disputes concerning MTEP issues"[60] using a formal multi-step process, that can include arbitration.
- State Dispute Process: States also have a dispute-resolution mechanism specifically for them: "at the end of the MTEP development process, but before the MTEP is submitted to the Transmission Provider Board for its review, the OMS Committee may submit a

[57] *Id.* Attachment FF § I.C.2 (emphasis added).

[58] *Id.* Attachment FF § I.B.

[59] MISO, Manual No. 20, Business Practices Manual, Transmission Planning, BPM-020-r33 ("MISO BPM 20") at 37–38 (July 2025).

[60] MISO Tariff, Attachment FF § I.C.14 (emphasis added); *see also id.* Attachment HH (outlining dispute resolution process).

reconsideration request to" MISO.[61] This right is carefully reticulated and available only when certain conditions are met, including support for reconsideration by a supermajority of OMS members.[62]

Section VI of the Tariff lays out exactly how this dispute resolution process relates to Board approval of the MTEP, and exactly when it must occur. First, it specifies that if stakeholders "cannot reach agreement on any element of the MTEP, the dispute may be resolved through the dispute resolution procedures provided in the Tariff, … or by the Commission or state regulatory authorities, where appropriate."[63] Then, MISO "shall present the MTEP … to the … Board."[64] Finally, "[a]pproval of the MTEP by the … Board certifies it as the [MISO] plan for meeting the transmission needs of all stakeholders subject to any required approvals by federal or state regulatory authorities."[65] So even as the Tariff creates a dispute resolution process, including providing for potential Commission intervention under Section 206, it contemplates that these processes will occur before final Board approval. Indeed, that front-end consideration is especially essential for MVPs, which by Tariff "must be evaluated as part of a Portfolio of projects, as designated in the transmission expansion planning process."[66]

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[61] *Id.*, Attachment FF § I.B.

[62] *Id.* The Tariff further provides that "[t]his reconsideration request can be made only with respect to Network Upgrades eligible to receive regional cost allocation under Attachment FF if such projects: (1) will be recommended to the Transmission Provider Board for MTEP Appendix A approval, but have not been considered through the complete MTEP process or (2) will have a change in project cost of twenty-five percent (25%) or greater between the final Subregional Planning Meeting in the current planning year and the project being submitted to the Transmission Provider Board for approval." *Id.*

[63] *Id.* Attachment FF § VI.A.

[64] *Id.* Attachment FF § VI.B.

[65] *Id.* Attachment FF § VI.C.

[66] *Id.* Attachment FF § II.C.1.

D. Board Approval Immediately Triggers Development of Projects.

Consistent with this front-end process, the Tariff then requires immediate action to implement the Board's conclusive determination. The Tariff requires that Transmission Owners "*shall* make a good faith effort to design, certify, and build the designated facilities to fulfill the approved MTEP."[67] The Tariff provides a limited, defined exception for a project that "is being challenged"—that is, is *already* being challenged—"through the dispute resolution procedures under this Tariff or in court proceedings."[68] Outside of this narrow exception, the Tariff imposes the expectation that projects must proceed promptly to development, and work on projects assigned to incumbent transmission owners *must* commence immediately.[69] For projects subject to competitive selection, MISO must launch selection processes within weeks: If the portfolio contains more than one competitive project, MISO must within 10 days announce its intent to stagger release dates for requests for proposals ("RFPs") and within 30 days must identify the competitive projects and their RFP release dates.[70] The upshot is that within a month of Board approval, everyone knows which projects MISO has identified as competitive, allowing incumbents to proceed immediately with work on the rest (and requiring immediate work on RFPs for competitive projects).

The approved MTEP also becomes the building block for other critical activities. MISO's "continuous series of planning cycles" roll forward,[71] and under the Tariff, each new planning

[67] *Id.* Attachment FF § VI.C (emphasis added).

[68] *Id*.

[69] *Id*.

[70] *See Id.* Attachment FF § VIII.C (providing that, if an approved MTEP project contains Competitive Transmission Facilities, "the Transmission Provider will release a Request for Proposals (RFP) for each Competitive Transmission Project pursuant to Section VIII.C of this Attachment FF and the applicable Business Practices Manuals."); *id.* (requiring that if an MTEP "contains only one (1) Competitive Transmission Project, The Transmission Provider will release an RFP *within sixty (60) Calendar Days*" from the date of Board approval (emphasis added)).

[71] *Id.* Attachment FF § I.C.1.b.

cycle must take into account the projects planned in the prior cycles.[72] Approved projects are included in MISO's models for expedited transmission project review,[73] generator interconnection requests,[74] and MISO's Expedited Resource Addition Study ("ERAS") process,[75] which the Commission approved to help bring "shovel ready" dispatchable resources online quickly.[76]

The Tariff permits the revisiting of approved projects in only limited circumstance. A "Variance Analysis" provides an avenue for reconsideration and even termination of projects on enumerated grounds like unexpected costs.[77] It does not permit the revisiting of approved projects (or their cost allocation) on the ground that their benefits should have been calculated differently. MISO must also later perform a retrospective analysis of MVP projects,[78] recognizing that projecting benefits and costs is an inexact science that can always be improved.[79] But this analysis informs *future* planning and does not provide a mechanism to disturb already approved projects.

III. Tranche 2.1 Is the Culmination of a Multiyear Planning Process by MISO and Its Members and Is an Essential Investment in the Midwest's Future Grid.

Tranche 2.1 is the second part of MISO's four-part plan to develop a robust transmission backbone to support reliability and economic growth into the next century—helping realize the

[72] *E.g.*, *id.* Attachment FF § I.C.8.e ("Each planning study will use the best known topology based upon the most recently approved MTEP. Planning studies will include all projects approved by the Transmission Provider Board, and shall identify, as appropriate ... any system needs already identified in the most recent approved MTEP.").

[73] *See* MISO BPM 20 § 4.1.4.

[74] MISO, *LRTP Integration BPM-015 Change* 5 (Planning Advisory Comm. Apr. 16, 2025), https://cdn.misoenergy.org/20250416%20PAC%20Item%2006b%20%20LRTP%20Integration%20BPM-015%20Change%20Presentation691129.pdf.

[75] MISO, *Expedited Resource Addition Study ("ERAS")*, at 9–10 (2025), https://cdn.misoenergy.org/ERAS%20Informational%20Guide707493.pdf.

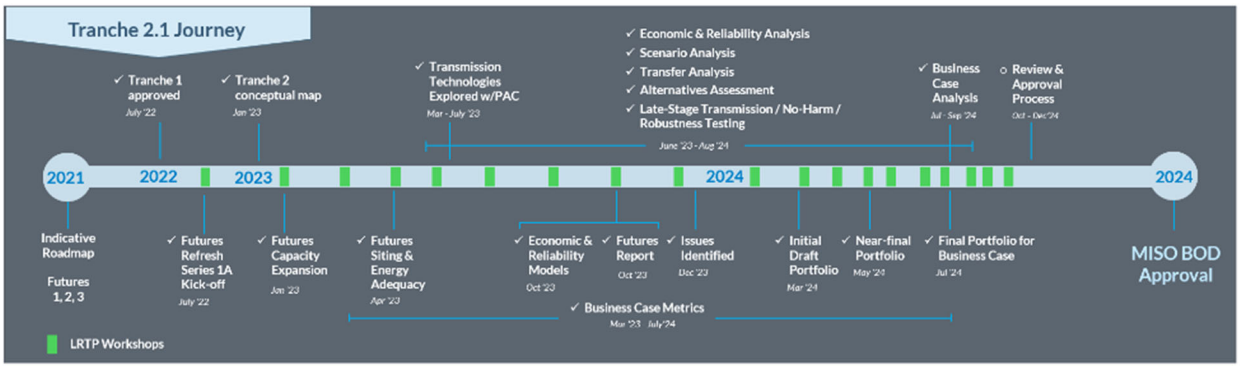
[76] *Midcontinent Indep. Sys. Operator*, 192 FERC ¶ 61,064 at P 81 (2025).

[77] MISO Tariff, Attachment FF § IX.C.1–5 (listing as grounds cost increases, schedule delays, defaults, inability to complete facilities, and undisclosed assignments).

[78] *Id.* Attachment FF § VII.

[79] *See Ill. Com. Comm'n v. FERC*, 721 F.3d 764, 774 (7th Cir. 2013).

state and national policy priorities like AI dominance, reindustrialization, and affordability.[80] Tranche 2.1's planning was complex, comprehensive, and deliberative, lasting more than two years—spanning from July 2022 through December 2024. MISO held at least 300 stakeholder meetings and 19 LRTP workshops (with 250+ attendees at each), and invested over 40,000 staff working hours.[81] The remainder of this Section walks through MISO's careful development of Tranche 2.1, depicted in the timeline below.



Source: MISO, *MTEP24 Transmission Portfolio* at 26 fig. 2.3

Developing Futures Scenarios and Planning Models. From July 2022 to January 2023, MISO developed its Futures scenarios using its members' planned resource additions, retirements, and policy goals, in addition to system-wide forecasts.[82] Then from January to April 2023, MISO refined its Futures scenarios by projecting where these new resources would likely be sited considering policy, grid topography, and market dynamics.[83] Stakeholders participated heavily in the siting process, proposing more than 500 revisions to MISO's siting projections.

[80] *See Midcontinent Indep. Sys. Operator, Inc.*, 181 FERC ¶ 61,219 at P 11.

[81] MISO, *LRTP Workshop: Tranche 2.1 Journey* (Sept. 25, 2024), https://cdn.misoenergy.org/20240924%20LRTP%20Workshop%20Item%2001%20Tranche%202.1%20Journey649711.pdf.

[82] *Id.* at 5.

[83] *Id*.

MISO also developed planning models to refine its thinking and planning strategy over the coming decades.[84] For example, MISO's reliability models allowed MISO to grapple with multiple uncertainties in future operating conditions, such as renewable energy variability, seasonal variation, and different load.[85] And MISO used multi-year economic models to predict likely patterns in the dispatch of resources—a modeling process again heavily informed by stakeholder input on both the underlying data and the assumptions.[86]

Identifying Future Transmission Problems. Based on these Futures scenarios and planning models, MISO identified future transmission problems.[87] MISO's analyses identified possible severe and widespread transmission congestion, with 10-20 percent of facilities overloaded across the region and generation curtailments as high as 40 percent in the West region, which includes the Dakotas.[88] MISO presented its findings on future system constraints at a workshop in December 2023 and received stakeholder input.[89] MISO also conducted transfer scenario analyses, which were also presented to stakeholders for input in August 2023 and January 2024.[90] These studies all pointed to a significant design limitation with the Midwest's current grid: the lack of intraregional high-voltage transmission capacity.[91]

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[84] MISO, *MTEP24 Transmission Portfolio* at 32–38.

[85] *Id.* at 32–33 & tbl.

[86] *Id.* at 35 & fig. 2.11, 36 (reporting four opportunities for stakeholder review).

[87] *Id.* at 39–52.

[88] *Id.* at 39, 46–47; MISO, *LRTP Workshop: Tranche 2.1 Journey* at 8.

[89] MISO, *LRTP Tranche 2; Flowgate Identification* (Dec. 1, 2023) , https://cdn. misoenergy.org/20231201%20LRTP%20Workshop%20Item%2003%20Economic%20Flowgate%20Identification631066.pdf; MISO, *LRTP Tranche 2: Reliability Analysis Update* (Jan. 26, 2024), https://cdn.misoenergy.org/20240126%20LRTP%20Workshop%20Item%2002%20Reliability%20Update631471.pdf.

[90] MISO, *LRTP Tranche 2: Reliability Analysis Update* (LRTP Workshop Aug. 31, 2023); MISO, *LRTP Tranche 2: Reliability Analysis Update* (LRTP Workshop Jan. 2024).

[91] MISO, *MTEP24 Transmission Portfolio* at 39, 41.

Developing Tranche 2.1's Transmission Solutions. Based on the intensive engineering and economic modeling described above, MISO shared an initial conceptual roadmap of potential transmission solutions in January 2023.[92] MISO proposed a multi-project 765 kV regional backbone designed to facilitate large energy transfers over long distances, at significantly lower costs than lower-capacity alternatives while requiring much less land.[93] After refining its proposal in conjunction with ongoing modeling, MISO released an anticipated portfolio of transmission solutions in March 2024 for stakeholder feedback,[94] and a revised portfolio in June 2024.[95] MISO also carefully evaluated 97 alternative transmission solutions proposed by stakeholders, ultimately incorporating 7 new projects into Tranche 2.1's portfolio.[96]

Evaluating the Benefits and Cost-Effectiveness of Tranche 2.1. MISO then tested the robustness and cost-effectiveness of its proposed solutions in Tranche 2.1 against its most severe planning scenarios—including mitigating of reliability issues, reducing extreme weather risks, avoiding capacity costs, and alleviating congestion, among other values.[97] Through this analysis, MISO determined that Tranche 2.1 would have substantial benefits for the Midwest, creating a "robust regional backbone" that would reduce economic congestion on transmission lines by nearly 30 percent and curtailment by 11 percent and support more than 110 GW of future

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[92] *Id.* at 53; MISO, *LRTP Tranche 2: Hypothesis Development* (LRTP Workshop Jan. 2023)https://cdn.misoenergy.org/20230127%20LRTP%20Workshop%20Item%2003%20Hypothesis%20Map627634.pdf.

[93] MISO, *MTEP24 Transmission Portfolio* at 53–54.

[94] *See* MISO, *Tranche 2: Initial Draft Portfolio* (LRTP Workshop Mar. 4, 2024), https://cdn.misoenergy.org/20240315%20LRTP%20Workshop%20Item%2002%20Tranche%202%20Anticipated%20Portfolio632013.pdf; *see* MISO, *LRTP Tranche 2: Reliability & Economic Alternative Review* (LRTP Workshop May 29, 2024), https://cdn.misoenergy.org/20240529%20LRTP%20Workshop%20Item%2003%20Reliability%20%20Economic633034.pdf.

[95] MISO, *Tranche 2.1: Near-Final Portfolio* (LRTP Workshop June 10, 2024).

[96] MISO, *MTEP24 Transmission Portfolio* at 60.

[97] MISO, *LRTP Workshop: Tranche 2.1 Journey* at 8, 12; MISO, *MTEP24 Transmission Portfolio* at 81–162.

generation.[98] All in, MISO calculated $23.1 to $72.4 billion dollars in total benefits over a 20-year period, at present value, with a benefit-to-cost ratio ranging from 1.8 to 3.5.[99]

The business case metrics central to MISO's cost-benefit analysis (and now contested by the Complaint) stemmed from a 13-month development process shaped by stakeholder input.[100] NDPSC largely sat on the sidelines during the development of these metrics.

The Final Tranche 2.1 Portfolio and Board Approval. In September 2024, more than two years after the Futures scenario refresh began in July 2022, and 18 months after the planning process opened to stakeholders, MISO shared its final draft Tranche 2.1 portfolio and supporting business case.[101] This $21.8 billion portfolio would create a 765 kV transmission backbone to facilitate high system transfers across the region under a range of operating conditions, allow significant new generation throughout the Midwest, and resolve severe transmission congestion in the coming decades.[102] The MISO Board approved Tranche 2.1 on December 15, 2024.[103]

IV. MISO's Tranche 2.1 Proposal Reflects the North Dakota Public Service Commission's Feedback During the Stakeholder Process.

Although NDPSC now complains about the results of MISO's Tranche 2.1 development process, the outcome was shaped in no small part by its own comments.

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[98] MISO, *MTEP24 Transmission Portfolio* at 88.

[99] *Id.* at 125.

[100] *See id.* at 160 (summarizing business case analysis).

[101] *Id.* at 161–61; *Id.* at 24; MISO, *MISO Economic Planning Whitepaper* (Oct. 3, 2024), https://cdn.misoenergy.org/MISO%20Economic%20Planning%20Whitepaper651689.pdf; MISO, *MISO Long-Range Transmission Planning Reliability Study for the Tranche 2 Effort* (Mar. 11, 2024), https://cdn.misoenergy.org/LRTP%20Tranche%202%20Reliability%20Study%20Whitepaper628669.pdf; MISO, *LRTP Tranche 2: Business Case Metrics Methodology Whitepaper* (Oct. 1, 2024), https://cdn.misoenergy.org/LRTP%20Tranche%202%20Business%20Case%20Metrics%20Methodology%20Whitepaper633738.pdf.

[102] MISO, *LRTP Workshop: Tranche 2.1 Journey*.

[103] Press Release, MISO, *MISO Board Approves Historic Transmission Plan to Strengthen Grid Reliability* (Dec. 12, 2024), https://www.misoenergy.org/meet-miso/media-center/2024/miso-board-approves-historic-transmission-plan-to-strengthen-grid-reliability/.

NDPSC complained that MISO's modeling of future generation resources was "extremely light" for new generation in the state and urged MISO "to increase the assumption for wind development" and natural gas generation in North Dakota.[104] NDPSC touted that North Dakota "has one of the best wind resources in the MISO region" and "is the only natural gas producing state in the MISO region."[105] MISO listened; it adjusted its Futures forecasts by adding an additional 17,000 MW of generation to North Dakota, including by shifting some generation from Minnesota, Wisconsin, and other area to the Dakotas.[106]

In March 2024, once MISO released its anticipated portfolio of transmission solutions, NDPSC again took nearly the polar opposite position that it does now—it complained that MISO's proposed projects *did not go far enough* to help connect North Dakota's "low-cost wind" resources to eastern load centers, "who would benefit from access to low-cost generation available from these wind-rich locations."[107] Per North Dakota, at the time, Tranche 2.1 "d[id] not provide sufficient deliverability for the low-cost wind in Central and Western [North Dakota]."[108] MISO in response committed to addressing the issue in the next phase of Tranche 2.[109]

Despite actively participating in other aspects of MISO's Tranche 2.1 development process, NDPSC largely sat on the sidelines on the issue that is now central to its complaint—the business

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[104] N.D. Pub. Serv. Comm'n Comment on Future 2A Expansion and Preliminary Siting (Mar. 30, 2023), https://www.misoenergy.org/engage/stakeholder-feedback/2023/lrtp-formal-feedback-future-2a-expansion-and-preliminary-siting-20230310/.

[105] *Id.*

[106] *See* MISO, *MTEP24 Transmission Portfolio* at 30; MISO, Formal Response to Stakeholder Feedback, LRTP Workshop Item 03b (Apr. 28, 2023), https://cdn.misoenergy.org/20230428%20LRTP%20Workshop%20Item%2003b%20Feedback%20Responses628728.xlsx.

[107] Comments of the N.D. Pub. Serv. Comm'n (Apr. 8, 2024), https://www.misoenergy.org/engage/stakeholder-feedback/2024/lrtp-tranche-2-anticipated-portfolio-20240315/.

[108] *Id.*

[109] MISO, *MISO Response to Feedback: Tranche 2 Anticipated Portfolio* 9 (Apr. 26, 2024), https://cdn.misoenergy.org/LRTP%20Workshop%20MISO%20Response%20to%20Feedback_Tranche%202%20Anticipated%20Portfolio(20240315)632666.pdf.

case metrics. When MISO first introduced its proposed business metrics in March 2023,[110] North Dakota filed no comments.[111] MISO then publicly shared its congestion and fuel savings benefit metric in January 2024 and invited feedback;[112] NDPSC gave no input.[113] And in March 2024, when MISO shared its *updated* business case benefit metrics,[114] NDPSC again did not comment.[115]

In May 2024, *over a year* after MISO first proposed Tranche 2.1's benefit metrics, NDPSC submitted a 405-word comment concerning reliability improvements, extreme weather mitigation, and reduced losses.[116] When MISO finalized its business case metrics in June 2024,[117] it responded point by point to NDPSC's concerns, explaining, for example, that the future resource assumptions that North Dakota took issue with were driven by the resource planning activities of MISO's

[110] MISO, *LRTP Tranche 2: Business Case Benefit Metrics* (LRTP Workshop Mar. 10, 2023), https://cdn.misoenergy.org/20230310%20LRTP%20Workshop%20Item%2005%20Business%20Case%20Metrics%20Development%20Presentation628153.pdf.

[111] *See* MISO, LRTP Informal Feedback: Business Case Benefit Metrics, Submitted Feedback (Mar. 10, 2023), https://www.misoenergy.org/engage/stakeholder-feedback/2023/lrtp-informal-feedback-business-case-benefit-metrics-20230310/.

[112] MISO, *LRTP Tranche 2: Congestion and Fuel Savings Benefit Metric* (LRTP Workshop Jan. 26, 2024), https://cdn.misoenergy.org/20240126%20LRTP%20Workshop%20Item%2004%20Congestion%20and%20Fuel%20Savings631473.pdf.

[113] *See* MISO, LRTP: Tranche 2 Congestion and Fuel Savings Benefit Metric, Submitted Feedback (Feb. 16, 2024), https://www.misoenergy.org/engage/stakeholder-feedback/2024/lrtp-tranche-2-congestion-and-fuel-savings-benefit-metric-20240126/.

[114] MISO, *LRTP Tranche 2: Business Case Benefit Metrics* (LRTP Workshop Mar. 15, 2024), https://cdn.misoenergy.org/20240315%20LRTP%20Workshop%20Item%2004%20Business%20Case%20Metrics%20Review632195.pdf.

[115] MISO, LRTP: Tranche 2 Anticipated Portfolio (20240315), Submitted Feedback.

[116] N.D. Pub. Serv. Comm'n Comments on LRTP: *Tranche 2 Business Case Benefit Metric* (May 13, 2024), https://www.misoenergy.org/engage/stakeholder-feedback/2024/lrtp-tranche-2-business-case-benefit-metric-20240426/.

[117] MISO, *LRTP Tranche 2.1: Benefit Metrics Development* (June 10, 2024), https://cdn.misoenergy.org/20240610%20LRTP%20Workshop%20Item%2004%20Business%20Case%20Metrics%20Overview633838.pdf (discussing avoided capacity cost metric, capacity savings from reduced losses, congestion and fuel savings, energy savings from reduced losses, reduced transmission outage costs, reduced risk from extreme weather, mitigation of reliability issues, avoided transmission investment, and decarbonization).

members, not MISO.[118] Then, after MISO shared its final draft portfolio in September 2024, the NDPSC filed a cursory comment letter renewing its concerns regarding Tranche 2.1's cost-benefit analysis.[119] Neither NDPSC nor any other stakeholder ever pursued the Tariff-required dispute resolution mechanisms, or sought the Commission's intervention before the Board approved Tranche 2.1.[120] To all the world, NDPSC appeared satisfied—or at minimum, not any more dissatisfied than any other stakeholder in MISO's complex planning process, which can never satisfy every stakeholder's every desire.

MOTION TO DISMISS

I. The Commission Should Dismiss the Complainants That Fail to Show They Are Adversely Affected by Tranche 2.1.

The Commission, to begin, should dismiss from this proceeding the Public Service Commissions of Arkansas, Mississippi, and Louisiana. The Commission "has consistently construed" Rule 206 to permit any person to file a complaint, "so long as the person is *adversely affected* by the actions that are the subject of the complaint."[121] In *Appalachian Power Co.*, for example, the Commission found that a complainant individual who raised only "general allegations" and failed to explain how he was affected by the matters raised in his complaint did

[118] MISO, *MISO Response to Feedback* 12–14 (June 10, 2024), https://cdn.misoenergy.org/LRTP%20Workshop%20MISO%20Response%20to%20Feedback-Three%20Business%20Case%20Metrics%20(20240426)633174.pdf.

[119] Comments of the N.D. Pub. Serv. Comm'n (Oct. 15, 2024), https://cdn.misoenergy.org/PSC-ND%20Feedback%20on%20Draft%20MTEP24%20Report653438.pdf.

[120] Press Release, MISO, *MISO Board Approves Historic Transmission Plan to Strengthen Grid Reliability* (Dec. 12, 2024), https://www.misoenergy.org/meet-miso/media-center/2024/miso-board-approves-historic-transmission-plan-to-strengthen-grid-reliability/.

[121] *Spire STL Pipeline LLC*, 174 FERC ¶ 61,058 at P 9 (2021) (emphasis added); *accord Appalachian Power Co*., 153 FERC ¶ 61,299 at P 15 (2015).

not have standing.[122] Here, Tranche 2.1 assigns costs only to the MISO Midwest subregion.[123] That should be the end of the road for the Complainants located in the MISO South subregion: The Public Service Commissions of Arkansas, Mississippi, and Louisiana have no concrete stake in Tranche 2.1, and their retail ratepayers will bear *no costs whatsoever* from Tranche 2.1.[124] While these Complainants may disagree as a policy matter with MISO's approval of Tranche 2.1, those concerns—uncoupled from any injury to any MISO South ratepayer—do not suffice to establish standing.[125] The Commission should set down a marker, lest the important purposes its Section 206 proceedings serve become mired in abstract disagreements brought by mere bystanders with "purely theoretical" injuries and an axe to grind.[126]

The interests of NDPSC and the Montana PSC are only marginally greater. Their customers will bear only a sliver of Tranche 2.1's costs, 3 and 0.2 percent respectively.[127] They do not even try to show that the benefits they receive are not at least roughly commensurate with these costs. Nor do they try to show that they would *pay less* if the Commission pulls out the rug from Tranche 2.1's approval as an MVP portfolio. If that occurs, some projects may proceed under

[122] 153 FERC ¶ 61,299 at P 15.

[123] Complaint at 44 (stating that "MISO will allocate Tranche 2.1 costs *using a postage stamp rate that will be collected from customers located throughout the MISO Midwest subregion*") (emphasis added); *see also id*. at 23 (acknowledging that "LRTP Tranche 2.1 is an approximately $22 billion portfolio of 24 new high-voltage transmission investments *across the MISO Midwest subregion*") (emphasis added). Despite these admissions, Complainants' Rule 206 disclosures incorrectly suggest that all Complainants' retail ratepayers will bear costs from Tranche 2.1. *See id.* at 53 (claiming that MISO's designation of Tranche 2.1 as an MVP portfolio "will lead to improper allocation of the portfolio's costs to the detriment of the retail ratepayers *under the Concerned Commissions jurisdiction*") (emphasis added).

[124] Russo Aff. at 50–51.

[125] *See, e.g*., *Spire STL Pipeline LLC*, 174 FERC ¶ 61,058 at P 10; *Wis. Pub. Power, Inc. v. FERC*, 493 F.3d 239, 268 (D.C. Cir. 2007) ("A petitioner's interest in the Commission's legal reasoning and its potential precedential effect does not by itself confer standing where, as here, it is uncoupled from any injury in fact caused by the substance of FERC's adjudicatory action.") (cleaned up).

[126] *Appalachian Power Co.*, 153 FERC ¶ 61,299 at P 15.

[127] Russo Aff. at 50–51.

other Tariff categories, and other, additional projects may become necessary—which could well result in *greater* costs for North Dakota and Montana given how *favorable* for these low-load states is the MVP postage-stamp cost allocation. If the Commission does not dismiss North Dakota and Montana outright, their arguments at minimum warrant enormous skepticism given their at-best marginal concrete interests in Tranche 2.1's approval as an MVP portfolio.

PROTEST

I. The Commission Should Reject the Complaint Because Complainants Disregarded the Tariff's Process for Raising Objections and Resolving Disputes.

None of the Complainants followed the Tariff-provided processes for pressing a dispute over the MTEP. Instead, they filed long after the Board's approval rendered Tranche 2.1 final and long after work began. MISO's Tariff creates detailed procedures to vet and even challenge transmission portfolios before they become final, including (if necessary) seeking Commission intervention. Then, the Tariff provides that an unchallenged plan is *the plan*, on which MISO and everyone else is entitled to rely. It does so *precisely because* these portfolios, once final, unleash immediate investment and become the foundation for nearly everything important MISO does. And entertaining challenges from litigants who have disregarded those Tariff-provided procedures, and instead sandbagged and brought grievances only to the Commission long after work has begun, would destroy the certainty on which sound planning and strong investment depend.

A. Because Complainants Flouted the Tariff and Unreasonably Delayed, the Commission Should Reject the Complaint.

As the Commission emphasized long ago, "should disputes arise [in the transmission planning process], they should first be addressed through the dispute resolution process set forth

in the transmission provider's" tariff.[128] Hence, the Commission has often rejected complaints, sometimes dismissing and other times denying, where the complaining party failed to follow the required procedures.[129] Indeed, it has done so as to MISO's MTEP specifically, "conclud[ing] Complainants should have advanced their arguments during the MTEP process."[130] These decisions are consistent with the "intensely practical" requirement of administrative exhaustion, which requires parties to press their complaints at the appropriate time and the appropriate way, rather than lie in wait until long after decisions have been made.[131] They are also consistent with the principle that where the law creates a "comprehensive" set of "procedures and guarantees," it may preclude actions that would "circumvent" that "carefully tailored scheme,"[132] particularly where allowing such actions would destroy the certainty that the designated scheme aims to provide. And while Section 206 does not itself contain a statute of limitations, complaining parties cannot carry their burden to show that a rate or practice is "unjust" or "unreasonable" when the

[128] Order No. 890-A, *Preventing Undue Discrimination and Preference in Transmission Serv.* 121 FERC ¶ 61,297, at P 189 (2007), *on reh'g*, 123 FERC ¶ 61,299 (2008), *on reh'g*, 126 FERC ¶ 61,228 (2009), *on reh'g*, 129 FERC ¶ 61,126 (2009).

[129] *See, e.g.*, *Citizens Energy Task Force & Save Our Unique Lands v. Midwest Reliability Org.*, 144 FERC ¶ 61,006 at P 40 (2013) ("[W]e conclude that Complainants should have advanced their arguments during the MTEP process"); *NextEra Energy Power Mktg., LLC*, 155 FERC ¶ 61,270 at P 27 (2016) ("ISO-NE has a process in place to challenge disqualification in a timeline fashion, and NextEra failed to take advantage of the opportunities to challenge its disqualification in a timely manner, a factor that weighs against the requested relief."); *Am. Transmission Co. v. Midwest Indep. Transmission Sys. Operator, Inc*, 142 FERC ¶ 61,090 at P 53 (2013) (denying complaint and finding that complainant should have advanced its argument "during the planning process, when MISO actively engaged with stakeholders to develop its regional expansion plans").

[130] *Citizens Energy Task Force & Save Our Unique Lands*, 144 FERC ¶ 61,006 at P 40; *see also Am. Transmission Co.*, 142 FERC ¶ 61,090 at P 53.

[131] *See, e.g.*, *J.B. ex rel. Bailey v. Avilla R-XIII Sch. Dist.*, 721 F.3d 588, 594 (8th Cir. 2013) (quoting *Bowen v. City of New York*, 476 U.S. 467, 484 (1984)); *Datek Sec. Corp. v. Nat'l Ass'n of Sec. Dealers, Inc.*, 875 F. Supp. 230, 231–33 (S.D.N.Y. 1995) (dismissing complaint because plaintiff failed to exhaust administrative remedies before the National Association of Securities Dealers, a private corporation with a quasi-official role under federal securities regulations).

[132] *Smith v. Robinson*, 468 U.S. 992, 1012 (1984), *superseded by statute as stated in Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995); *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 252 (2009).

Tariff provided opportunities to challenge the rate or practice at an appropriate time and in an appropriate way, when they failed to invoke the processes provided to protect their rights,[133] and when—as a result—entertaining the challenge would prejudice other affected parties by undermining the certainty those processes aim to provide.[134]

MISO's Tariff creates just that type of process, and adhering to it is particularly important for foundational MVP portfolios like Tranche 2.1, which must be evaluated holistically and then serve as the base for so much of what MISO does. That process is comprehensive and sequential. To recap: First, Attachment FF of the Tariff specifies that if stakeholders "cannot reach agreement on any element of the MTEP," the "dispute may be resolved through the dispute resolution procedures provided in the Tariff, … or by the Commission or state regulatory authorities, where appropriate" (§VI.A). Second, if those processes have not been invoked, the Tariff imposes on MISO a mandatory duty—that it "shall present the MTEP to the … Board for approval" (§VI.B). Third, "approval … by the … Board certifies [a plan] "as the [MISO] plan for meeting the transmission needs of all stakeholders subject to any required approvals by federal or state regulatory authorities" (§VI.C). Indeed, the Commission has emphasized that a primary function of this and similar stakeholder processes is to create a venue where stakeholders and MISO can ventilate concerns and resolve disputes *before* MISO presents a plan to its Board and *before* the Board approves that plan.[135]

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[133] *See, e.g.*, *Niagara Mohawk Power Corp. v. N.Y. Reliability Council*, 114 FERC ¶ 61,098 at P 19 (2006) (dismissing section 206 complaint because complainant failed to "exhaust[] its remedies within Reliability Council or NYISO"); *Hudson Transmission Partners, LLC v. New York Indep. Sys. Operator, Inc.*, 122 FERC ¶ 61,024 at P 29 n.26 (2008) ("Additionally, it is the responsibility of the parties ... to first exhaust their administrative remedies with NYISO before bringing matters to the Commission.").

[134] *See California ex rel. Brown v. Powerex Corp.*, 135 FERC ¶ 61,178 at PP 97–111 (2011) (holding unreasonably delayed section 206 complaint time barred because it would unfairly penalize other market participants), *on reh'g*, 139 FERC ¶ 61,210 (2012).

[135] *See, e.g.*, *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,074 at P 113 (2011) ("Midwest ISO utilizes its stakeholder and committee processes to ensure that issues of importance to

By contrast, when stakeholders allow Board approval to proceed without seeking relief, and unless an exception applies, the result becomes the plan "for … all stakeholders"—including them. Where the law creates a "sequential evaluation process to determine" a question, that sequence must be followed.[136] And even if this provision does not necessarily require dissatisfied stakeholders to invoke the Tariff-provided process of mediation and then arbitration, and may permit stakeholders may to instead seek relief directly from the Commission, it contemplates that dissatisfied stakeholders will seek relief *from someone* before the plan becomes final.

That conclusion is stronger still because of how the Tariff's step-by-step procedures are purpose-built to induce reliance. Again, to recap: First, MVP projects "must be evaluated as part of a Portfolio of projects"[137]—an evaluation that cannot sensibly govern if some stakeholders are harboring secret grievances they plan to spring long after Board approval. Second, upon Board approval, Transmission Owners immediately incur the obligation that they "*shall* make a good faith effort to design, certify, and build the designated facilities to fulfill the approved MTEP," and the competitive selection process proceeds within days or weeks.[138] Third, MISO uses, and under the Tariff must use, approved plans to plan future portfolios.[139] As the Commission has observed,

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stakeholders are voiced and weighed equitably. Issue-related committees, task forces and working groups have their end products reviewed by the sector-weighted Advisory Committee before being sent to the independent Board of Directors for final approval. Finally, Midwest ISO submits changes or additions to its Tariff for review and approval by the Commission. In this manner, all stakeholders can be assured of having their arguments heard and acted upon in an independent and neutral way."); MISO Tariff, Attachment FF § I.C.2.a–c (providing for MTEP input by the Planning Advisory Committee, Planning Subcommittee, and Sub-regional Planning Meetings).

[136] *See, e.g.*, *Barnhart v. Thomas*, 540 U.S. 20, 24 (2003); *Nat'l R.R. Passenger Corp. v. Transport Workers Union of Am.*, 373 F.3d 121, 124 (D.C. Cir. 2004) (describing "a sequence of mandatory procedures for the resolution of a major dispute" under a statute); *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 61 (D.C. Cir. 2014) (affirming FERC's interpretation of FPA section 202(a) as describing a "chronological sequence" given the statute's "text and its structure").

[137] MISO Tariff, Attachment FF §§ II.C.1, VIII.C.

[138] *Id.* Attachment FF § VI.C (emphasis added).

[139] *Id.* Attachment FF § I.C.8.e.

"[i]n order to plan future projects, MISO's planning cycles necessarily assume that previously-approved projects in its models will be in operation even if they have not yet been placed in service," and both MISO and "[t]ransmission owners must be allowed to rely on the planning provisions in previous MTEPs."[140] The alternative would eviscerate regulatory certainty and make long-term transmission planning impossible—forcing MISO to build the future grid on sand.

The several express exceptions in MISO's Tariff only confirm that, unless an exception applies, the Tariff does not permit challenges like the one here. Another recap: The obligation to build ceases to apply if an approved project "*is being* challenged through the dispute resolution procedures under this Tariff or in court proceedings."[141] This "present progressive tense" "generally indicates continuing action" that is "contemporaneous" with the rest of the sentence.[142] So here, it means that the obligation ceases if—but only if—a challenge has already been brought when the Board approved the plan. As well, the Variance Analysis process allows projects to be removed from the plan in limited circumstances, such as significant changes in cost, delays, or the inability of the designated transmission owner to complete the project.[143] When a law "explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied[.]"[144]

The Complaint makes a mockery of MISO's reticulated scheme of procedures and exceptions. As just one more example, the Tariff carefully prescribes the circumstances under which the OMS Committee (not an individual state) can seek reconsideration—before Board approval, and only for projects that have significant cost overruns or that MISO considered under

[140] *Am. Transmission Co.*, 142 FERC ¶ 61,090 at P 55.
[141] MISO Tariff, Attachment FF § VI.C (emphasis added).
[142] *United States v. Balint*, 201 F.3d 928, 933 (7th Cir. 2000).
[143] MISO Tariff, Attachment FF §§ IX, IX.C, IX.E.
[144] *TRW Inc. v. Andrews*, 534 U.S. 19, 28 (2001) (quotation marks omitted).

a less than complete process.[145] Yet under Complainants' approach, a *single* state could overturn the results of this process long after it is concluded—even if it opted not to participate in the stakeholder process and even if *OMS itself* would have been barred from filing a reconsideration request. That is no way to read MISO's Tariff, which so carefully protects the integrity of MISO's detailed process of stakeholder engagement and review.[146]

After failing to pursue those procedures, Complainants also delayed unreasonably—indeed, egregiously—in filing their Complaint. The Complaint challenges the "modeling and assumptions" underlying Tranche 2.1.[147] Developing those models and formulating those assumptions are *the very first step* of MISO's MTEP process.[148] Complainants were on notice of the benefit metrics at the heart of their Complaint in March 2023, when MISO unveiled them to stakeholders at an LRTP workshop.[149] MISO solidified its modeling methodology for the MTEP24 cycle by June 2024,[150] released the proposed final MTEP report in September 2024,[151] and posted the final business case for Tranche 2.1 in October.[152] Yet all this time, Complainants never pursued the Tariff's dispute resolution process. Indeed, the Montana PSC did not participate in the

[145] MISO Tariff, Attachment FF § I.B (limiting OMS's ability to seek reconsideration to where there is support by a supermajority of OMS members and only as to certain types of projects).

[146] *See, e.g.*, *PJM Power Providers Grp. v. FERC*, 96 F.4th 390, 400 n.6 (3d Cir. 2024) (interpreting RTO tariff under "canon of construction known as *expressio unius est exclusio alterius*, which means the expression 'the expression of one thing is the exclusion of the other[.]'").

[147] Complaint at 32; *e.g.*, *id.* at 33 ("MISO's calculation of this benefit is flawed because it incorrectly assumes states and utilities will build the same Future 2A generation resources regardless of whether Tranche 2.1 is built.").

[148] MISO Tariff, Attachment FF § I.C.1.b ("The regional planning process is preformed through a continuous series of planning cycles. . . . *Each cycle commences with regional model development*[.]" (emphasis added)); *id.* Attachment FF § I.C.1.b.i (listing "[m]odel development" as the first key planning cycle milestone).

[149] Complaint at 26 (citing MISO, *LRTP Tranche 2: Business Case Benefit Metrics* at 3–14).

[150] MISO, *LRTP Tranche 2.1: Benefit Metrics Development*.

[151] MISO, *MTEP24 Transmission Portfolio* (Sept. 2024).

[152] MISO, *LRTP Tranche 2: Business Case Metrics Methodology Whitepaper* at 1 (Oct. 1, 2024).

stakeholder process *at all*. And the two cursory comments from NDPSC are miles away from pursuing the Tariff-provided dispute resolution process or timely seeking Commission relief.[153] Stakeholders routinely decide to let go of their disagreements with RTOs' choices without seeking to blow up the results, particularly where—as here—they have gotten much of what they asked for (such as NDPSC's request to assume more wind development in North Dakota and to add Flex Units to the model).[154] To all the world, Tranche 2.1 appeared set and unchallenged—until July 30, 2025, when Complainants sprung their belated challenge more than two years after MISO disclosed its benefit metrics, more than a year after the specific methodology was known, more than 10 months after MISO released the final draft Tranche 2.1 portfolio,[155] and 8 months after the MISO Board approved Tranche 2.1.[156] Meanwhile, MISO has been building Tranche 2.1 into

[153] *See supra* Background Part IV.

[154] It is no answer to say that Complainants supposedly "learned for the first time on June 25, 2025" that MISO ratepayers would pay the costs of "transmission upgrades PJM deems necessary to address any reliability issues on PJM's system caused by Tranche 2.1." *See* Complaint at 42. First, it was hardly unforeseeable that MISO's ratepayers would have to pay the costs caused by Tranche 2.1; to the contrary, that result accords with basic principles of cost causation. Second, Complainants' view—that "these projects should have been determined before the MISO Board approved Tranche 2.1 and the costs … should have been included in the business case"—would again throttle the infrastructure development this country desperately needs. *Id.* That process is too complicated to nail down every jot and tittle before finalizing projects, and if MISO had to do so, it could never approve anything at all. Third, Complainants do not claim that these PJM-related costs would on their own move the needle meaningfully on Tranche 2.1's benefit-cost ratio. So these costs are not a ground for forgiving Complainants' disregard of MISO's Tariff-defined process.

[155] MISO, *LRTP Tranche 2.1 Portfolio Update* (LRTP Workshop Sept. 24, 2024), https://cdn.misoenergy.org/20240924%20LRTP%20Workshop%20Item%2002%20Tranche%202.1%20Final%20Portfolio%20Overview649676.pdf.

[156] Press Release, MISO, *MISO Board Approves Historic Transmission Plan to Strengthen Grid Reliability* (Dec. 12, 2024).

nearly everything important it does,[157] and companies like Xcel and ITC have undertaken the hard and time-consuming work necessary to build the projects that make up Tranche 2.1.[158]

Under these circumstances, the Commission should reject the Complaint, as it has rejected complaints that similarly failed to pursue tariff-provided procedures.[159] Particularly given the broad discretion the Tariff vests in MISO to identify and measure "economic value" and "any … financially quantifiable benefit" from MVP portfolios,[160] MISO's choices on how to apply this discretion should be conclusive when they are allowed to proceed and a plan duly becomes "certifie[d]" as MISO's "plan for meeting the transmission needs of all stakeholders."[161]

Moreover, as a result of Complainants' choice not to pursue avenues for challenge under the Tariff and their failure to show that MISO violated its Tariff,[162] the filed rate doctrine now protects the process's results.[163] As the Third Circuit recently and emphatically emphasized, this doctrine "reflects a congressional determination that parties in the industry need to be able to rely on … finality," and "this interest outweighs the value of being able to correct for decisions that"

[157] *Am. Transmission Co.*, 142 FERC ¶ 61,090 at P 55 ("To foster successful project development, MISO plans transmission projects on an incremental basis. Transmission owners must be allowed to rely on the planning provisions in previous MTEPs. In order to plan future projects, MISO's planning cycles necessarily assume that previously-approved projects in its models will be in operation even if they have not yet been placed in service.").

[158] *See* Russo Aff. at 48.

[159] *See Citizens Energy Task Force & Save Our Unique Lands*, 144 FERC ¶ 61,006 at 61,024–25; *NextEra Energy Power Mktg., LLC*, 155 FERC ¶ 61,270 at P 27.

[160] MISO Tariff, Attachment FF § II.C.5.e.

[161] *Id.* Attachment FF § VI.C.

[162] *See infra* Protest Part III.

[163] *E.g.*, *PJM Power Providers Grp. v. FERC*, 96 F.4th 390, 394–95, 398–99 (3d Cir. 2024) ("*P3*") (explaining that the filed rate doctrine "binds regulated entities to charge only the rates filed with FERC and to change their rates only prospectively" (quoting *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 829 (D.C. Cir. 2021)); *Consol. Edison Co. of N.Y., Inc. v. FERC*, 347 F.3d 964, 969 (D.C. Cir. 2003) ("By authorizing only prospective rate changes, these doctrines ensure rate predictability . . . ." (citing *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791, 793 (D.C. Cir. 1990)).

some litigants may claim "appear unsound" "in hindsight."[164] Likewise here, Complainants may disagree on how MISO should conduct long-term regional transmission planning, but under the filed rate doctrine, any remedy based on that disagreement can only be prospective.[165]

The decision in *Boston Energy Trading & Marketing LLC v. MISO* does not help Complainants. There, the Commission turned aside an argument that failure to invoke the mediation-and-arbitration provision in Section I.C.14 barred a complaint and held that this provision "do[es] not preclude filing a complaint, except while arbitration is pending."[166] Our point here is not that Complainants had to invoke that specific procedure, and our argument is not based on Section I.C.14; it is that under Section VI, Complainants had to do *something* to pursue their disagreements, and far earlier. *Boston Energy*, moreover, did not involve an MTEP approval from the MISO Board, and Complainants' egregious delay contrasts sharply with *Boston Energy*—where the complainant filed with the Commission *three weeks* after the decision they challenged.[167] And while the Commission in some instances has granted post-approval challenges to the MISO Board's authority to approve individual transmission projects,[168] those complaints presented a jurisdictional question not present here: whether a project is properly classified as a facility used for transmission or local distribution of electricity.[169] And those complaints, unlike this one, did not dispute decisions that are foundational to MISO's entire MTEP.

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[164] *P3*, 96 F.4th at 402 (quoting *Pub. Utils. Comm'n of Cal.*, 894 F.2d 1372, 1383 (D.C. Cir. 1990)).

[165] *See, e.g.*, *Town of Norwood v. Nat'l Grid USA*, 126 FERC ¶ 61,039, at P 13 (2009) ("Section 206 authorizes the Commission to order two types of relief: prospective relief and limited retroactive relief in the form of refunds. Section 206(a) permits the Commission to order prospective relief only from the date that it finds an existing rate to be unjust and unreasonable.").

[166] 153 FERC ¶ 61,336 at P 40 (2015).

[167] *Id.* at PP 1, 7.

[168] *See, e.g.*, *DTE Elec. Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 180 FERC ¶ 61,222 at PP 1, 6, 41, 45, 52 (2022); *Consumers Energy Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,020 at PP 1, 82-83 (2020), *modified on reh'g*, 172 FERC ¶ 61,201 (2020).

[169] *See, e.g.*, *DTE Elec. Co.*, 180 FERC ¶ 61,222 at P 6 ("DTE Electric objected to the inclusion of the Croswell Interconnection in MTEP19 throughout the MISO stakeholder process on the basis that the

B. Entertaining the Complaint Will Inflict Enormous Harm on the Infrastructure Development Our Nation So Urgently Needs.

The way for the Commission to advance its critical role in fostering infrastructure development is to reject the Complaint and to make clear that, while all stakeholders are welcome to ventilate disagreements, they must pursue relief up front and cannot lie in wait and belatedly unleash years of administrative and judicial litigation. By contrast, if the Commission entertains Complainants' tardy challenge, grave consequences will follow—in MISO and nationwide. These harms would include: (1) creating uncertainty by requiring MISO to develop its own generation plans that may differ from members' plans and state mandates; (2) forcing MISO into the role of a "central planner" at the expense of the stakeholders; and (3) blocking any regional transmission projects from being built, due to unending debates about whether any given project is "optimal."[170]

MISO cannot plan portfolios if core assumptions remain up for grabs during the planning process and long after that process is supposed to be done.[171] The Tariff moreover requires that MISO plan transmission iteratively and continuously, taking the previously approved tranche of projects as a starting point for the next MTEP cycle,[172] so each tranche serves as the foundation for the next.[173] If delayed challenges like this one can proceed, MISO could not sensibly commence the next planning cycle until litigation regarding the prior cycle resolves—because who

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Croswell Interconnection is a distribution facility, but was informed by MISO that MISO does not view itself as having responsibility for making a jurisdictional determination (transmission vs. distribution) for a project proposed by an established transmission owner"); *Consumers Energy*, 171 FERC ¶ 61,020 at P 30 (noting MISO position that it had "no legal basis or need" to determine whether the project in question should be classified as transmission or local distribution under FERC's seven-factor test).

[170] Russo Aff. at 48.

[171] *See supra* Background Part III; Russo Aff. at 47.

[172] MISO Tariff, Attachment FF § I.C.1.b ("The regional planning process is performed through a continuous series of planning cycles, with each cycle typically addressing Transmission Issues through a rolling planning horizon.").

[173] *Am. Transmission Co.*, 142 FERC ¶ 61,090 at P 55.

knows whether the prior tranche will vanish.[174] Indeed, it is worse than that: As this case illustrates, even if litigation has *not yet* commenced, stakeholders cannot know whether litigation *might be brought later* by someone lurking in the weeds. The Commission has rejected arguments that would result in forcing MISO to "delay subsequent planning cycles until all the facilities in the previous planning cycle were constructed and placed in service."[175] It should do so again here.

The dangers of derailing MISO's cumulative MTEP processes are particularly acute as to Tranche 2.1. Central to the portfolio is a 765 kV "backbone" line that will traverse the Midwest and support customers through the entire region.[176] This high-capacity transmission line is critical for satisfying the region's skyrocketing demands for electricity, powering data centers, winning the AI race, and regrowing the nation's manufacturing economy.[177] Granting the Complaint would make it all but impossible for the energy sector to meet these challenges and seize these opportunities. And particularly given the backbone nature of Tranche 2.1, granting the Complaint may cause any further grid planning based on Tranche 2.1 to collapse. Tranche 2.1 is already included in MISO's models for expedited transmission project review,[178] the 2022 and 2023 cycles of MISO's Definitive Planning Phases for its generator interconnection requests,[179] and MISO's ERAS process, which the Commission recently approved to help bring "shovel ready" dispatchable resources online quickly.[180] This Complaint threatens to send MISO back to the drawing board on all of these initiatives, whose *whole purpose* is to help MISO address the

[174] *See id.* ("To foster successful project development, MISO plans transmission projects on an incremental basis. Transmission owners must be allowed to rely on the planning provisions in previous MTEPs.").

[175] *Id.*

[176] MISO, *Fact Sheet: Long Range Transmission Planning (LRTP) Tranche 2.1* 1 (Dec. 2024), https://cdn.misoenergy.org/LRTP%20Tranche%202.1666573.pdf; Russo Aff. at 44–45.

[177] MISO, *Fact Sheet: Long Range Transmission Planning (LRTP) Tranche 2.1* 1 (Dec. 2024).

[178] *See* MISO, *Expedited Resource Addition* Study *("ERAS")* at 9–10.

[179] MISO, *LRTP Integration BPM-015 Change* at 5.

[180] *Midcontinent Indep. Sys. Operator*, 192 FERC ¶ 61,064 at P 81 (2025).

exigencies of surging demand, tightening supply, and at-risk reliability. Meanwhile, the only alternative that Complainants posit—that some Tranche 2.1 projects might eventually proceed as other project categories[181]—is no answer at all. That process would itself take years, with uncertain results, and would do nothing to avoid all of the harm just described.

The precedent-setting effect would be, if anything, worse. It would inject NEPA-style procedural litigation into regional transmission planning and unleash stakeholders of all stripes to pick apart careful infrastructure planning years after the fact. This would tie up finalized transmission expansion plans in litigation, paralyze the planning process as regional operators try to litigation-proof their decisionmaking, and kill off project development and economic growth. As the Supreme Court recently observed about such unchecked procedural litigation:

> Fewer projects make it to the finish line. Indeed, fewer projects make it to the starting line. Those that survive often end up costing much more than is anticipated or necessary ... And that in turn means fewer and more expensive railroads, airports, wind turbines, transmission lines, dams, housing developments, highways, bridges, subways, stadiums, arenas, data centers, and the like. And that also means fewer jobs, as new projects become difficult to finance and build in a timely fashion.[182]

The Commission should nip this proliferation of process on process in the bud and reject the Complaint. Although Complainants inaccurately tar Tranche 2.1 as exclusively designed for renewable generation, and indeed despite North Dakota's calls during the stakeholder process that MISO *do more* to bring the state's wind generation to market,[183] the same tactics—if successful here—are sure to be deployed against Tranche 2.2 or against the development of other infrastructure that some interest group disfavors.[184]

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[181] *See* Complaint at 2.

[182] *Seven Cnty. Infrastructure Coal v. Eagle County*, 145 S. Ct. 1497, 1513–14 (2025).

[183] Comments of the N.D. Pub. Serv. Comm'n (Apr. 8, 2024).

[184] *See* MISO, *Futures Redesign: Futures 1-4 Preliminary Expansion* 20, 26 (July 25, 2025), https://cdn.misoenergy.org/20250725%20Futures%20Redesign%20Workshop%20Item%2002%20Futures%201-4%20Preliminary%20Results%20-%20Full%20IRA710033.pdf.

II. The Commission Should Reject the Complaint Because It Constitutes an Impermissible Collateral Attack on the Commission's Prior Approvals of the MVP Tariff and Seeks Improper Retroactive Relief.

Section 313(b) of the Federal Power Act, 16 U.S.C. § 825*l*(b), requires aggrieved parties to seek judicial review by filing a petition for review within sixty days following the Commission's denial of an application for rehearing. And section 313(a), 16 U.S.C. § 825*l*(b), requires the application for rehearing to be filed within thirty days after issuance of the order. The Commission approved MISO's Tariff provisions adopting the MVP project category and cost allocation methodology in 2010, and denied requests for rehearing in 2011.[185] Because Complainants' real objection here amounts to an improper collateral attack on those orders, which the Seventh Circuit upheld in *Illinois Commerce Commission v. FERC*, 721 F.3d 764, 773-75 (7th Cir. 2013),[186] the Commission should reject the Complaint.

The MVP Tariff provides MISO broad discretion over the regional transmission planning process. MVP projects (as relevant here) are defined in open-ended terms as "provid[ing] multiple types of economic value across multiple pricing zones with a Total MVP Benefit-to-Cost ratio of 1.0."[187] The Tariff does not limit the types of "economic value" MISO may consider. Quite the opposite: The Tariff expressly identifies particular types of economic value that MISO may consider, and then specifies that MISO may consider "[*a]ny other financially quantifiable benefit*"

[185] MVP Order, 133 FERC ¶ 61,221 at PP 65–72, 209–210; In 2022, the Commission approved MISO's proposal to allow subregional cost allocation for MVP projects. *Midcontinent Indep. Sys. Operator, Inc*., 179 FERC ¶ 61,124 at P 1; *see also id*. at P 85 ("MISO will conduct the same process as it does today to determine if a proposed MVP portfolio provides benefits that distributed across the MISO system-wide footprint. The only difference under Filing Parties' Proposal is that, if MISO determines an MVP portfolio does not provide benefits that accrue to transmission customers across the MISO system-wide footprint, it will then determine if benefits are distributed across the Midwest Subregion or the South Subregion.").

[186] *See, e.g*., *Sacramento Mun. Util. Dist. v. FERC*, 428 F.3d 294, 299 (D.C. Cir. 2005) (deeming challenge "an impermissible collateral attack on the previously approved California ISO tariff" "[b]ecause the time for seeking judicial review ha[d] long passed"); *Transwestern Pipeline Co. v. FERC*, 988 F.2d 169, 174 (D.C. Cir. 1993) (similar).

[187] MISO Tariff, Attachment FF § II.C.2.b.

(that MISO identifies) related to enhancement of the transmission system.[188] Nor does the Tariff say anything about how MISO must measure the types of economic value it identifies. The Tariff thus expressly and deliberately delegates to MISO, subject to the substantial guardrails and scrutiny provided by its stakeholder process, the choice of what benefits to measure and how to quantify them. As the Commission emphasized when it approved the MVP project category, "[w]e will not circumscribe or limit what Midwest ISO and its stakeholders may consider in performing their analyses."[189] And as the Seventh Circuit explained in affirming the Commission's decision, the Commission made that choice for good reason: There are "limitations on calculability that the uncertainty of the future imposes,"[190] and the Tariff gives MISO space to make the thousands of difficult choices that such projections inevitably entail.

Similarly, the Tariff broadly defines the spectrum of goals MISO may pursue through the MTEP: "The MTEP will give full consideration to the needs of all Market Participants, will include consideration of demand-side options, and will identify expansions or enhancements needed to i) support competition and efficiency in bulk power markets; ii) comply with Applicable Laws and Regulations; and iii) maintain reliability."[191] These open-ended goals reinforce MISO's broad discretion in pursuing them. And MISO's work to develop the MTEP, according to the

[188] *Id.* Attachment FF § II.C.5.e (emphasis added). An MVP Project under Criterion 2 "must provide multiple types of economic value across multiple pricing zones with a Total MVP Benefit-to-Cost ratio of 1.0 or higher." *Id*. Attachment FF § II.C.2.b. *See Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17-000, Comments of the Midcontinent Independent System Operator, Inc., at 48–49 (filed Aug. 17, 2022).

[189] *Midwest Independent Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,074 at P 133 n.290.

[190] *Ill. Com. Comm'n*, 721 F.3d at 774.

[191] MISO Tariff, Attachment FF § I.C; *see also id*. ("The Transmission Provider shall develop the MTEP for expected use patterns and analyze the performance of the Transmission System in meeting both reliability needs and the needs of the competitive bulk power market, under a wide variety of contingency conditions.").

Tariff, must be "consistent with good utility practice"[192]—a standard that, under the Tariff, does not limit the utility to "the optimum practice," but includes other "acceptable" practices based on reasonable judgments or consistent with regional or industry practice.[193] MVP portfolios, moreover, are bound up with cost-causation questions—on which the Commission and courts have repeatedly emphasized that only "rough" approximations are necessary or, indeed, obtainable.[194]

The Complainants' core grievance, stripped of ornamentation, is that MISO's Tariff should be more constraining. They suggest that MISO should not have selected particular benefits.[195] They say MISO should have compared the differences between a base case without Tranche 2.1 against future grid projections that includes Tranche 2.1 projects.[196] And they say MISO should have proceeded in the manner Dr. Hogan deems ideal.[197] Complainants do not even try to show what matters under MISO's Tariff—that MISO failed to follow the Tariff-defined process for developing Tranche 2.1 or that the approach MISO took is beyond the pale of "acceptable practices" that RTOs engaged in transmission planning undertake. As the Commission itself

[192] MISO Tariff, Attachment FF § I.C.

[193] *See* MISO Tariff, Module A § II, 1.G (defining "Good Utility Practice" as "[a]ny of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather, intended to include acceptable practices, methods, or acts generally accepted in the region…."); *see also Improvements to Generator Interconnection Procedures and Agreements*, Order No. 2023, 184 FERC ¶ 61,054 at P 247 n.599 (2023) (same) (citing definitions section of *pro forma* LGIP section 1).

[194] *See, e.g.*, *Long Island Power Auth. v. FERC*, 27 F.4th 705, 715 (D.C. Cir. 2022) ("FERC must ensure only that there is 'some resemblance' between costs and benefits.") (quoting *Pub. Serv. Elec. & Gas Co. v. FERC*, 989 F.3d 10, 13–14 (D.C. Cir. 2021)); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1369 (D.C. Cir. 2004) ("[W]e have never required a ratemaking agency to allocate costs with exacting precision."); *Sithe/Indep. Power Partners, L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002) ("FERC is not bound to reject any rate mechanism that tracks the cost-causation principle less than perfectly").

[195] Complaint at 35–39.

[196] *Id.* at 33–34.

[197] *Id.* at 33–34, 35-36, 39, 43.

emphasized long ago, the "fact that [Complainants] would have chosen to use different study methods and assumptions than [MISO] does not necessarily render [MISO's] analysis unreasonable to demonstrate the benefits derived from the MVP [] projects."[198]

Complainants' arguments are instead an impermissible collateral attack on the Commission's long-final approval of MISO's Tariff.[199] And having failed entirely to address the questions that the Tariff makes relevant, Complainants of course have failed to show that MISO violated those (unaddressed) standards. Indeed, Complainants' grievances are particularly meritless because MISO's actions were far from any attempt to leverage its Tariff-provided discretion to thrust itself into the role of a resource planner—rather, MISO respected *states'* resource-planning decisions, as its Tariff requires and in stark contradiction to Complainants' attempt to elevate MISO over states in generation planning.

None of the exceptions to collateral attack doctrine apply. There is no question that Complainants had notice of the MVP Tariff filing and the Commission's approval of it. OMS even filed comments in support of the MVP proposal, noting the support of several of the Complainants.[200] OMS—again including the Complainants—also repeatedly encouraged the

[198] MVP Order at P 237.

[199] *See* MISO Tariff, Module A § II, 1.G (defining "Good Utility Practice").

[200] *See* MVP Order, 133 FERC ¶ 61,221 at P 204 ("[W]e note that the MVP proposal is generally supported by state authorities and participants across the Midwest ISO region. The stakeholder process for the MVP proposal was both long in duration and inclusive of interested parties. As noted by the OMS, a majority of its members have generally agreed to support its comments supporting the proposal. Additionally, we note that the MVP proposal was approved by the Advisory Committee, which is comprised of nine stakeholder sectors."); *see also id*. at P 110 ("OMS supports Criterion 2 as proposed by Filing Parties.").

LRTP process[201] and supported MISO's 2022 proposal to allow subregional cost allocation of MVP projects.[202]

Complainants' arguments are also utterly at war with the broad discretion that the Commission has repeatedly recognized that RTOs and transmission providers must have when it comes to regional transmission planning. Starting with Order No. 890, the Commission required each transmission provider to establish an open and transparent transmission planning process that complies with nine planning principles. This set a floor of broad goals for regional transmission planning—coordination, openness, transparency, information exchange, comparability, dispute resolution, regional participation, economic planning studies, and cost allocation for new projects—while leaving the details up to each individual transmission provider, within the generous bounds of the Federal Power Act's "just and reasonable" standard.[203]

Through Order No. 1000, the Commission similarly "gave each region leeway to design its own cost allocation method, but set out six general cost allocation principles that are binding on all planning regions."[204] In other words, the Commission neither dictated "how the costs should be allocated in any more detail than those general principles," nor specified "how costs should be

[201] *E.g.*, Organization of MISO States OMS Comments re Request for MTEP21 Study Scope Feedback at 1 (Aug. 14, 2020), https://www.misostates.org/images/stories/Filings/Board_comments/2020/OMS_MTEP21_Study_Scope_Feedback.pdf ("The OMS is supportive of the multiple sub-regional planning studies that are already underway and the renewed emphasis on long-range transmission planning at MISO."); Organization of MISO States Request for MTEP22 Study Scope Feedback at 1 (Aug. 23, 2021), https://www.misostates.org/images/stories/Filings/Board_comments/2021/MTEP2222_Study_Scope_Feedback_Response.pdf ("The OMS is supportive of the ongoing Long Range Transmission Planning study that is underway at MISO and believes it should remain MISO's primary focus in the coming year.").

[202] *See, e.g.*, *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER22-995, Notice of Intervention and Comments of the Organization of MISO States, Inc. at 1, 8 (filed Mar. 7, 2022).

[203] *See S.C. Pub. Serv. Auth.*, 762 F.3d at 51 (quotation marks omitted).

[204] *Consol. Edison Co. of N.Y., Inc. v. FERC*, 45 F.4th 265, 272 (D.C. Cir. 2022) (internal citation omitted).

recovered (i.e., how the new facilities should be paid for)."[205] And consistent with the approach approved in MISO's Tariff, the Commission has emphasized that Order No. 1000's transmission planning reforms were concerned with "process."[206]

Order No. 1920 reaffirmed the Commission's longstanding deference to RTOs on regional transmission planning, specifically as to the details of how each region selects and measures benefits when analyzing the costs and benefits of long-term transmission planning. In that rulemaking, MISO argued that the final rule should "allow some flexibility in selecting appropriate benefits" and be "less prescriptive."[207] While the final rule set a minimum of seven benefits that must be considered in cost-benefit analyses of long-term transmission planning,[208] the Commission agreed that transmission providers should have flexibility to measure and use additional benefits.[209] The Commission also agreed that transmission providers should have flexibility "to specify the method for measuring" the benefits required under the final rule.[210] To

[205] *S.C. Pub. Serv. Auth.*, 762 F.3d at 83.

[206] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000-A ¶ 188, 139 FERC ¶ 61,132 (2012), *aff'd sub nom.*, *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

[207] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, Docket No. RM21-17-000, Comments of the Midcontinent Independent System Operator, Inc. at 48 (filed Aug. 17, 2022); *see also id*. ("MISO would support identifying a general set of benefit metrics that could be used and that captures key areas of transmission value, such as reliability and resiliency, production cost savings, and avoided resource and/or transmission investment, so long as regional flexibility is allowed regarding how to calculate each metric within key areas, and how to apply each metric, as well as allowing for different benefit metrics not part of the 'general set' to be applied when warranted.").

[208] *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation*, Order No. 1920, 187 FERC ¶ 61,068 at P 837 (2024), *set aside in part*, 189 FERC P 61,126 (2024), *clarified on denial of reh'g*, 191 FERC P 61,026 (2025).

[209] *See id.* at P 729 ("Transmission providers may also propose to measure and use additional benefits in Long-Term Regional Transmission Planning, as discussed below in the Other Benefits section. This approach provides flexibility to transmission providers in how they implement the requirement to measure and use the required set of benefits in Long-Term Regional Transmission Planning, while maintaining the baseline requirement that they measure and use all seven benefits included in that required set of benefits, in order to ensure that rates remain just and reasonable."); *id*. at PP 822, 837.

[210] *Id*. at P 839; *see also id*. at PP 757, 768.

ensure that RTOs maintain this flexibility, the Commission agreed with MISO and other commenters that the tariff descriptions of each required benefit need only be sufficient "to enable stakeholders to understand the manner by which transmission providers will measure these benefits," and thus the final rule did not require further details on measurement of benefits to be included in the tariff.[211]

This sort of flexible approach on regional transmission planning is eminently sensible, as industry goals and planning scenarios necessarily will evolve over a lengthy time horizon.[212] A foundation of the reforms ushered in by Order No. 1000 is that the Commission's highest and best use on transmission is to review and approve a tariff-based *process* for the selection of regional transmission projects, rather than reviewing projects individually. The Commission explained in Order No. 1000 that the absence of clear *ex ante* cost allocation methods impaired the ability of transmission providers to implement more efficient or cost-effective transmission solutions.[213]

Likewise, in the MVP Order, the Commission emphasized that it was accepting "*a functional method* of determining which projects should qualify as MVPs," and that it would not itself determine "whether any projects meet those qualifications"—that latter role, under the tariff

[211] *Id*. at P 840.

[212] *See* Docket No. RM21-17-000, Comments of the Midcontinent Independent System Operator, Inc. at 47 (filed Aug. 17, 2022) ("Since the specific metrics used to quantify benefits may vary over subsequent planning cycles as industry goals shift and future planning scenarios unfold, the transmission provider should evaluate the set of metrics that best represents the objectives of future planning scenario and captures value of the proposed investment."); *id*. at 48 ("The types of benefits are greatly influenced by the variety of drivers that lead to the outcomes in the future planning scenarios. The appropriate types of benefits depend on any economic, policy, customer preferences and technological assumptions used to establish the future scenarios. Therefore, benefits should be less prescriptive and allow some flexibility in selecting appropriate benefits and defining the specific methodology once the details of the future scenarios are known.").

[213] Order No. 1000, 136 FERC ¶ 61,051 at P 499 (2011); Order No. 1000-A, 139 FERC ¶ 61,132 at P 52 (2012); *Midcontinent Indep. Sys. Operator, Inc*., 179 FERC ¶ 61,124 at P 76.

approved by FERC, was left to MISO's judgment within the bounds of the tariff.[214] Indeed, that order also directly addressed the very concerns that Complainants belatedly raise now. The Commission approved MVP as an *ex ante* cost allocation method, and explained in detail how that methodology ensured that selected projects would benefit the region. The D.C. Circuit has agreed that the Commission is not required to consider cost-allocation rules "on a project-by-project basis, which would unravel the framework of *ex ante* tariffs established by Order No. 1000."[215]

As to Complainants' objection of a purported lack of oversight, again the Commission already addressed this in the MVP orders. The Commission explained that "the MTEP stakeholder process will provide a venue for the cost-benefit calculation of individual projects."[216] Through this process, the Commission found that "[s]takeholders will have an opportunity in the MTEP to review and to challenge studies that quantify the costs and benefits of each individual MVP, and therefore of the regional cost allocation."[217] And in the event of an impasse on benefits and costs, "the dispute resolution procedures of the Tariff will be available to stakeholders."[218] Moreover, "if the stakeholder process does not satisfy their concerns," then stakeholders could have come to the Commission to seek "alternative dispute resolution" or to file a complaint under FPA section 206 before the process had run its course.[219] Again, if Complainants believe that this lengthy and rigorous *process* under the MVP Tariff is inadequate, the time to raise that objection was on rehearing of the MVP orders—not 15 years later through this Complaint; and if they believe the

[214] MVP Order, 133 FERC ¶ 61,221 at P 222 (emphasis added).

[215] *Long Island Power Auth.*, 27 F.4th at 715.

[216] MVP Order, 133 FERC ¶ 61,221 at P 203; *see also id*. at P 207 ("[MISO] and stakeholders will review each candidate MVP on an individual basis in order to assess its benefits.").

[217] *Id*. at P 203.

[218] *Id*.

[219] *Id*.

Tariff itself is unjust and unreasonable, Section 206 limits them to prospective relief only (not retroactive unwinding of approved projects).

Complainants' claim of a lack of regulatory oversight is remarkable considering OMS's position that MISO should bear *fewer* reporting obligations on MVP projects. In 2022, MISO sought FERC's permission to discontinue an annual reporting requirement that had been imposed by the MVP Order.[220] The Commission there had instructed MISO to submit annual informational filings "describing the selection of MVPs…after each full planning cycle has been completed"[221] and to furnish to stakeholders the results of a triennial review of the MVP selection process.[222] OMS supported MISO's request to stop annual reporting, noting that the remaining reporting requirements "provide sufficient monitoring and visibility of transmission project development and because MISO's resources are better allocated to its LRTP initiative."[223] Considering OMS's position just two years ago that the existing Tariff provided sufficient transparency and oversight into the transmission planning process, Complainants' position now that there is not enough oversight is not credible.

Then-Commissioner Danly warned of the dangerous consequences of allowing long-final orders to be re-opened. In 2021, the Commission issued an order directing briefing as to public safety concerns over the operation of the Weymouth Compressor Station, a part of the Atlantic Bridge Project that received Commission authorization for construction and operation in 2017.[224]

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[220] *Midcontinent Indep. Transmission Sys. Operator, Inc.*, 184 FERC ¶ 61,191, at PP 1, 11 (2023).

[221] MVP Order, 133 FERC ¶ 61,221 at PP 4, 49.

[222] *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,074 at P 191; *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER12-1564-001 (June 10, 2014) (delegated order) (accepting revised MVP Reporting Tariff language)).

[223] *See Midcontinent Indep. Sys. Operator, Inc.*, 184 FERC ¶ 61,191 at P 12 (citing Comments of OMS, ER23-2478 at 1 (Aug. 15, 2023).

[224] *Algonquin Gas Transmission, LLC,* 174 FERC ¶ 61,126 at P 2 (2021) (Danly, Comm'r, dissenting).

Commissioner Danly dissented, expressing alarm that the Commission's order required Algonquin to relitigate the certificate that had been affirmed over three years earlier.[225] As he warned, the order "threatens the certainty of the certificate upon which the pipeline's business is founded, disregards the principles of final judgment upon which all litigants rely, and violates the specific statutory procedures devised by Congress to render and challenge final orders."[226] This amounted, in his view, to "what is essentially an end-run around the statutory process for rehearing and judicial review," far more dangerous and disruptive than the Commission's prior practice of delaying final resolution of proceedings by issuance of tolling orders.[227] Those same concerns—over evisceration of certainty to regulated parties and disregard for the statutory path for review and appeals of Commission orders—apply with equal force to Complainants' belated attempt to relitigate the MVP Tariff methodology.

More, because Complainants in substance seek to narrow the discretion that MISO's Tariff expressly provides, their requested relief—declassifying Tranche 2.1 projects as MVPs—is again impermissibly retroactive. While Complainants may have a different view on how MISO should conduct long-term regional transmission planning, those policy arguments can only be raised through a prospective challenge to MISO's Tariff—not by seeking to retroactively unwind a $22 billion tranche of projects that has already been approved by MISO's Board and that are already under way.

[225] *Id.* at PP 1–32 (Danly, Comm'r, dissenting).
[226] *Id.* at P 32 (Danly, Comm'r, dissenting).
[227] *Id.*

III. Complainants Fail to Show Any Tariff Violation.

A. MISO Followed Its Tariff Process to the Letter and Complainants Cannot Show Otherwise.

We have already explained the fundamental reason why Complainants' core grievance—that MISO should have identified or measured benefits differently and should have been barred from adopting the approach it took,[228]—does not amount to a Tariff violation: The Tariff neither limits what benefits MISO may consider nor how MISO must measure those benefits. And Complainants' alternative view of optimal planning is light years from a Tariff violation, particularly because this view would thrust MISO into the role of a resource planner that its Tariff and basic principles of federalism reject.

Complainants, moreover, ignore the *procedures* that the Tariff sets up as guardrails on the discretion it confers on MISO—procedures that Complainants do not claim MISO violated (even as Complainants failed to press their own grievances in the manner the Tariff contemplates). These procedures include: (1) collaboration with stakeholders on planning horizons, development of suitable models and assumptions, and the scope of long-term planning studies[229]; (2) soliciting inputs from stakeholders on, among other things, load forecasts and identification of projects that have requested interconnection or transmission delivery services[230]; and (3) ensuring transparency

[228] Complaint at 32–42.

[229] *See, e.g.*, MISO Tariff, Attachment FF § I.C (requiring MISO to "work[] in collaboration with representatives of the Transmission Owners, OMS, and the Planning Advisory Committee" to develop the MTEP "consistent with Good Utility Practice and taking into consideration long-range planning horizons, as appropriate"); *id*. Attachment FF § I.C.7 (MISO shall collaborate with "Transmission Owners, other transmission providers, Transmission Customers, and other stakeholders to develop appropriate planning models that reflect expected system conditions for the planning horizon," and such models "shall reflect the projected Load growth of existing Network Customers and other transmission service and interconnection commitments"); *id*. Attachment FF § I.C.2.b.

[230] *See, e.g.*, *id*. Attachment FF § I.C.1.b ("Each cycle commences with regional model development, identification of potential expansions from the local planning processes of the Transmission Owners, identification and selection of transmission needs driven by public policy requirements pursuant to Section

and the ability of stakeholders, especially states, to participate in the planning process.[231] As to states in particular, MISO's Tariff establishes a highly structured framework for input by the Organization of MISO States Committee.[232] Complainants do not—indeed, cannot—show that MISO did not follow its Tariff-dictated process throughout its development of Tranche 2.1.[233] Consistent with the Tariff, MISO provided extensive opportunities for stakeholders to offer input and raise objections or concerns,[234] which (as described above) Complainants failed to pursue.

B. Complainants' Arguments Fail Even on Their Own Terms.

Even on their own terms, Complainants' disagreements with MISO's modeling choices lack merit. A single flawed assumption is at the heart of the virtually all of the criticisms of

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I.C.1.b.ii to be included as Transmission Issues, and identification by stakeholders or the Transmission Provider of potential expansions that address the Transmission Issues."); *id*. Attachment FF § I.C.7.

[231] *See, e.g.*, *id*. Attachment FF § I.C.2 ("The Transmission Provider shall facilitate discussions with its Transmission Customers, Transmission Owners, OMS Committee, and other stakeholders about the Transmission Issues and solutions involving both transferred and non-transferred facilities, as described in Section I.D.1 of this Attachment FF."); *id*. ("Once the MTEP report for a specific planning cycle has been completed but prior to recommendation to the Transmission Provider Board for approval, the Transmission Provider shall seek feedback on the proposed MTEP, including Network Upgrades recommended for approval, from the Transmission Provider's stakeholders and the OMS Committee."); *id*. Attachment FF §§ I.C.7, I.C.8 (requiring MISO to post its models on a secure site accessible by stakeholders and to publish "in detail" its planning assumptions through its MTEP report).

[232] The OMS Committee is defined in the tariff as the committee composed of members of the OMS that may exercise the rights granted to it under the tariff. *See* MISO Tariff, Module A § I.O. Under Section I.B, the OMS Committee may suggest additional scope elements in the MTEP, modifications to MISO's planning principles and objectives for a given planning cycle, modeling inputs or assumptions for the development of the MTEP and related appropriate cost/benefit analyses, among other things. *Id.*, Attachment FF, §I.B; *see also* Docket No. RM21-17-000, Comments of the Midcontinent Independent System Operator, Inc. at 62 (filed Aug. 17, 2022). The OMS Committee is also authorized under that provision to submit a "reconsideration request" to MISO staff—as to a specified class of network upgrade projects—at the end of the development process but before the MTEP is submitted to the MISO Board for review. MISO Tariff, Attachment FF § I.B.

[233] *See supra* Background Parts II–III.

[234] MISO, *LRTP Workshop: Tranche 2.1 Journey*; Michelle Wilson, *Transforming the Grid: MISO's $21.8 Billion LRTP Tranche 2.1 Portfolio*, MISO (Sept. 25, 2024), https://www.misoenergy.org/meet-miso/media-center/miso-matters/transforming-the-grid-misos-$21.8-billion-tranche-2.1-transmission-portfolio.

Complainants and Dr. Hogan, as Mr. Russo explains.[235] Dr. Hogan assumes that a single central planner—MISO itself—can and should control members' and states' resource planning.[236] And from that premise, Dr. Hogan avers that MISO failed to follow the theoretical ideal he imagines for this central planner. But while that assumption might be just fine for economic theory and academic publications, it does not match MISO's role.[237] MISO instead under its Tariff must design its transmission system around member and state resource plans.[238] Complainants of course cannot show that MISO's approach was unjust and unreasonable based on theories that are themselves contrary to law.

Dr. Hogan's remaining concerns amount to little more than the same kinds of quibbles that parties raise every time RTOs go through meaningful modeling exercises, over which the Commission affords RTOs latitude to implement.[239] If the Commission rejects Tranche 2.1 based on disagreements over these sorts of modeling choices, the floodgates will open and it will have no choice but to flyspeck every modeling choice that a Commission-jurisdictional utility makes. Endless second-guessing will grind infrastructure development to a halt. Those consequences,

[235] Russo Aff. at 5–6.

[236] *Id.* at 5–6, 8–10.

[237] *E.g.,* Complaint at 34, 41 (faulting MISO for modeling too many generation resources too far from load centers "to effectuate ... clean energy goals of [MISO] states and utilities"); Complaint, Exhibit 1, Testimony of William Hogan at 31:8-15 ("Hogan Testimony") ("Another core element of MISO's discussion of the Future 2A resource mix is that these plans are consistent with member plans. However, consistency with member plans is not a stipulation of the cost-benefit analysis theory. To the contrary, it is precisely because the case of large-scale transmission with economies of scope and scale can create distortion in participant decisions that there is a need for the central planner [MISO] and the oversight regulator to look to the fundamentals of generation, load and transmission investments.") (citations omitted).

[238] MISO Tariff, Attachment FF §§ I.C, I.C.2, I.C.7, I.C.8.c.

[239] *E.g.*, *Midcontinent Indep. Sys. Op., Inc.,* 190 FERC ¶ 61,147 at PP 22-23 (2025) (recognizing MISO's discretion over modeling assumptions and parameters when calculating the loss-of-load expectation and rejecting arguments for Tariff revisions that would constrain that "would hamper this discretion"); *PPL EnergyPlus, LLC v. PJM Interconnection, L.L.C.*, 134 FERC ¶ 61,263 at PP 41-43 (2011) (dismissing section 206 complaint and deferring to PJM's modeling of transmission line outages under its tariff), *aff'd sub nom. PPL EnergyPlus, LLC v. FERC*, 503 F. App'x 1, 2-3 (D.C. Cir. 2013) (per curiam) (unpublished).

however, should not come to pass—because Complainants' arguments fail even on their own terms. Below, we address Dr. Hogan's arguments and demonstrate that MISO's choices were reasonable and complied with the Tariff.

MISO's Resource Modeling. Dr. Hogan claims a "fundamental mistake" from MISO starting its analysis "with a set of" given resource additions—namely, the set of additions contemplated by MISO's member states.[240] Complainants likewise argue that MISO erred by "assum[ing] states and utilities will build the same Future 2A generation resources regardless of whether Tranche 2.1 is built."[241] This basic claim underlies almost every grievance they lodge against Tranche 2.1, including MISO's modeling of Avoided Capacity Costs,[242] Mitigation of Reliability Issues,[243] and MISO's use of Flex Units.[244] But as just explained, MISO's approach is neither mistake nor error.[245] It is instead *compelled* by MISO's role and the practical realities of transmission planning. The Federal Power Act provides exclusive authority to state regulators and jurisdictional utilities to plan generation, including decisions about retirements and new entry, as well as both resource type and location. "The states may select the type of generation to be built—wind or solar, gas or coal—and where to build the facility."[246] MISO lacks authority over these decisions and so under the Tariff must take member and state resource planning as given inputs to its transmission model.[247]

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[240] Hogan Testimony at 14:16-20.

[241] Compl. at 33.

[242] *Id.* at 33–34.

[243] *Id.* at 35–36.

[244] *Id.* at 40–41.

[245] Russo Aff. at 9, 17, 19 (noting that MISO's Futures 2A generation portfolio was based on state and LSE goals, policies, and planning generation).

[246] *PPL Energyplus, LLC v. Solomon*, 766 F.3d 241, 255 (3d Cir. 2014); *see also Citizens Action Coal. v. FERC*, 125 F.4th 229, 239 (D.C. Cir. 2025) ("[T]he States retain authority to choose their preferred mix of energy generation resources.").

[247] MISO Tariff, Attachment FF §§ I.C, I.C.2, I.C.7, I.C.8.c.

Several consequences follow—all fatal to the claims of Dr. Hogan and Complainants. First, MISO had no grounds to second-guess state and member decisions, including that they included too much wind (a decision, by the way, shared by NDPSC—which successfully urged MISO to include *more wind* in its plans),[248] could have sited generation closer to load (though again, NDPSC during the stakeholder process instead went to bat for its own distant wind resources),[249] or may be able to achieve more efficient outcomes by delaying thermal retirements.[250] Dr. Hogan criticizes MISO for treating these resources as "sunk,"[251] but as Mr. Russo explains, MISO's approach was exactly right because the planned expenditures on those resources are not avoidable *from MISO's perspective*.[252] Put simply, contrary to Dr. Hogan's view,[253] MISO's starting point *must* include the type and location of generation that members and states have decided.[254] Second, even aside from these fatal *legal* problems with Dr. Hogan's

[248] Hogan Testimony at 16:9-15; N.D. Pub. Serv. Comm'n Comment on Future 2A Expansion and Preliminary Siting (Mar. 30, 2023), https://www.misoenergy.org/engage/stakeholder-feedback/2023/lrtp-formal-feedback-future-2a-expansion-and-preliminary-siting-20230310/; Comments of the N.D. Pub. Serv. Comm'n (Apr. 8, 2024), https://www.misoenergy.org/engage/stakeholder-feedback/2024/lrtp-tranche-2-anticipated-portfolio-20240315/.

[249] Hogan Testimony at 17:8-9, 26:4–27:2, 27:11-15; N.D. Pub. Serv. Comm'n Comment on Future 2A Expansion and Preliminary Siting (Mar. 30, 2023); Comments of the N.D. Pub. Serv. Comm'n (Apr. 8, 2024).

[250] *Id.* at 18:12–19:3.

[251] *Id.* at 14:12–15:1.

[252] *E.g.,* Russo Aff. at 34 ("The Future 2A generation represents the accumulated planning of the states and member utilities, each of whom may have employed their own criteria, along with assumptions made by MISO to ensure resource adequacy. Characterizing these resources as 'sunk' implies that MISO has some authority to override the plans of its members or is otherwise directing parties to construct the generation assumed in the Future 2A generation portfolio." (emphasis added)); Hogan Testimony at 25:7-12.

[253] Hogan Testimony at 14:12–15:16, 16:9-16.

[254] The IMM's generation model that Dr. Hogan leans on heavily suffers from the same errors that Dr. Hogan seeks to introduce. *See* Hogan Testimony at 28:6–29:4. The IMM has no basis to suggest that MISO can tinker with state and member resource plans. *See, e.g.*, MISO Tariff, Attachment FF § I.C.2; *see also id.* Attachment FF § I.C. (i)–(x); *id.* Attachment FF § I.C.7 (requiring MISO to incorporate load forecasts of members and member-planned projects when predicting "expected system conditions for the planning horizon"); Russo Aff. at 8 ("As is the case with every independent system operator (ISO) and regional transmission organization (RTO), MISO has no role or authority to decide what type of generation

approach, expecting perfect optimization[255] amongst MISO, states, and members over their generation and transmission plans "is too difficult to implement" practically as well.[256] The task of co-optimizing generation and transmission over a two-decade planning horizon—while surely nice to imagine from Harvard Yard—is impracticable in the real world.[257] MISO properly chose to treat as fixed the things that the Federal Power Act and its Tariff *require* it to treat as fixed.

Flexible Generation. It takes no little chutzpah for Complainants to attack MISO's use of Flexible Attribute Units[258] ("Flexible Generation") when MISO added those units to its model in part to address NDPSC's own arguments. As explained above, NDPSC complained that "[d]ispatchable resources, even if they aren't being planned by MISO utilities, need to be modeled in order to reflect a system that is reliable longterm and has the transmission infrastructure needed to support this essential generation."[259] That is exactly what Flexible Generation does.

It is no surprise, then, that Dr. Hogan's attacks miss the mark. MISO's modeling of state and member resource plans indeed revealed a gap between the expected generation and future load.[260] That gap existed because states' resource plans, which MISO must take as a starting point, inevitably do not fully address every need over a two-decade planning horizon. Given its reliability function, MISO thus added the megawatts needed to meet core reliability metrics; modelling a system that is tens of thousands of megawatts short itself would be invalid—as (again) NDPSC

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to build, nor where it should be built…. MISO's states and member utilities bear primary responsibility for generation planning, and they generally do so through integrated resource planning processes.").

[255] *See* Hogan Testimony at 30:11–32:15.

[256] *Id.* at 11:20–21:2.

[257] Additionally, Dr. Hogan's claim that avoided capacity costs from Tranche 2.1 should be valued at zero is implausible and casts doubt on his methodology, as Mr. Russo explains. *Id*. at 32:13-15.

[258] *Id.* at 21:10–22:7.

[259] N.D. Pub. Serv. Comm'n Comment on Future 2A Expansion and Preliminary Siting (Mar. 30, 2023).

[260] Russo Aff. at 22.

itself emphasized.[261] Dr. Hogan complains that Flexible Generation have attributes of technology that "does not exist at present,"[262] but they are purpose-built as a modeling tool representing resources that have are needed but not yet planned.[263] The use of similar modeling tools is a standard practice (SPP, for example, does the same in its own regional transmission planning process).[264] Neither Complainants nor Dr. Hogan claim otherwise.

Dr. Hogan's suggestion that MISO could have substituted Flexible Generation for its initial model generation relies on an improper order of operations. As described above, MISO was *required* to use state and member resource plans, and thus had to model them *first*. MISO had no right to replace already-planned resources with Flexible Generation,[265] either from the outset or after adding Flexible Generation units to the model.[266] MISO, therefore, did exactly the right thing in deciding that "[f]lexible attribute units do not displace the need for previously identified resources and, instead, supplement them in periods of energy inadequacy."[267]

Dr. Hogan also is wrong to claim that MISO excluded flexible generation in evaluating reliability.[268] In fact, MISO's reliability analysis had two passes, and MISO used the dispatch capabilities of flexible generation and other resource types during the first pass of the reliability

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[261] N.D. Pub. Serv. Comm'n Comment on Future 2A Expansion and Preliminary Siting (Mar. 30, 2023); *see also* Russo Aff. at 23 (explaining that "flex units" are additional capacity MISO added to fill the gap in intervals where the Future 2A generation was projected to fall below demand).

[262] Hogan Testimony at 21:1-9.

[263] Russo Aff. at 24 (explaining that MISO's approach on adding flex capacity to ensure resource adequacy was reasonable and consistent with standard planning assumptions and the MISO tariff).

[264] Russo Aff. at 22 ("SPP ... follows the same high level methodological steps that MISO does in its transmission planning process [and] added model-built capacity into its recent transmission expansion plan.") (citing Sw. Power Pool, Inc. *2024 Integrated Transmission Planning Assessment Report* at 34 (Jan. 24, 2025), https://www.spp.org/media/2229/2024-itp-assessment-report-v10.pdf).

[265] *See* Hogan Testimony at 22:1-7.

[266] *See id.* at 23:6-14.

[267] MISO, *MISO Futures Report: Series 1A* 20 (Nov. 1, 2023), https://cdn.misoenergy.org/Series1A_Futures_Report630735.pdf.

[268] Hogan Testimony at 33:14-19.

study.[269] In the *second pass only*, MISO limited the dispatch capability of flexible generation and other units to test two scenarios to ensure that it was not double counting financial benefits.[270]

Load Shed. Dr. Hogan claims that load shed risk should be ignored because "known reliability issues would not be resolved by planning to shed large amounts of load,"[271] but there is no basis simply to assume away this risk. As Mr. Russo explains, it is unreasonable for planners to assume, as Dr. Hogan does, that some other process will address an identified danger—a particularly dangerous assumption for consequences as significant as load shed.[272] MISO is required by its Tariff to quantify the financial benefits of MVP projects, and MISO did so by using a "value of lost load" (or "VOLL") analysis to quantify the benefits of avoiding load shed events. And the values MISO used were both appropriate and consistent with the Tariff.[273]

Indeed, as explained above, the grievances of Complainants and Dr. Hogan also echo certain criticisms of the Department of Energy's *Resource Adequacy Report*. Several parties objected that the Department "outlined an implausible reliability crisis" by not assuming that some (unidentified) "future planning by utilities, states and communities" would address the reliability issues the Department had found.[274] Complainants and Dr. Hogan likewise contend that MISO overstated reliability benefits and instead should have assumed that someone else will eventually take action "to prevent [the] future load shed" MISO identified.[275] But again, those responsible

[269] Russo Aff. at 37–38.
[270] *Id.*
[271] Hogan Testimony at 35:7-9.
[272] Russo Aff. at 39.
[273] *Id.* at 39–40.
[274] Request for Rehearing of The Clean Energy Organizations at 46–47, *Resource Adequacy Protocol, Evaluating the Reliability and Security of the United States Electric Grid*.
[275] Complaint at 37.

for reliability cannot pass the buck and assume that someone else will save the day, particularly from consequences as severe as load shed.

Environmental Benefits. Dr. Hogan's view that Tranche 2.1's environmental benefits are overstated is wrong and irrelevant. Although it is true that the resources in the Base Case and Expanded Case are the same,[276] as they must be, MISO's proposed transmission solutions result in a different dispatch and alleviate congestion, reducing curtailment and enabling additional dispatch of lower-cost wind and solar resources compared to the Base Case.[277] Moreover, while Dr. Hogan argues that MISO should have valued carbon at $50/metric ton based on the federal production tax credit,[278] MISO reasonably used $85/metric ton value based on the federal tax policy in effect at the time.[279] Putting aside the impracticality of chasing models based on ever-evolving inputs, as Mr. Russo explains, MISO's original estimate based on federal tax credits for carbon sequestration was reasonable.[280]

Dr. Hogan's view is also irrelevant because, even accepting his second-guessing, it yields $4.3 billion to $7.2 billion in decarbonization benefits.[281] And even if one excludes decarbonization benefits *entirely* (which neither Dr. Hogan nor Complainants urge), Tranche 2.1's benefits still comfortably exceed its costs, and it continues to do so unless one *also* accepts Dr. Hogan's untenable and federalism-destroying view that MISO should have rejected the resource plans of its member states.

[276] Hogan Testimony at 37:1-11
[277] Russo Aff. at 41.
[278] Hogan Testimony at 37:21–38:5.
[279] MISO, MTEP24 Transmission *Portfolio* at 159 tbl. 2.34 .
[280] Russo Aff. at 42.
[281] Hogan Testimony at 40–41.

IV. Complainants' Request for Commission Review and Approval of Future MTEP Business Cases Contravenes the Commission's Historical Approach to *Ex Ante* Cost Allocation for Regional Transmission Planning.

Complainants' preference for FERC review and approval of the business case supporting all future MVP projects calls for micromanagement on the most sweeping scale. If granted, this would impose an unprecedented federal takeover of regional transmission planning and ultimately would oust *states* from their important role in the planning cycle. And it would grind to a halt the already slow MTEP planning process and cast aside the flexibility that the Commission has long afforded MISO and its stakeholders in reaching efficient, cost-effective solutions for the electric grid. If the Commission reaches the merits, it should reject this Complainants' baseless and overly burdensome request.

When MISO creates and implements its MTEP business case, it does what utilities always do: it applies its Tariff to make highly technical judgments in carrying out its role as a utility.[282] The Commission and courts have time and again affirmed the discretion of RTOs and ISOs over the regional transmission planning process: under Order No. 1000, "*[t]he substance* of a regional transmission plan ... remain[s] *within the discretion of the decision-makers in each planning region*."[283] MISO exercises that discretion subject to the careful guardrails and vetting of its stakeholder process.[284] As noted, for Tranche 2.1, MISO held at least 300 stakeholder meetings and analyzed over 500 stakeholder revisions, with such feedback being "instrumental in informing the business case metrics" underlying the tranche.[285] The Tariff further provides many avenues

[282] *E.g.*, *Big Sandy Peaker Plant, LLC*, 154 FERC ¶ 61,216 at PP 42, 47 (2016) (affirming RTOs and ISOs' "broad discretion" when implementing their Commission-approved tariffs).

[283] *S.C. Pub. Serv. Auth.*, 762 F.3d at 58 (citing FERC Order No. 1000-A, 139 FERC ¶ 61,132) (emphasis added).

[284] *See supra* Background Part II (providing overview of MTEP planning process).

[285] MISO, *2024 MISO Transmission Portfolio* at 26–27.

for resolving disputes with MISO and correcting potential errors within the MTEP.[286] And parties may also seek Commission review via Section 206, provided they do not unreasonably delay in doing so.[287]

Complainants' claims—that MISO is "completely autonomous" and "free to subjectively interpret Tariff provisions broadly to operate as it sees fit"—thus are simply wrong.[288] And those claims are particularly noncredible considering that Complainants made no attempt to use any of the dispute-resolution mechanisms available under the Tariff and unreasonably delayed filed their Complaint.[289] Nor do Complainants bother to grapple with the enormous costs their proposed remedy would inflict. Regional transmission planning is a large, complex, and highly technical affair, so requiring Commission pre-approval of MISO's business cases would create a new chokepoint for litigation, result in "unconscionable regulatory delay," and slam the brakes on an already slow process.[290] The disruption would not stop there. Parties could argue, with similar force, that regional transmission organizations must obtain preauthorization for implementing other important aspects of their tariffs, such as specific parameters for wholesale auctions. That would bring to a standstill the important work that regional transmission organizations and the Commission undertake.

In Order No. 1000, the Commission refused "to dictate substantive outcomes" in the transmission planning process,[291] but that is precisely what would happen if MISO and other

[286] *E.g.*, MISO Tariff, Attachment FF § I.B.

[287] *Id.* Attachment FF § VI.A (providing that, if MISO and stakeholders "MISO and stakeholders "cannot reach agreement on any element of the MTEP, the dispute may be resolved through the dispute resolution procedures provided in the Tariff, or in any applicable joint operating agreement, or by the Commission or state regulatory authorities, where appropriate").

[288] Complaint at 5.

[289] *See supra* Background Part IV.

[290] *See Ill. Com. Comm'n*, 721 F.3d at 775.

[291] *S.C. Pub. Serv. Comm'n*, 762 F.3d at 58 (quoting Order No. 1000-A, 139 FERC ¶ 61,132 at P 188).

regional transmission organizations were required to obtain preauthorization for their business cases. Instead of arriving at transmission solutions in partnership with states, transmission owners, and consumer advocates, the MTEP process would be geared toward obtaining approval from regulators in Washington, D.C.—firmly shifting the center of gravity *away* from states. The Commission should reject this unnecessary, extremely costly, and counterproductive request.

CONCLUSION

For the reasons given above, the Commission should at minimum dismiss the Arkansas, Mississippi, and Louisiana Public Service Commissions. There are, moreover, multiple threshold problems that warrant rejecting the Complaint, like the Complainants' failure to invoke existing processes under the MISO Tariff to ventilate objections and resolve disputes *before* Board approval of Tranche 2.1. To the extent the Commission reaches the merits, it should deny the Complaint.

Dated: September 9, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day caused the foregoing document to be served on each person designated on the official service list compiled by the Secretary for this proceeding.

Dated at Washington, DC, this 9th day of September 2025.

/s/ John Estes
John Estes