UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System System Operator, Inc.	**)** **)**	**Docket No. EL25-80-000**

MOTION TO INTERVENE, PROTEST, AND REQUEST FOR EXPEDITED ACTION OF THE MISO INDEPENDENT MARKET MONITOR

Pursuant to Rules 211, 212 and 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 C.F.R. §§ 385.211, 212 and 214 (2025), Potomac Economics, Ltd. respectfully moves to intervene in the above-captioned proceedings and to protest the May 5, 2025 Petition for Declaratory Order ("the Petition") by the Midcontinent Independent System Operator, Inc. ("MISO") regarding the scope of the our responsibilities as the Independent Market Monitor ("IMM") under Module D of the MISO Open-Access Transmission, Energy, and Operating Reserve Markets Tariff ("Tariff").

In particular, MISO asserts that monitoring of MISO's transmission planning activities exceeds the IMM's scope under the Tariff. As explained in this Protest, MISO's request in the Petition must be rejected because:

(i) Module D unambiguously authorizes the IMM to monitor the market impacts of MISO's transmission planning;

(ii) Allowing MISO to unilaterally narrow the scope of the market monitoring in the MISO region violates the Commission's regulations; and

(iii) To the extent that the Commission looks to extrinsic evidence or policy factors to interpret Module D they all support the IMM's position.

We also note that almost all the MISO States support the IMM's role in monitoring of MISO's transmission planning and have raised concerns about MISO's attempts to suppress the views of the IMM.[1]

Therefore, the IMM respectfully asks the Commission to deny MISO's request in the Petition and, instead, to clarify both that the IMM is authorized to monitor MISO's transmission planning under Module D, and that MISO may not impede such monitoring. Furthermore, we request that the Commission act expeditiously because the IMM is currently being prevented from monitoring transmission planning decisions that will have consequential market impacts.

I. NOTICE AND COMMUNICATIONS

All correspondence and communications in this matter should be addressed to:

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II. MOTION TO INTERVENE

Potomac Economics is the IMM for MISO. In this role, we are responsible for monitoring and evaluating the performance of MISO's energy and ancillary services markets. We also are responsible for recommending market design changes to improve the performance of the markets and evaluating design changes proposed by MISO or market participants.

Because the Petition seeks to prevent Potomac Economics from fulfilling a material portion of its responsibilities, Potomac Economics has a direct and unique interest in this proceeding that cannot be adequately represented by any other party.

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[1] Notice of Intervention and Comments of the Organization of MISO States, Inc., EL25-80-000 (June 6, 2025), ("OMS Comments"). Nine of the states supported this filing and we understand that others are filing even stronger comments in support of the IMM's monitoring of the transmission planning process.

III. BACKGROUND AND INTRODUCTION

To provide background and context for MISO's Petition and our protest, it is useful to review the history of the IMM's monitoring of MISO's transmission planning and the events leading up to the Petition.

As the MISO IMM, Potomac Economics has routinely reviewed and monitored MISO's transmission plans and planning analyses over the past 20 years. This monitoring has resulted in a few issues or concerns being raised with MISO or stakeholders, but generally these issues have been limited. However, over the past two years, this activity has increased as MISO has initiated Long Range Transmission Planning (LRTP).

Our monitoring of MISO's transmission planning has historically raised few concerns. A number of years ago, we identified a planning methodology that tended to understate transmission needs and reduce transmission investment. More recently, we have identified serious flaws and concerns with MISO's LRTP process and results:

- MISO's capacity expansion modeling that produced an unrealistic Future 2A that was the basis for its latest portfolio of transmission projects – Tranche 2.1;[2] and
- MISO's quantification of the benefits of Tranches 1 and 2.1 of transmission projects:[3]
    - We identified that MISO established no "but for" base case without the transmission projects, which serves to overstate every class of benefits.
    - We identified two of the nine classes of benefits that are based on invalid methodologies where the true benefits are likely very low or close to zero. Unfortunately, these two classes account for more the two thirds of the benefits.

Rather than explaining why it believed its analysis was reasonable or why the concerns were not accurate, MISO staff repeatedly chose to simply indicate that they did not agree with the

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1 See *IMM Discussion of MISO Futures and Long-Range Transmission Planning* presented at the MISO LRTP Workshop, August 31, 2025.

2 See *MISO IMM Comments on LRTP Tranche 2 Benefit Analysis* presented to the System Planning Committee of the Board of Directors, October 30, 2025.

concerns and made no substantive attempt to address them. This raised serious concerns regarding the independence and objectivity of the analysis and process. The number of hours MISO spent in meetings and number of rounds of feedback sought does not ensure that MISO has satisfied its mandate to conduct an independent and objective process.

Coming out of this process, MISO suggested to its Board in late 2024 that our monitoring activity may be outside of the market monitoring scope described in Module D. In response, the Board directed MISO to seek clarification of the IMM's scope from the Commission, and to not compensate the IMM for any work in this area until such clarification is received.

As we describe in this protest, MISO fails to identify and discuss the tariff in Module D that mandates that the IMM monitors the transmission planning process to the extent that it may be affecting or undermining MISO's markets. Further, we explain why it is essential for this process to be subject to independent review and oversight. The need for independent oversight is underscored by the fact that the current process has been administered in a manner that is highly biased in favor of inflating future transmission needs and supporting extraordinary expenditures to address the perceived needs. Finally, we address some of the mischaracterizations and misleading statements made by MISO in its Petition.[4]

As we discuss, Module D of the MISO tariff not only authorizes, but mandates the IMM's monitoring of the transmission planning process. Given the fact that critical transmission planning activities are underway currently, we respectfully request that the Commission act quickly to confirm that MISO's tariff authorizes the IMM to monitor transmission planning and require MISO to compensate the IMM for the monitoring of these processes.

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[4] We focus on the most material errors and mischaracterizations in the Petition. The fact that we do not address an assertion in the petition should not be mistaken as agreement with it.

IV. PROTEST

A. Module D authorizes the IMM to monitor transmission planning because it substantially affects MISO's Market and Services

In its Petition, MISO requested that the Commission declare that monitoring MISO's transmission planning process is outside the scope of the Independent Market Monitor's role. The Petition makes a variety of misleading or irrelevant arguments, a number of which we address in detail later in this protest. However, the most salient flaw in MISO's Petition is that in arguing that monitoring the transmission planning process is outside of the IMM's scope, MISO fails to cite the most relevant Tariff provision in Module D that clearly places this monitoring within the scope of the IMM. Specifically, Section 53.1 of Module D states that:

> The IMM will achieve the purposes and objectives of this Plan through review and analysis of conditions, functions or actions affecting the competitiveness, economic efficiency and proper operation of the Markets and Services, including but not limited to, the following to the extent each may be deemed relevant to the purposes and objectives of this Plan **by the IMM**: (Emphasis added).
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> And Section 53.1.e of Module D establishes that the IMM is to evaluate:
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> Competitive or other market impacts of tariffs and agreements, or other rules, standards or procedures, **or any other Transmission Provider or Market Participant actions governing or affecting any of the Markets and Services**; (Emphasis added)

For the purposes of the Petition, the primary issue pertains to the interpretation of this single provision. We recognize that Section 53.1.e. is broadly worded, but this was intentional. The provision's expansive scope is consistent with the breadth of the Commission's market monitoring regulations. No entity has a larger and more direct impact on MISO's markets and their outcomes than MISO itself as the "Transmission Provider" under Section 53.1. Therefore, it is incumbent on the IMM to identify any actions or activities by MISO that undermine, distort, or otherwise affect "the competitiveness, economic efficiency and proper operation" of any "the Markets and Services" provided by the MISO.

Section 50. 2 of Module D identifies certain areas that are not subject to direct monitoring by the IMM. But transmission planning is not one of those specified areas and there are no Commission or judicial precedents that suggest that transmission planning's impacts on MISO Markets and Services should not be monitored by the IMM. The IMM is also expressly authorized to "periodically assess" the effects of activities that it may not directly monitor on markets that it does monitor.[5]

Therefore, the question before the Commission is solely: *does transmission planning affect MISO's markets or services*? The unambiguous answer to this question is: YES. Beyond the substantial direct effects that its transmission planning will have on its transmission rates, here are just some of the ways that MISO's transmission planning affects its markets and services:

- Transmission planning can substantially affect the competitiveness of RTOs' capacity and energy markets.
- Transmission planning affects long-term locational price signals and local capacity requirements that govern investment in flexible resources that can manage transmission flows and maintain reliability in load pockets.
- Inefficient transmission planning can greatly increase costs to RTOs' customers by undermining such investment.
- Transmission planning affects the development and siting of large loads and distributed energy resources and their incentives to participate in the RTO markets.

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[5] Module D, Section 50.2, "The IMM will not monitor bilateral Energy, Ancillary Services or Capacity markets, or private transmission rights not administered, coordinated or facilitated by the Transmission Provider, except to periodically assess the effect of these markets on the Markets and Services administered by the Transmission Provider, or the effects of the Transmission Provider Markets and Services on these markets."

- Poor transmission planning can slow the resource interconnection process and hinder investment in resources that rely on transmission to be deliverable in the RTOs' capacity and energy markets.[6]

Indeed, it is difficult to conceive of a coherent argument that transmission planning *does not* affect MISO's markets and services, and we note that MISO makes no such argument in its Petition. In fact, large-scale transmission investment that flows from MISO's transmission planning efforts may have a larger impact on MISO's market outcomes over the long-term than almost anything else that MISO does. In short:

(i) Module D expressly empowers the IMM to monitor activities that *the IMM* "deems relevant" to the purposes and objectives of the Independent Market Monitoring Plan;

(ii) Such activities expressly include, "[c]ompetitive or other market impacts of tariffs and agreements, or other rules, standards or procedures, or *any other Transmission Provider* or Market Participant actions governing or affecting any of the Markets and Services";

(iii) It is apparent that transmission planning decisions substantially affect the MISO's market and services;

(iv) MISO has made no attempt to deny that this the case; and

(v) Module D's narrow restrictions on the scope of the IMM's authority do not apply to transmission planning.

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[6] As the Commission emphasized in Order No. 1920, "[t]he interconnection queue backlogs and delays that were the Commission's focus in Order No. 2023 have arisen, in part, due to deficiencies in the existing transmission planning requirements." *Bldg. for the Future Through Elec. Reg'l Transmission Planning & Cost Allocation*, Order No. 1920, (June 11, 2024), 187 FERC ¶ 61,068, at P 107 *order on reh'g*, Order No. 1920-A, (Dec. 6, 2024), 189 FERC ¶ 61,126 (2024), *order on reh'g*, Order No. 1920-B, (Apr. 28, 2025), 191 FERC ¶ 61,026 (2025). Order No. 1920 also held that transmission planning defects were causing an overreliance on interconnection-related network upgrades which was inefficient and increased costs. *See* Order No. 1920 at PP 104-108.

MISO's request in the Petition must be denied because it seeks relief that would violate the terms of Module D. Commission and judicial precedent unambiguously holds that when the express language of a filed tariff or agreement is clear then that language is controlling.[7] The Commission will not consider any form of "extrinsic evidence" or policy argument that may be offered in support of interpretations that deviate from a Tariff's express terms.[8] The fact that Module D expressly authorizes the IMM to monitor the effects of transmission planning decisions on MISO Markets and Services is fatal to MISO's request.

B. FERC and the Courts have repeatedly held that transmission planning affects RTO markets and services

Even if MISO had tried to argue that that that transmission planning decisions do not affect MISO's markets and services, such an argument would be precluded by numerous precedents recognizing that transmission planning decisions do significantly affect Commission-jurisdictional rates and markets. In fact, if the Commission were to conclude that transmission planning was outside the scope of Module D, then it would effectively be undermining the basis for its own jurisdiction over transmission planning.

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7 *See, e.g., PSEG Energy Res. & Trade LLC v. FERC*, 665 F.3d 203, 208 (D.C. Cir. 2011); *Colo. Interstate Gas Co. v. FERC*, 599 F.3d 698, 702 (D.C. Cir. 2010); *ISO New Eng. Inc*., 151 FERC P 61,196, at P 11 n.24 (2015) (citing *PSEG Energy*, 665 F.3d at 208).

8 *Cal. Indep. Sys. Operator Corp.*, 140 FERC ¶ 61,168, at P 7 (2012); *see also ISO New England Inc.*, 172 FERC ¶ 61,251, at P 26 (2020) (same); *Iberdrola Renewables, Inc. v. FERC*, 597 F.3d 1299, 1304 (D.C. Cir. 2010) ("Iberdrola finds ambiguity outside the contract in the previously discussed language from Alliance's Certificate Application, which indicated that Alliance would seek FERC's approval before adjusting the negotiated rate. This argument fails as a matter of law. 'If a contract is not ambiguous, extrinsic evidence cannot be used as an aid to interpretation.'"); *Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 827 (D.C. Cir. 2021) (considering "whether the relevant language unambiguously addresses the matter at issue, and if so, we apply that unambiguous meaning" and noting that a "tariff provision must be understood according to its plain meaning, which we draw from its text and context" (cleaned up and citations omitted)).

For example, in Order No. 890, the Commission mandated open and transparent transmission planning, based on its determination that:

> Transmission planning is critical to the provision of open access transmission service and **has a significant impact on the rates**, terms and conditions of service.[9]
>
> and
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> Planning failures can lead to congestion, higher locational marginal prices (LMPs), and reduced competition—directly impacting wholesale electricity prices.[10]

This is not ambiguous and the Commission has consistently found this to be the case. In its next major Order reforming the transmission planning process, Order No. 1000, the Commission stated that:

> The inability to identify and build cost-effective regional projects can lead to **inefficient market outcomes** and increased costs to customers.[11]

Order 1920, the latest Commission rule enhancing transmission planning processes, similarly stated:

> Transmission planning practices **affect whether rates are reasonable** and nondiscriminatory, particularly when they result in inefficient infrastructure investment or unequitable cost burdens.[12]

As former Chairman Phillips said in connection with Order No. 1920:

> The authority of the Federal Energy Regulatory Commission to regulate regional transmission planning and cost allocation has long been recognized by bipartisan majorities of the Commission and U.S. Court of Appeals for the District of Columbia Circuit. It could hardly be otherwise. Both regional transmission planning and cost allocation are practices that have exactly the type of "direct effect" on Commission-jurisdictional rates that the U.S. Supreme Court has held brings a matter within this Commission's jurisdiction. Indeed, our authority to regulate regional transmission planning and cost allocation is essential to the

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9 Order No. 890, 118 FERC ¶ 61,119 (2007) at P 418.

10 Id at P 420.

11 Order No. 1000, 136 FERC ¶ 61,051 (2011) at P 50.

12 Order No. 1920, 187 FERC ¶ 61,068 (2024) at P 42.

> Commission's ability to ensure that customers have access to reliable, affordable supplies of electricity—our most fundamental statutory responsibility.[13]

Most recently, Order No. 1920-A reiterated that, "[a]s affirmed by the D.C. Circuit, regional transmission planning and cost allocation processes are practices directly affecting rates subject to the Commission's sole jurisdiction, as transmission providers "use those processes to 'determine which transmission facilities will more efficiently or cost-effectively meet' transmission needs."[14]

Hence, the precedents are clear that transmission planning *does* affect MISO's markets and services, making the monitoring of this process clearly withing the scope of Module D, Section 53.1.e. The IMM is not aware of any precedent suggesting that transmission planning

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[13] Chairman Willie Phillips Statement Concerning Order No. 1920, https://www.ferc.gov/news-events/news/chairman-willie-phillips-statement-concerning-order-no-1920 (July 1, 2024) (internal footnotes omitted), citing, *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (South Carolina); *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils*., Order No. 1000, 136 FERC ¶ 61,051 (2011), Order No. 1000-A, (May 31, 2012), 139 FERC ¶ 61,132 (2012), *order on reh'g & clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd South Carolina*, 762 F.3d 41; *Preventing Undue Discrimination & Preference in Transmission Serv*., Order No. 890, FERC Stats. & Regs. ¶ 31,241, 118 FERC ¶61,119 (2007), *order on reh'g*, Order No. 890-A, 118 FERC ¶ 61,119, *order on reh'g and clarification*, Order No. 890-B, (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009); *see also South Carolina*, 762 F.3d at 58 ("Commission-mandated transmission planning is not new. . . . [Order No. 1000] builds on Order No. 890's requirements in light of changed circumstances and is simply the next step in a series of related *reforms that began no later than Order No. 888*."); FERC v. Elec. Power Supply Ass'n, 577 U.S. 260, 277-79 (2016); *NARUC v. FERC*, 964 F.3d 1177, 1186 (D.C. Cir. 2020); *see, e.g., South Carolina*, 762 F.3d at 56 (stating that the petitioners cannot "dispute that the Commission is obligated by the plain text of Section 206 to ensure that [transmission planning] practices are just and reasonable and not unduly discriminatory or preferential").

[14] Order No. 1920 at P 86 (quoting *South Carolina* at 56); id. ("[T]hese processes identify, evaluate, and select the regional transmission facilities whose costs will be recovered through transmission rates . . . .").

does not affect an RTO's markets and services. MISO is wrong to ignore these precedents and replace it with an artificial restriction that would prevent such monitoring. There is no basis for drawing such a formalistic line and doing so would be irreconcilable with the authorities cited above.

Moreover, MISO, as a Commission-approved RTO, is still subject to Order No. 2000's market monitoring requirements. Order No. 2000 goes unmentioned in the Petition but it required that "Market monitoring must include monitoring the behavior of market participants in the region, including transmission owners other than the Regional Transmission Organization, if any, to determine if their actions hinder the Regional Transmission Organization in providing reliable, efficient and not unduly discriminatory transmission service."[15] This regulatory requirement belies any notion that market monitoring is limited only to matters that directly pertain to market administration.

C. MISO's Arguments Cannot Override the Express Terms of Module D or the Commission's Regulations and Are Unpersuasive on their Merits

The Petition's arguments all fail because they are inconsistent with the express terms of Module D as well as the Commission's regulations and precedents that shaped Module D. MISO is impermissibly seeking to use extrinsic evidence to interpret unambiguous tariff language. The Commission should deny the Petition on this basis alone without any need to consider extrinsic evidence.

However, even if the Commission were to conclude that Module D was ambiguous it should still deny the Petition because its arguments all fail on the merits. As noted below, to the extent that extrinsic evidence is considered, it supports the IMM's position.

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[15] 18 C.F.R. 35.34(k)(6)(i).

1. MISO's "Slippery Slope" Argument Should Be Rejected

Although it does not acknowledge the existence of Section 53.1.e, MISO makes one argument against concluding that transmission planning affects MISO's markets and services. Namely, the "slippery slope" argument there may be "…widespread and potentially detrimental consequences of adopting such a view" because it "…could disrupt the efficient operations at MISO and introduce unnecessary costs, which all, in turn, could impact reliability and the benefits received by MISO members."[16] As described above, Section 53.1.e. is broadly written because it is difficult to predict in advance all the specific actions MISO could take as the market operator and Transmission Provider that could adversely affect the markets. However, if one were to attempt to list such actions, transmission planning would clearly be on it.

Further, we believe that the Commission should reject MISO's argument because it is fundamentally flawed for the following reasons. First, Section 53.1 has existed for more than 20 years and the IMM has interpreted this provision to broadly include any MISO actions that adversely affect its markets. There is no evidence that the IMM has ever interpreted the provision unreasonably or caused any of the detrimental impacts MISO asserts. On the contrary, in nearly every case where the IMM has raised concerns regarding MISO's actions, MISO has worked collaboratively to make improvements that have yielded substantial efficiency benefits and other savings.

Second, the natural conclusion of MISO's slippery slope argument is that the IMM should not have the authority to monitor any of MISO's activities under Section 53.1.

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[16] Petition at 24-25.

Third, finding that transmission planning affects MISO's market and services would not "…conceivably expand Potomac's authority to any business area in MISO," as MISO asserts.[17] This determination would simply provide the Commission interpretation of an existing Tariff provision and would not alter the IMM's scope or authority. In other words, confirming that the IMM should monitor the market impacts of MISO's transmission planning will not unleash potential harm that MISO claims, particularly given that there is no evidence of such behavior by the IMM over the past 25 years.

2. References in the Petition to the IMM's monitoring as being "unsolicited" or "for compensation" are misplaced

The Petition repeatedly, 24 in total, labels the IMM's monitoring of its transmission planning process as "unsolicited", presumably to create the impression that it is an optional activity that would only be justified if specifically requested by MISO.[18] This is simply not true and a misleading characterization of the IMM's activities for the following reasons.

First, the monitoring activities in question are within the scope of Module D of the MISO Tariff as described above and are, therefore, solicited. MISO does not "solicit" market monitoring work from the IMM, particularly when MISO is the focus of the monitoring. It is likely that all monitored entities, whether market participants or MISO itself, would view investigations by the IMM to be "unsolicited" since no target of our monitoring and investigation would ever voluntarily solicit such activity by the IMM.

Second, both the MISO Board and MISO staff initiated meetings and requested presentations of the IMM's findings in this area, which verify that both MISO and its Board of

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17 Id. at 25.

18 *See* Petition at 1, 2, 3, 4, 8, 14, 15, 16, 20, 25, 29, and 35.

Directors believed that this work was within the IMM's scope until very recently.[19] Examples of these requests included:

- Requests by the Board to work closely with MISO staff to discuss the findings of our review of MISO's Futures cases and its benefits analyses;
- MISO initiating numerous meetings with transmission planning staff and management, as well as other staff and executives at MISO to discuss our findings and concerns regarding the transmission planning results. These meetings pre-dated LRTP but were much more frequent after 2022.
- MISO put the IMM on the agenda to present at two LRTP stakeholder workshops and multiple stakeholder meetings, including the Resource Adequacy Subcommittee.

In addition to asserting that the MISO IMM's monitoring in this area is "unsolicited," the Petition curiously indicates 15 times that this monitoring is "for compensation" or that the IMM has "requested or sought compensation" for this monitoring.[20] MISO seems to be implying that our monitoring of transmission planning is motivated by a desire for increased compensation, which is offensive and baseless. Like all market monitoring work, we bill our work on an hourly

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[19] To the extent that the Commission were to look to extrinsic evidence to interpret Module D, the fact that MISO acquiesced to two decades of transmission planning monitoring would constitute dispositive "course of dealing" evidence. *See, e.g.*, *ANR Pipeline Co. v. FERC*, Case No. 24-60222 (5th Cir. May 22, 2025) ("This 'course of performance accepted or acquiesced in without objection is given great weight in the interpretation of the agreement.' *Univ. of Texas Sys. v. United States*, 759 F.3d 437, 445 (5th Cir. 2014) (quoting Restatement (Second) of Contracts § 202(4))."); *Mont.-Dakota Utils. Co. v. Midcontinent Indep. Sys. Operator, Inc*., 190 FERC ¶ 61,168 (2025) at P 45 ("Regardless, to the extent SPP's notes in 2019 suggest that SPP thought ICP section 8.1.1 would constitute an independent substantive requirement, this belief was not reflected either in the text of the ICP filed with, and accepted by, the Commission or in the parties' course of dealing. Thus, on balance, even if we were to consider extrinsic evidence, we would find the course of dealing evidence more persuasive than SPP's notes in 2019.") (internal footnotes omitted), *citing City of Lebanon, Ohio*, 64 FERC ¶ 61,341, at 63,445 ("The Commission will hold parties to the language they drafted and agreed to.").

[20] *See* Petition at 3, 4, 14, 16, 19, 20, 21, 22, 25, 28, 35.

basis. The only reason the hours related to transmission planning monitoring have increased in the past two years above the historical level of effort in the prior twenty is due to the profound concerns that we have uncovered with MISO's most recent determinations.

3. Many of the assertions in the "Factual Background" section of the Petition are factually incorrect, misleading or irrelevant to defining the scope of the IMM's responsibilities

MISO makes a series of arguments based on Tariff provisions outside of Module D in an attempt to bolster their assertion that transmission planning is outside of the IMM's scope. As we explain below, none of these arguments are relevant and should dismissed by the Commission. We list MISO's arguments in italics and our responses below.

> …the TOA unambiguously confirms it is MISO's responsibility to undertake transmission planning. The TOA states that the "planning function of MISO shall be the responsibility of the MISO Planning Staff (hereinafter "Planning Staff").[21]

We agree that it is MISO's role to undertake transmission planning. Unfortunately, MISO conflates *transmission planning activities* with *independent monitoring of the transmission planning* throughout its Petition. The IMM is not seeking to engage in transmission planning, despite MISO's assertions.

For example, we routinely monitor and evaluate MISO's operations because operator actions can substantially affect the market outcomes and costs. However, monitoring MISO's operating actions does not constitute the IMM operating the system. In other words, MISO's responsibility to operate the system is distinct from the IMM's responsibility to monitor MISO operations. Likewise, MISO's responsibility to engage in transmission planning is distinct from the IMM's responsibility to monitor MISO's transmission planning.

> The IMM is reimbursed for its market monitoring functions under Tariff Schedule 17 – Energy and Operating Reserve Markets Support Administrative Service Cost Recovery Adder ("Schedule 17")...In contrast, the costs associated with MISO's transmission

[21] Petition at 20.

> planning process are recovered through Schedule 10 – ISO Cost Recovery Adder ("Schedule 10"). Under Schedule 10, MISO is generally authorized to recover the costs of operating the ISO, including costs of administering the Tariff.[22]

Like most of the other arguments in the Petition, this argument is not relevant to whether monitoring transmission planning is within the IMM's scope. We do not understand why MISO believes that its recovery of these costs under different Tariff schedules is relevant. Under this theory, all monitoring of MISO's conduct and operations would be out of scope because it is all recovered under a different Tariff schedule than the market monitoring costs.

MISO claims that our monitoring of transmission planning has not been included in our Statements of Work (SOW) or budget that is reviewed by the MISO Board. This is not true. The costs of this work are covered in the Market Monitoring and Data Management SOW and budget along with numerous other topics we monitor. It is not logical to conclude that the fact that monitoring transmission planning is not called out separately indicates that it was not included in the SOW because there are numerous specific monitoring topics that are not called out in the SOW.

In reality, we had anticipated this work and included it in the budget. The $300,000 of billings MISO cited in 2023 and 2024 constitute less than 2 percent of the IMM budget, and did not contribute to the overages MISO identifies in the Petition.[23]

4. None of the cases or proceedings pertaining to market monitors' scope cited in the Petition support the MISO's arguments in any way

The Petition cites several administrative and judicial rulings that allegedly show that the IMM's authority and role should be narrowly construed. However, none of the cases cited by MISO suggest in any way that monitoring the transmission planning process is not within the

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22 Petition at 12-13.

23 *See* Petition at 15 and 16.

MISO IMM's scope. They are all therefore irrelevant to this proceeding. MISO has also mischaracterized these rulings in various ways.

For example, *Old Dominion Elec. Coop v. FERC*,[24] addressed the question of whether market monitors have "cognizable legal interests" in market outcomes sufficient to confer Article III standing, which is a prerequisite to becoming a party in appellate proceedings. The court did not address the scope of the PJM IMM's monitoring responsibilities and there was no dispute over the PJM IMM's monitoring authority in the case. And unlike MISO here, the court in *Old Dominion Elec. Coop.* did not seek to silence the PJM IMM. Instead, the court allowed the PJM IMM to participate in the appellate proceedings as an *amicus curiae*.

MISO also notes that the court found that a market monitor acts "…in the nature of an auditor…" The Petition claims that the monitoring function tasks are consistent with the tasks of an independent auditor and "…not a transmission planner."[25] We do not disagree because we have never advocated that the IMM should engage in transmission planning and have not done so. Characterizing our monitoring activities as engaging as a transmission planner is simply incorrect and misleading. MISO's statement as just as inaccurate as if MISO had said that the IMM's monitoring of the MISO energy market meant that the IMM was administering the market.

The Petition also cites a ruling in which MISO inaccurately claims that "the Commission" constrained the authority of PJM's market monitor:

> In *Stony Creek Wind Farm, LLC*, the Commission observed that a market monitor likely exceeded the scope of its authority by challenging a settlement agreement. The Commission held that the market monitor's function was limited to monitoring, advising, and encouraging compliance and that obstructing a settlement "drifted' beyond the monitor's intended role.[26]

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24 892 F. 3d 1223, 1234 (D.C. Cir. 2018).

25 *See* Petition at 19.

26 *See* Petition at 18.

However, *Stony Creek Wind Farm* is not a Commission order. It is a settlement report by one of the Commission's Administrative Law Judge ("ALJ") and MISO is therefore wrong both to describe it as a "Commission order" and to imply that it has any precedential value. And even if *Stony Creek Wind Farm* were an "order," the language that MISO cites would still clearly be mere *obiter dictum*. The ALJ acknowledged that the PJM monitor was a party to the case, that the Commission permits monitors to participate in settlement proceedings, and that the monitor's objection made the proposed settlement a contested one.[27] The ALJ expressed her personal view that the monitor "likely" went beyond its role in PJM by injecting policy issues into a settlement process, which is completely irrelevant to this proceeding. If anything, the ALJ's description of a market monitor's function is consistent with our activities in monitoring MISO's transmission planning process.

Likewise, *Pub. Serv. Comm'n of W. Va. v. PJM Interconnection* has no bearing on this case. It turned on tariff language authorizing the PJM IMM to attend stakeholder meetings which the Commission read as not encompassing a PJM Board liaison meeting. But the Commission also emphasized that the PJM IMM had other means of directly communicating with the PJM Board, i.e. excluding the PJM IMM from liaison committee meetings had only minor practical effects. The same would not be true if the MISO IMM were wholly prevented from monitoring transmission planning's impacts on the MISO's markets.

The Commission should reject MISO's attempt to cobble these cases into a proposition that the Commission should err on the side of interpreting IMM responsibilities narrowly. MISO's attempt must fail in this instance because the question in this case in not a close one and Module D clearly supports the IMM's monitoring of transmission planning. Even so, the

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[27] *See Stony Creek Wind Farm*, 187 FERC ¶ 63,014 (2024).

Commission should be clear that its traditional broad reading of the scope of market monitoring has not changed.

The Commission should also look beyond the cases that MISO misapplies and consider other precedents that more accurately reflect the broad scope of market monitoring responsibilities. For example, the Commission has previously held that the IMM has authority to file complaints concerning rules or activities in other RTO regions that have effects on MISO markets.[28] It cannot possibly be that the IMM is precluded from addressing transmission planning decisions by MISO that will substantially impact the MISO markets when it is authorized to file complaints about actions by other RTOs that the MISO IMM believes could have such effects.

5. The Petition inappropriately conflates the potential functions of an Independent Transmission Monitor with the IMM's functions

The Petition discusses the Commission's determinations and our protest regarding the Commission potentially establishing an Independent Transmission Monitoring (ITM) function. However, none of these arguments in the Petition are relevant to the interpretation of the MISO Tariff sought in the Petition because Potomac is *not* acting as an ITM.

We advocated the Commission establish an ITM because it would provide independent oversight that would extend substantially beyond the high-level oversight that we provide, which would be good for the MISO system and its customers. This more detailed oversight by the ITM would include: monitoring engineering studies, the transmission project selections, the project cost estimates, the cost changes in the construction phase of the transmission expansion process, and more. As the IMM, our monitoring does not include these issues, which explains why we

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[28] *See Potomac Economics, Ltd. v. PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,039 at PP 33, 41-43 (2020) (confirming that the MISO IMM could file a complaint alleging that pseudo-tie rules in PJM was unjust and unreasonable because it would harm the MISO market and thus related to the MISO IMM's monitoring responsibilities).

have taken the position that there is a small overlap between the IMM scope and the potential scope of an ITM.

Importantly, because our current monitoring of MISO's planning process includes only a small portion of the full scope of an ITM, the fact that the Commission chose not to mandate an ITM in Order 1920 has no bearing whether Module D should be interpreted to exclude MISO's transmission planning process. The Commission simply determined that it was outside the scope of Order 1920 while emphasizing that the ITM concept could be explored further in Docket No. AD22-8-000, which is still active.

MISO also argues in the Petition that Potomac "…appears to acknowledge its scope does not extend to the transmission planning horizon" because we made the following comment in Docket No. RM21-17:

> While market monitors do monitor transmission issues in the operating horizon, our scope is generally limited in the planning horizon. Although there may be a small overlap between the two, it is not accurate to argue that the current market monitoring scope includes the [independent transmission monitor] ITM scope proposed by the Commission.

It is convenient for MISO to interpret this comment as an acknowledgement that monitoring the transmission planning process is not within the IMM scope, but it is not. The limited scope in the planning horizon to which we referred to in our protest includes the activities we have undertaken to date but does not include the additional functions of an ITM that are discussed above.

The fact that our monitoring of MISO's transmission planning process is not equivalent to the ITM function renders all of MISO arguments related to the ITM function irrelevant. This includes MISO's spurious arguments that we lack the skills of an ITM. While we disagree with these arguments, they are not relevant. There can be no argument that Potomac Economics lacks the skills to engage in the monitoring of the transmission planning process that we have

undertaken for the past 20 years. The two principal elements of MISO's planning process that have raised concerns are (i) MISO's capacity expansion modeling that produced an unrealistic future and (ii) MISO's benefit analyses. We have extensive expertise in both of these areas. Potomac Economics has reviewed and performed numerous capacity expansion modeling studies. We have performed an even larger number of cost-benefit studies and have the expertise to identify the serious flaws in MISO's benefit analyses.

Finally, the Petition makes the false claim that "…the advice of the IMM reaches into recommending changes to Integrated Resource Plans."[29] It is disappointing that MISO would support its position by attempting to mislead the Commission. At no time have we advised the states or the utilities to change their Integrated Resource Plans, yet MISO has made this baseless assertion in multiple forums. All of our concerns relate exclusively to unreasonable analytic assumptions or methodologies used by MISO in its planning processes. On many occasions, we have explained that we take state and utility policy preferences as given and have never attempted to alter such choices. Hence, the Commission should disregard these arguments, as well as all of MISO's arguments that the ITM function with the current functions of the IMM.

6. Other Market Monitors Oversee Transmission Planning

Finally, the fact that market monitors in other regions monitor transmission planning issues further demonstrates that our actions with respect to MISO's LRTP were in no way abnormal or out of step with the Commission's requirements. Other regional market monitors are not subject to Module D but are bound by the same regulations that underlie it, including requirements to evaluate actions of RTOs that affect their markets. There are many examples of market monitors assessing their RTOs' planning processes, but I will identify just two below.

[29] Petition at 31.

First, as the NYISO MMU, we are obligated under the Tariff to review and produce a report with our assessment of public policy transmission projects. Outside of this process, we have evaluated NYISO's resource and transmission planning processes and have made a number of recommendations to improve them.

Second, PJM's IMM addressed transmission planning issues[30] and made planning-related recommendations[31] in its most recent annual "State of the Market Report" for PJM. The IMM is not aware of any language in Attachment M to the Intra-PJM Tariffs, i.e., PJM's version of Module D, that expressly authorizes the PJM IMM to monitor transmission planning. It appears instead, that the PJM IMM addresses these matters because they can affect the PJM-administered markets just as the MISO IMM does in MISO.

V. REQUEST FOR EXPEDITED ACTION

We request that the Commission act quickly on this Petition because MISO has stated that it will not pay any invoiced amounts associated with our monitoring of transmission planning.[32] Hence, although we believe this monitoring is clearly in scope, MISO will successfully avoid independent monitoring of its planning activities until such time as the Commission denies the Petition. This timing issue is important because MISO is actively working to update its Future Planning Scenarios in preparation for future tranches of transmission projects.

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30 *See,* https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2024/2024-som-pjm-sec12.pdf.

31 *See* https://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2024/2024-som-pjm-sec2.pdf.

32 MISO did note that the IMM is free to engage as a stakeholder on a pro bono basis.

Because Module D requires MISO to provide the resources necessary to carry out the market monitoring functions specified in Module D, we find that MISO's action to withhold compensation for the monitoring activities in question constitutes a violation of MISO's tariff. Expedited action by the Commission is warranted to resolve this violation and restore the monitoring of this area called for in the Tariff.

VI. CONCLUSION

The Petition ultimately revolves around one, and only one, question:

> *Does Section 53.1.e. provide the authority for the IMM to review MISO's transmission planning activities and raise concerns if it finds such activities have not been conducted in an objective and independent manner?*

Section 53.1.e. calls for the IMM to monitor any activities by MISO that affect its markets and services. We believe this question is straightforward with only one reasonable answer – yes, MISO's transmission planning processes substantially affect MISO's markets, services, and rates. Therefore, Module D calls for these processes to be monitored as they have been for the past 20 years. The fact that we have recently been raising serious concerns may explain the recent change in how it interprets the IMM scope under Module D.

Apart from the simple tariff interpretation question posed to the Commission, the Petition contains a wide array of arguments and assertions that range from irrelevant to affirmatively misleading. We respectfully request that the Commission focus exclusively on the reasonable interpretation of Module D and disregard all other arguments in the Petition.

We also ask that the Commission act expeditiously because MISO is currently preventing the IMM from fulfilling its planning responsibilities based on its erroneous reading of Module D. Specifically, we respectfully request that the Commission promptly reject MISO's request in the

Petition to declare the IMM's transmission planning activities outside of the IMM's scope and, instead, to clarify both that the IMM is authorized to monitor MISO's transmission planning and that MISO may not impede such monitoring.

Respectfully submitted,

/s/ David B. Patton

David Patton
President
Potomac Economics, Ltd.

June 13, 2025

CERTIFICATE OF SERVICE

I hereby certify that I have this day e-served a copy of this document upon all parties listed on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated this 13th day of June 2025 in Fairfax, VA.

/s/ David B. Patton

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