

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Public Citizen, Inc. v. Midcontinent Independent
System Operator, Inc.

Docket Nos. EL15-70-003

The People of the State of Illinois By Illinois Attorney
General Lisa Madigan v. Midcontinent Independent
System Operator, Inc.

EL15-71-003

Southwestern Electric Cooperative, Inc. v. Midcontinent
Independent System Operator, Inc., Dynegy, Inc., and
Sellers of Capacity into Zone 4 of the 2015-2016 MISO
Planning Resource Auction

EL15-72-003

(consolidated)

**OFFER OF SETTLEMENT, SETTLEMENT AGREEMENT, REQUEST FOR
EXPEDITED APPROVAL, AND MOTION FOR SHORTENED COMMENT
PERIOD**

Pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 C.F.R. § 385.602 (2025), Dynegy Marketing and Trade, LLC and Illinois Power Marketing Company (together, Dynegy) on behalf of itself and the other Settling Parties, namely: Public Citizen, Inc. (Public Citizen), The People of the State of Illinois By Illinois Attorney General Kwame Raoul¹ (Illinois Attorney General), Southwestern Electric Cooperative, Inc. (Southwestern and, together with Public Citizen and Illinois Attorney General, Complainants), Illinois Municipal Electric Agency (IMEA), Illinois Industrial Energy Consumers (IIEC), and Midcontinent Independent System Operator, Inc. (MISO), hereby submits this Uncontested Offer of Settlement and Settlement Agreement (Settlement Agreement) as a full and complete

¹ Illinois Attorney General Lisa Madigan left office and was replaced by Illinois Attorney General Kwame Raoul in 2019.

resolution of all issues in or stemming from Docket Nos. EL15-70-003, EL15-71-003, and EL15-72-003 (consolidated).

The Settling Parties respectfully request that the Commission issue an order approving the Settlement Agreement on or before August 29, 2025. While the Settlement Amount (defined below) agreed to herein has been calculated on a black-box basis, the MISO auction (and associated payment obligations) from which the complaints in these proceedings arose, was conducted in 2015 for the period June 1, 2015-May 31, 2016; negotiations between the parties therefore included significant discussion of interest and the time value of money. Thus, the Settling Parties respectfully submit an unopposed motion for shortened comment period, the granting of which will facilitate expedited approval of the Settlement Agreement.

Pursuant to Commission Rule 602(c), the Settling Parties include the following with their Offer of Settlement:

- The Settlement Agreement; and
- An Explanatory Statement.²

EXPLANATORY STATEMENT

I. BACKGROUND

MISO runs an annual Planning Resource Auction (Auction) for, among others, Local Resource Zone (Zone) 4, pursuant to MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff). In May 2015, Public Citizen,

² This Explanatory Statement is not part of the Settlement Agreement. It is not intended to, and does not in any respect, supersede, modify, or qualify the Settlement Agreement, which controls.

Illinois Attorney General, and Southwestern (collectively, Complainants) each filed a complaint challenging the results of the 2015/16 Auction for Zone 4 (collectively, Complaints), in which they alleged, as relevant here, that Dynegy engaged in illegal market manipulation of and/or unlawfully exercised market power in the Auction with the effect that the capacity charges established in the 2015/16 Auction resulted in an unjust, unreasonable and unduly discriminatory rate of \$150/MW-day in Zone 4.³ Dynegy disputed Complainants' allegations. In June 2015, IIEC also filed a complaint against MISO seeking relief in the form of prospective changes to the MISO Tariff and in July 2015 intervened and filed comments in these consolidated dockets.⁴

The Commission issued several rulings on the Complaints, including, as relevant here, ultimately denying Complainants' allegations that Dynegy had exercised market power and closing the investigation into alleged market manipulation by Dynegy.⁵ However, Public Citizen successfully appealed those decisions to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit), who remanded to the Commission after finding, as relevant here, that the Commission had failed to adequately explain its conclusion that the results of the 2015/16 Auction were just and reasonable, or for its determination that market manipulation did not lead to unjust and unreasonable

³ *Pub. Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 187 FERC ¶ 61,140, at P 3, 61 (2024) ("Hearing Order").

⁴ Complaint and Request for Fast-Track Processing, EL15-82-000, 1-2 (filed June 30, 2015). The issues raised by IIEC were fully addressed in the Commission's December 2015 Order, and thus IIEC's complaint was resolved. *See Pub. Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,385 (2015) ("2015 Order"); Doc-less Motion to Intervene of the Illinois Industrial Energy Consumers (filed July 1, 2015); Comments of Joint MISO Industrial Customers (Coalition of MISO Industrial Customers and Illinois Industrial Energy Consumers (filed July 2, 2015)).

⁵ *Pub. Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 168 FERC ¶ 61,042 (2019).

rates.⁶

On remand, the Commission directed Office of Enforcement Staff to submit a report including its assessment of whether Dynegy had engaged in market manipulation and/or the exercise of market power, and initiated paper hearing procedures into the Complaints.⁷ Office of Enforcement Staff concluded in the Remand Report, filed on March 10, 2023, that Dynegy engaged in market manipulation;⁸ Dynegy disputed, and continues to dispute, the allegations in the Remand Report, and each of Dynegy, the Complainants, and Office of Enforcement Staff engaged in several rounds of briefing and answers in response to the Remand Report.

Based on the Remand Report and subsequent briefing, the Commission issued the Hearing Order on June 6, 2024. The Hearing Order found that the parties had raised disputed issues of material fact regarding whether Dynegy had engaged in market manipulation and/or exercised market power regarding the 2015/16 Auction in Zone 4.⁹ The Commission initiated an evidentiary hearing to resolve these disputed issues of material fact, assigning Office of Administrative Litigation staff (Trial Staff) to serve as trial staff in the hearing. The Commission held the hearing in abeyance to encourage the parties to make an effort to reach settlement.¹⁰

The Chief Judge appointed the Honorable Andrea McBarnette as Settlement

⁶ See *Pub. Citizen, Inc. v. FERC*, 7 F.4th 1177, 1196-1200 (D.C. Cir. 2021).

⁷ *Pub. Citizen v. Midcontinent Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,185 (2022) (“Remand Order”).

⁸ Remand Report, *Pub. Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, Docket Nos. EL15-70-003 et al. (filed March 10, 2023).

⁹ Hearing Order at P 80.

¹⁰ *Id.* at PP 80-81, 87.

Judge, who convened several settlement conferences while the Participants engaged in informal settlement discovery and meetings. As a result of these negotiations, the Settling Parties reached the Settlement Agreement included herewith and summarized below.

II. REQUEST FOR EXPEDITED APPROVAL BY AUGUST 29, 2025

The purpose of this Offer of Settlement is to resolve all claims and controversies among the Settling Parties pending before the Commission in Docket Nos. EL15-70-003, EL15-71-003, and EL15-72-003. Those claims relate, *inter alia*, to actions allegedly taken by Dynegy in connection with the 2015/16 Auction, run by MISO, with respect to Zone 4, and payments made by the other Settling Parties associated with the Auction results. As discussed below, the Settling Parties have agreed to resolve these claims on a black-box basis through the provision of a total payment by Dynegy of \$38,000,000 (the Settlement Amount). However, due to the principle of the time value of money, the length of time since the monies at issue were collected (starting over ten years ago), and the Settling Parties' agreement that the Settlement Amount agreed-to herein will not be subject to additional interest as a non-precedential compromise to achieve settlement, the Settling Parties respectfully request that the Commission act expeditiously to approve the Settlement.

For these reasons, the Settling Parties respectfully request that the Settlement Agreement be certified to the Commission as soon as possible following the shortened comment period requested below, and that the Commission approve the Settlement Agreement on its terms, without condition or modification, on or before August 29, 2025.

III. SUMMARY OF SETTLEMENT AGREEMENT

The following is a summary of the Settlement Agreement's principal terms:

Article 1. Background. This section describes the MISO 2015/16 Auction, the Complaints that initiated this proceeding, and a general history of the proceeding up to the time that the Settling Parties reached a settlement agreement-in-principle.

Article 2. Settlement Amount. Dynegy has agreed on a black-box basis to make a total payment of \$38,000,000 (the Settlement Amount) to finally resolve each Complaint and fully resolve all remaining issues in this matter. While this figure was determined on a black-box basis, negotiations among the Settling Parties concerned issues such as the passage of time since Dynegy's alleged actions, the time-value of money, and the Commission's regulations regarding interest, demonstrating the importance to certain of the Settling Parties of speedy approval of the Settlement and disbursement of the Settlement Amount. Dynegy shall pay the Settlement Amount to MISO within ten days of the Effective Date, and MISO shall distribute the Settlement Amount to the Settling Parties as follows, in each case based on the extent to which the recipient identified themselves as, and demonstrated themselves to be, a net buyer in the 2015/16 Zone 4 Auction or, in the case of IIEC, a representative of customers of Ameren Illinois that paid the capacity charge resulting from that Auction: \$1,140,000 to Southwestern; \$1,330,000 to IMEA; \$33,530,000 to Ameren Illinois Company d/b/a Ameren Illinois; as well as \$2,000,000 to IIEC as a representatives of its member customers of Ameren Illinois that paid the MISO capacity charge resulting from the 2015/16 Auction. Each of IMEA, IIEC, and Ameren Illinois will further distribute the

Settlement Amount to its member municipalities, members, or default supply customers, respectively. Dynegy has taken no position on the allocation of the Settlement Amount.

Article 3. Release. In consideration of the Settlement Amount, upon the Effective Date, each of the Settling Parties will provide Dynegy, its affiliates, parents, subsidiaries, and predecessors a release against all claims relating to the alleged market manipulation of, or the alleged exercise of market power by, Dynegy in relation to the 2015/16 Zone 4 Auction, as well as any claim that as a result of Dynegy's actions, the results of the 2015/16 Zone 4 Auction were unjust and unreasonable. The Settlement Agreement shall settle with prejudice all challenges to the results of the 2015/16 Zone 4 Auction, including those currently pending in the above-captioned dockets. Correspondingly, Dynegy will withdraw all of its appeals arising out of these proceedings. No release is provided as to the rights and obligations of the Settlement Agreement, or any claim based on facts unrelated to actions taken by Dynegy, its affiliates, parents, subsidiaries, or predecessors, in connection with the 2015/16 Zone 4 Auction.

Article 4. Effective Date. The Settlement Agreement shall become effective upon a final order of the Commission accepting or approving the Settlement Agreement without condition or modification. If the Commission conditions its acceptance or approval of the Settlement Agreement, or requires modification of the Settlement Agreement, procedures are implemented for any Settling Party to object to such a modification, including procedures for negotiations in good faith to reach a revised agreement. Failure to object within the time periods established shall result in the

Settlement Agreement becoming effective. Failure to reach a revised agreement shall result in the Settlement Agreement being of no force to effect and the above-captioned proceeding continuing.

Article 5. Standard of Review. The standard of review for any changes to this Settlement Agreement proposed by a Settling Party shall be the “public interest” application of the just and reasonable standard, and after the Effective Date, the standard of review for any change sought by a third party of the Commission acting *sua sponte* shall be the most stringent standard permitted by law.

Article 6. Reservations. The Settling Parties agree that the Settlement Agreement: shall be privileged and of no effect in any other proceeding except with respect to settlement comments or as needed to effectuate the Settlement Agreement; relates only to the specific matters discussed therein, and shall establish no precedent or “settled practice”; shall not constitute an admission by any Settling Party as to the truth or validity (or untruth or invalidity) or any allegation made in this proceeding; and shall not bind or prejudice any Settling Party unless the Settlement Agreement is accepted or approved and made effective pursuant to its terms.

Article 7. Miscellaneous. The Settlement Agreement is an integrated agreement and constitutes the entire agreement among the Settling Parties with respect to the subject matter addressed therein. The Commission’s order accepting or approving the Settlement shall constitute all authority necessary to effectuate the Settlement Agreement. The settlement discussions that produced the Settlement Agreement were and shall remain privileged pursuant to Rules 602 and 606 of the Commission’s Rules of Practice and

Procedure. Each Settling Party agrees to support, and not take any action inconsistent with, the filing of the Settlement Agreement with, and approval of the Settlement Agreement by, the Commission. The Settlement Agreement may not be waived by any Settling Party except in writing by an authorized representative and is binding upon and for the benefit of the Settling Parties and their successors. The Settlement Agreement was the product of negotiations and review, including by counsel, and no ambiguity in the Settlement Agreement shall be construed in favor of or against any Settling Party. Section headings are for convenience only. The Settlement Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

IV.UNOPPOSED MOTION FOR SHORTENED COMMENT PERIOD

The Settling Parties respectfully request that the Commission waive the standard 20-day comment period to offers of settlement,¹¹ and grant a shortened comment period consistent with the comment period described below. The Settling Parties believe good cause exists for shortening the comment period as all Participants¹² have either agreed or not opposed a shortened comment period. In addition, all persons that are on the service list have been informed of the settlement conferences since the settlement process commenced, with ample opportunity to participate, and shortening the comment period would allow the Commission to expeditiously consider and approve the Offer of Settlement.

¹¹ 18 C.F.R. § 385.602(f)(2) (2025).

¹² 18 CFR § 385.102 (definition of participants).

The Settling Parties respectfully submit this unopposed motion for shortened comment period and request that the Commission approve and set the shortened comment period of not later than twelve (12) days from the date the Settlement Agreement is filed. In the event no comments opposing the Settlement Agreement are received during the time period for initial comments, the Settling Parties agree that reply comments may be waived, and the Settlement Agreement may be certified to the Commission.¹³

V. INFORMATION TO BE PROVIDED WITH SETTLEMENT AGREEMENT

Pursuant to the Chief Administrative Law Judge's directives,¹⁴ the Settling Parties provide the following:

A. Whether the settlement affects other pending cases.

The Settlement Agreement does not affect any other cases pending before the Commission.

B. Whether the settlement involves issues of first impression.

The Settlement Agreement does not involve any issues of first impression.

C. Whether the settlement departs from Commission precedent.

The Settlement Agreement does not depart from Commission precedent.

¹³ In accordance with Rule 602(d)(2), and subject to the Commission's approval of the unopposed motion for shortened comment period, comments on this Offer of Settlement are due not later than twelve (12) days from the date of filing, making comments due on or before August 11, 2025.

¹⁴ See October 15, 2003 Notice to the Public entitled "*Information to be Provided with Settlement Agreements*," and the December 15, 2016 "*Amended Notice to the Public on Information to be Provided with Settlement Agreements and Guidance on the Role of Settlement Judges*."

D. Whether the settlement imposes a standard of review other than the ordinary just and reasonable standard with respect to any changes to the settlement that might be sought by either a third party or the Commission acting *sua sponte*.

The standard of review for any modifications to the Settlement Agreement that might be sought by either a third party or the Commission acting *sua sponte* shall be the most stringent standard permitted by law.¹⁵

CONCLUSION

For the reasons set forth above, the Settling Parties request that the Commission approve this Offer of Settlement and the Settlement Agreement on an expedited basis as fair and reasonable and in the public interest, and request that the Commission shorten the comment period such that comments on this Offer of Settlement are due not later than twelve (12) days from the date of filing.

Respectfully submitted,

/s/ Natasha Gianvecchio

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¹⁵ See, e.g., *New England Power Generators Ass'n v. FERC*, 707 F.3d 364, 370-71 (D.C. Cir. 2013).

CERTIFICATE OF SERVICE

Pursuant to Rules 602(d) and 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.602(d), 385.2010, I hereby certify that I have this day served a complete copy of this Offer of Settlement upon each person designated on the official service lists compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 30th day of July, 2025.

/s/ Natasha Gianvecchio
Natasha Gianvecchio
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555 Eleventh Street, NW
Suite 1000
Washington, D.C. 20004

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Public Citizen, Inc. v. Midcontinent Independent System Operator, Inc. Docket Nos. EL15-70-003

The People of the State of Illinois By Illinois Attorney General Lisa Madigan v. Midcontinent Independent System Operator, Inc. EL15-71-003

Southwestern Electric Cooperative, Inc. v. Midcontinent Independent System Operator, Inc., Dynegy, Inc., and Sellers of Capacity into Zone 4 of the 2015-2016 MISO Planning Resource Auction EL15-72-003
(consolidated)

SETTLEMENT AGREEMENT

This Settlement Agreement is made pursuant to Rule 602 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 C.F.R. § 385.602 (2025), by Dynegy Marketing and Trade, LLC and Illinois Power Marketing Company (together, Dynegy), Public Citizen, Inc. (Public Citizen), The People of the State of Illinois By Illinois Attorney General Kwame Raoul¹⁶ (Illinois Attorney General), Southwestern Electric Cooperative, Inc. (Southwestern and, together with Public Citizen and Illinois Attorney General, Complainants), Illinois Municipal Electric Agency (IMEA), Illinois Industrial Energy Consumers (IIEC)₂ and Midcontinent Independent System Operator, Inc. (MISO) (collectively, the Settling Parties).

Subject to the approval or acceptance of this Settlement Agreement by the

¹⁶ Illinois Attorney General Lisa Madigan left office and was replaced by Illinois Attorney General Kwame Raoul in 2019.

Commission, it is agreed as follows:

ARTICLE I BACKGROUND

1.1 Pursuant to the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff), MISO annually runs a Planning Resource Auction (Auction), including for Local Resource Zone (Zone) 4. In May 2015, Public Citizen, Illinois Attorney General, and Southwestern (collectively, Complainants) each filed a complaint against MISO¹⁷ under section 206 of the FPA challenging the results of the 2015/16 Auction for Zone 4 (collectively, Complaints). Complainants alleged that as a result of (1) unjust and unreasonable MISO Tariff rules governing MISO's 2015/16 Auction process, (2) illegal market manipulation by Dynegy, and/or (3) the unlawful exercise of market power by Dynegy, the capacity charges established in the 2015/16 Auction resulted in an unjust, unreasonable and unduly discriminatory rate of \$150/MW-day in Zone 4.¹⁸ Dynegy disputed Complainants' allegations. In June 2015, IIEC also filed a complaint against MISO seeking relief in the form of prospective changes to the MISO Tariff and in July 2015 intervened and filed comments in these consolidated dockets.¹⁹

¹⁷ Southwestern's complaint was also alleged against all sellers of capacity into Zone 4 of the 2015/16 Auction.

¹⁸ *Pub. Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 187 FERC ¶ 61,140, at P 3, 61 (2024) ("Hearing Order").

¹⁹ Complaint and Request for Fast-Track Processing, EL15-82-000, 1-2 (filed June 30, 2015). The issues raised by IIEC were fully addressed in the Commission's December 2015 Order, and thus IIEC's complaint was resolved. *See Pub. Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,385 (2015) ("2015 Order"); Doc-less

- 1.2 In October 2015, the Commission authorized Office of Enforcement Staff to conduct a non-public, formal investigation regarding the 2015/16 Auction.²⁰ In December 2015, in response to the Complaints, the Commission directed MISO to revise its then-effective Tariff based on a finding that certain provisions in the Tariff associated with market power mitigation were no longer just and reasonable for prospective application but reserving for later a decision the other arguments raised in the Complaints regarding the 2015/16 Auction.²¹ In July 2019, the Commission ultimately found that the results of the 2015/16 Auction were just and reasonable, denied Complainants’ allegations that Dynegy had exercised market power, and closed the investigation into alleged market manipulation by Dynegy.²² The Commission upheld its decisions in response to a request for rehearing by Public Citizen.²³
- 1.3 Public Citizen appealed the Commission’s decision to the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit). The D.C. Circuit found, as relevant here, that the Commission had failed to adequately explain its conclusion that the results of the 2015/16 Auction

Motion to Intervene of the Illinois Industrial Energy Consumers (filed July 1, 2015); Comments of Joint MISO Industrial Customers (Coalition of MISO Industrial Customers and Illinois Industrial Energy Consumers) (filed July 2, 2015).

²⁰ *Investigation into MISO Zone 4 Planning Res. Auction Mkt. Participant Offers*, 153 FERC ¶ 61,005 (2015).

²¹ *Pub. Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,385 (2015) (“2015 Order”). The complaint brought by IIEC (EL15-82) was consolidated with the dockets subject to this settlement and the issues raised by IIEC were addressed in the Commission’s December 2015 Order.

²² *Pub. Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 168 FERC ¶ 61,042 (2019) (“2019 Order”).

²³ *Pub. Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,227 (2020) (“2020 Order”).

were just and reasonable.²⁴ The D.C. Circuit also found that the Commission did not “provide any explanation for its determination that market manipulation did not lead to unjust and unreasonable rates.”²⁵ As a result, the court “remand[ed] to the Commission for further analysis and explanation.”²⁶

- 1.4 In response to the D.C. Circuit’s ruling, the Commission initiated paper hearing procedures in the above-referenced complaint dockets and directed Office of Enforcement Staff to submit a report including its assessment of whether Dynegy had engaged in market manipulation and/or the exercise of market power, and if so, the effect of that conduct on the 2015/16 Auction results (the Remand Report).²⁷ On March 10, 2023, Office of Enforcement Staff filed the Remand Report.²⁸ In the Remand Report, Office of Enforcement Staff concluded that Dynegy engaged in market manipulation based on certain actions it took leading up to and during the 2015/16 Auction.²⁹ Dynegy disputed, and continues to dispute, the allegations in the Remand Report.

²⁴ See *Pub. Citizen, Inc. v. FERC*, 7 F.4th 1177, 1196-1200 (D.C. Cir. 2021) (finding the evidentiary record and facts that the Commission relied upon in finding the 2015 Tariff to be unjust and unreasonable “applied just as much to the 2015/16 Auction as to future auction years” and that since “the record evidence raised a substantial question of whether the tariff provisions had adequately mitigated exercises of market power or market manipulation in the 2015 Auction, the Commission could not rely reactively on compliance with a hobbled tariff as the lodestar of competitiveness.”).

²⁵ *Id.* at 1196.

²⁶ *Id.* at 1200.

²⁷ *Pub. Citizen v. Midcontinent Indep. Sys. Operator, Inc.*, 179 FERC ¶ 61,185 (2022) (“Remand Order”).

²⁸ Remand Report, *Pub. Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, Docket Nos. EL15-70-003 et al. (filed March 10, 2023).

²⁹ Remand Report at 69-80.

- 1.5 Southwestern, Illinois Attorney General, Public Citizen, Dynegy, and Office of Enforcement Staff engaged in several rounds of briefing and answers in response to the Remand Report. Pursuant to the Commission’s decision in the Remand Order that it would reserve a decision on remedies to a future stage of the proceeding, if necessary,³⁰ the Remand Report did not discuss that issue.
- 1.6 On June 6, 2024, the Commission issued the Hearing Order in response to the Remand Report and subsequent briefing. The Hearing Order rejected certain objections raised by Dynegy in response to the briefing procedures adopted in the Remand Order, concluded that Dynegy had adequate notice that its alleged behavior could constitute market manipulation, and found that the parties had raised disputed issues of material fact regarding whether Dynegy had engaged in market manipulation and/or exercised market power regarding the 2015/16 Auction in Zone 4.³¹
- 1.7 To resolve these disputed issues of material fact, the Commission initiated an evidentiary hearing into “all disputed issues regarding Complainants’ market manipulation and market power allegations.”³² The Commission also stated that the “evidentiary hearing will provide an opportunity for the parties to further litigate and the presiding judge to assess” evidence regarding whether the 2015/16 Auction results were unjust and

³⁰ Remand Order at P 16.

³¹ Hearing Order at P 80.

³² *Id.* at P 81.

unreasonable and “the competing evidence and analyses offered by Dynegy, and witnesses’ credibility.”³³ The Commission assigned Office of Administrative Litigation staff (Trial Staff) to serve as trial staff in the hearing.³⁴

1.8 The Commission also withheld certain issues from the evidentiary hearing, specifically “legal findings regarding the Commission’s jurisdiction, including Dynegy’s assertion that the Commission lacks jurisdiction over Steps 2, 3, and 4 of the alleged manipulative scheme,” “Complainants’ assertion that the 2015/16 Auction results were unjust and unreasonable because of the Commission’s findings in the December 2015 Order that MISO’s then-existing Capacity Import Limit Tariff provisions were unjust and unreasonable,” “the determination of any remedy,” and certain questions relating to “whether any documents subject to confidentiality claims should be publicly released.”³⁵

1.9 Notwithstanding its initiation of a trial-type evidentiary hearing, the Commission held the hearing in abeyance, directed the appointment of a settlement judge, and encouraged the parties to make an effort to reach settlement.³⁶

1.10 On June 12, 2024, the Chief Judge appointed the Honorable Andrea

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at PP 82-85.

³⁶ *Id.* at P 87.

McBarnette as Settlement Judge.³⁷ Judge McBarnette convened settlement conferences over videoconference on July 9, 2024, October 21, 2024, January 30, 2025, March 20, 2025, and in person on May 15, 2025. The Participants that were active in the settlement conferences included the Settling Parties and Trial Staff. The active Participants also engaged in informal settlement discovery and meetings.

- 1.11 On May 15, 2025, the Settling Parties reached a settlement in principle and subsequently drafted this Settlement Agreement. This Settlement Agreement represents a fair and reasonable resolution of this proceeding. Dynegy denied, and continues to deny, all of the allegations asserted against it in this proceeding, including but not limited to allegations concerning market manipulation and market power.
- 1.12 In addition to the support of the Settling Parties, all other Participants and persons on FERC's service list in this proceeding were notified of the settlement conferences scheduled in these proceedings and given an opportunity to review the Settlement Agreement and raise objections, and none did so.

ARTICLE 2

SETTLEMENT AMOUNT

- 2.1 As a final resolution of each Complaint brought by the Complainants

³⁷ Order of Chief Judge Designating Settlement Judge, *Public Citizen v. Midcontinent Independent System Operator, Inc.*, Docket No. EL15-70-003 *et al.* (June 12, 2024).

pursuant to Section 206 of the FPA and to fully resolve all remaining issues in these proceedings, and avoid the cost, inconvenience, and uncertainty of litigating this matter, Dynegy has agreed on a black-box basis to make a total payment of \$38,000,000 (the Settlement Amount).

2.2 While the parties agree that the foregoing figure has been determined on a black-box basis, they note that negotiations between the Settling Parties included, among other things, the passage of time since the 2015/16 Zone 4 Auction, the time-value of money, and the applicability of Commission regulations regarding appropriate interest, if any, without setting any precedent or principle related thereto as part of this settlement.

2.3 Within ten (10) days after the Effective Date, Dynegy shall pay the Settlement Amount to MISO for distribution based upon the following allocations:

(a) \$1,140,000 will be allocated to Southwestern (based on Southwestern's 65.1 MW of capacity purchased in Zone 4 of the Auction) and will be distributed by MISO to Southwestern either by way of check or ACH, as directed by Southwestern;

(b) \$1,330,000 will be allocated to IMEA³⁸ (based on IMEA's 78.7 MW of capacity purchased in Zone 4 of the Auction) and will be distributed by MISO to IMEA either by way of check or ACH, as directed by

³⁸ IMEA will credit its member municipalities proportionately, reducing their future energy charges by the amount allocated to IMEA.

IMEA;

(c) \$33,530,000 will be allocated to Ameren Illinois Company d/b/a

Ameren Illinois, to be further distributed by Ameren Illinois to its default supply customers in accordance with its applicable retail tariff (based on the 2,104.8 MW of capacity Ameren Illinois default customers purchased in Zone 4 of the Auction); and

(d) \$2,000,000 will be allocated to IIEC for distribution to its members that paid the MISO capacity charge resulting from the 2015/16 Zone 4 Auction and will be distributed to IIEC by MISO by way of check or ACH, as directed by IIEC.

The above-noted allocations are based on the extent to which each of the recipients was a net buyer (purchasing more capacity than it sold, if any) in the 2015/16 Zone 4 Auction or, in the case of IIEC, a representative of its member customers of Ameren Illinois that paid the capacity charge resulting from that Auction, and identified themselves and provided information, either via complaint or through the settlement process in these proceedings to demonstrate that they are entitled to a share of the Settlement Amount. Dynegy takes no position on the allocation of the Settlement Amount as set forth above.

ARTICLE 3 RELEASE

3.1 In exchange for good consideration, upon the Effective Date, each of the

Settling Parties each for itself and on behalf of their respective affiliates, parents, subsidiaries, and predecessors, shall release, relinquish, acquit, remise, satisfy, extinguish, forever discharge, and covenant not to sue or file a complaint or other adverse pleading or proceeding with any judicial, arbitral, governmental, or regulatory body with respect to, any and all claims, causes of action, damages, liabilities, expenses, penalties, losses, injuries, fees and costs, including attorneys' fees or costs, known or unknown, whether arising from contract, tort, statute, regulation, and/or equity arising from the conduct of Dynegy, its affiliates, parents, subsidiaries, or predecessors, relating to (1) alleged market manipulation of Dynegy in relation to the 2015/16 Zone 4 Auction; (2) the alleged exercise of market power by Dynegy in relation to the 2015/16 Zone 4 Auction; or (3) any other claim that as a result of the actions of Dynegy, its affiliates, parents, subsidiaries, or predecessors, the results of the 2015/16 Zone 4 Auction were unjust and unreasonable.

- 3.2 Upon the Effective Date, this Agreement shall settle with prejudice all challenges to the results of the 2015/16 Zone 4 Auction, and allegations of unlawful conduct by Dynegy, its affiliates, parents, subsidiaries, or predecessors in connection with the same, including those that are currently pending in Docket Nos. EL15-70-003, EL15-71-003, or EL15-72-003. Correspondingly, Dynegy will withdraw all of its appeals arising out of these proceedings.

- 3.3 Notwithstanding anything to the contrary, none of the releases or settlements contained herein are intended to release any of the rights and obligations established by this agreement or any claims based on facts unrelated to actions taken by Dynegy, its affiliates, parents, subsidiaries, or predecessors in connection with the 2015/16 Zone 4 Auction. Nothing in this Settlement Agreement relates to or is intended to affect any Settling Party's right to challenge or raise claims related to any other year's or Zone's Planning Resource Auction, or the conduct of any other party in connection with the 2015/16 Zone 4 Auction.

ARTICLE 4 EFFECTIVE DATE

- 4.1 This Settlement Agreement shall become effective upon a final order of the Commission accepting or approving this Settlement Agreement without condition or modification, or, if accepted or approved with condition or modification, if no Settling Party files a notice of objection with the Commission in accordance with Section 4.2 (the Effective Date).
- 4.2 If, in its order on this Settlement Agreement, the Commission conditions its acceptance or approval of the Settlement Agreement or requires modification of the Settlement Agreement, any Settling Party may notify the other Settling Parties within fifteen (15) days of the issuance of such order that it does not agree to this Settlement Agreement, as conditioned or modified by the Commission (Timely Notification). Any Settling Party

that does not provide Timely Notification shall be deemed to have waived all objections. Within ten (10) business days after a Settling Party provides Timely Notification, the Settling Parties shall meet or confer to negotiate in good faith to reach a revised agreement or otherwise address the concerns of the Settling Parties. If a revised agreement cannot be reached and the concerns of the Settling Parties cannot otherwise be adequately addressed within thirty (30) days after such meeting or conference, this Settlement Agreement shall be of no force and effect and the rights, duties, and obligations of all persons affected by this Settlement shall be restored as if this Settlement had never been executed and the captioned proceeding shall continue without prejudice to the Settling Parties reaching a separate settlement.

- 4.3 For purposes of this Settlement Agreement, an order shall be deemed a “final order” as of the date that rehearing is denied by the Commission, or if rehearing is not sought, the day following the date by which any request for rehearing would have been required to be filed with the Commission pursuant to 18 C.F.R. § 385.713(b).

ARTICLE 5 STANDARD OF REVIEW

- 5.1 The standard of review for any change to this Settlement Agreement proposed by a Settling Party shall be the “public interest” application of the just and reasonable standard set forth in *United Gas Pipe Line Co. v.*

Mobile Gas Service Corp., 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), as clarified in *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, Washington*, 554 U.S. 527 (2008) and *NRG Power Marketing v. Maine Public Utilities Commission*, 558 U.S. 165 (2010).

- 5.2 Once this Settlement Agreement has become effective pursuant to the provisions of Article 4, the standard of review for any change to this Settlement Agreement sought by the Commission acting *sua sponte* or at the request of a non-party to the proceeding shall be the most stringent standard permitted by law. *See, e.g., New England Power Generators Ass’n v. FERC*, 707 F.3d 364, 370-71 (D.C. Cir. 2013).

ARTICLE 6 RESERVATIONS

- 6.1 Unless and until this Settlement Agreement becomes effective pursuant to its terms, this Settlement Agreement shall be privileged and of no effect and shall not be admissible in evidence or in any way described or discussed in any proceeding before any court or regulatory body (except in comments filed with the Commission in response to the filing of this Settlement Agreement), as specified in 18 C.F.R. § 385.602(e); provided, however, that this reservation does not apply to the actions needed to effectuate the Settlement Agreement.
- 6.2 The provisions of this Settlement Agreement are intended to relate only to

the specific matters referred to herein and, by agreeing to this Settlement Agreement, no Settling Party waives any claim or right which it may otherwise have with respect to any matters not expressly provided for herein. Moreover, in consideration of all elements of this negotiated settlement, no Settling Party intends that any element of this Settlement Agreement constitute precedent or be deemed a “settled practice” as that term was interpreted in *Public Service Commission of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980). Neither the Commission nor any Settling Party shall be deemed to have approved, accepted, agreed, or consented to any ratemaking or other legal principle or any other method of cost of service or other determination, or to any allocation underlying or supposed to underlie any of the rates provided for herein, or be prejudiced thereby in any future proceedings, except as expressly stated herein.

6.3 This Settlement Agreement shall not be deemed in any respect to constitute an admission by any Settling Party that any allegation or contention made or contained in this proceeding by any other Settling Party is true or valid or untrue or invalid. The approval or acceptance of the Settlement Agreement by the Commission shall not in any respect constitute a determination by the Commission as to the merits of any allegations or contentions made in this proceeding, including without limitation in the Remand Report.

6.4 No Settling Party shall be bound or prejudiced by any part of this

Settlement Agreement unless it is accepted or approved and made effective pursuant to its terms.

ARTICLE 7 MISCELLANEOUS

- 7.1 This Settlement Agreement embodies an integrated agreement. None of the terms of the Settlement is agreed to without each of the others. The various provisions of this Settlement Agreement are not severable. The severance of any provision or any party shall be considered a modification of the Settlement Agreement and such severance shall be treated as a condition or modification of the Settlement Agreement for purposes of Article 4.2.
- 7.2 The Commission's order accepting or approving this Settlement Agreement in accordance with Article 4 above shall constitute all authority, and all waivers, that may be necessary to effectuate this Settlement Agreement in accordance with all of its terms.
- 7.3 This Settlement Agreement constitutes the entire agreement among the Settling Parties with respect to the subject matter addressed herein, and supersedes any and all prior or contemporaneous representations, agreements, instruments, and understandings among them, whether written or oral. There are no oral understandings, terms, or conditions, and none of the Settling Parties has relied upon any representation, express or implied, not contained in this Settlement Agreement.
- 7.4 The discussions that resulted in the Settlement Agreement were conducted

with the understanding, pursuant to Rules 602 and 606 of the Commission's Rules of Practice and Procedure, that all such discussions are and shall remain privileged, shall be without prejudice to the position of any party or any participant presenting such offer or participating in any such discussions, and are not to be used in any manner in this proceeding or otherwise, except as specifically noted in the Settlement Agreement or in an action to enforce the Settlement Agreement after its acceptance or approval by the Commission.

- 7.5 Each Settling Party shall cooperate with and support, and shall not take any action inconsistent with, (i) the filing of this Settlement Agreement with the Commission; and (ii) efforts to obtain Commission acceptance or approval of this Settlement Agreement. No Settling Party shall take any actions that are inconsistent with the provisions of this Settlement Agreement.
- 7.6 No provisions of this Settlement Agreement may be waived as to any Settling Party except through a writing signed by an authorized representative of the waiving Settling Party. Waiver of any provision of this Settlement Agreement by a Settling Party shall not be deemed to waive any other provision or to be a waiver by any other Settling Party.
- 7.7 This Settlement Agreement is binding upon and for the benefit of the Settling Parties and their successors and assigns. Each person executing this Settlement Agreement on behalf of a Settling Party represents and warrants that he or she is duly authorized and empowered to act on behalf

of, and to authorize this Settlement Agreement to be executed on behalf of, the Settling Party that he or she represents.

- 7.8 This Settlement Agreement is the result of negotiations among the Settling Parties and has been subject to review by each Settling Party and its respective counsel. Therefore, this Settlement Agreement shall be deemed the product of each Settling Party and no ambiguity in this Settlement Agreement shall be construed in favor of, or against, any Settling Party.
- 7.9 Section headings are used in this Settlement Agreement solely for convenience of reference and shall not be used to interpret or modify the Settlement Agreement.
- 7.10 The Settlement Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

IN WITNESS WHEREOF the Settling Parties, each acting on its own behalf or through an authorized representative, have caused this agreement to be executed as of the dates set forth below.

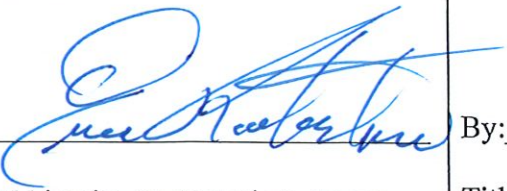
DYNEGY MARKETING AND TRADE, LLC By: <u>/s/ Stephanie Z. Moore</u> Title: EVP & General Counsel, Vistra Corp. Date: July 28, 2025	ILLINOIS POWER MARKETING COMPANY By: <u>/s/ Stephanie Z. Moore</u> Title: EVP & General Counsel, Vistra Corp. Date: July 28, 2025
PUBLIC CITIZEN, INC. By: _____ Title: _____ Date: _____	THE PEOPLE OF THE STATE OF ILLINOIS, BY ILLINOIS ATTORNEY GENERAL KWAME RAOUL By: _____ Title: _____ Date: _____
SOUTHWESTERN ELECTRIC COOPERATIVE, INC. By: _____ Title: _____ Date: _____	ILLINOIS MUNICIPAL ELECTRIC AGENCY By: _____ Title: _____ Date: _____

DYNEGY MARKETING AND TRADE, LLC By: _____ Title: _____ Date: _____	ILLINOIS POWER MARKETING COMPANY By: _____ Title: _____ Date: _____
PUBLIC CITIZEN, INC. By: <u>Tyson Slocum</u> Title: <u>Energy Program Director</u> Date: <u>July 29, 2025</u>	THE PEOPLE OF THE STATE OF ILLINOIS, BY ILLINOIS ATTORNEY GENERAL KWAME RAOUL By: _____ Title: _____ Date: _____
SOUTHWESTERN ELECTRIC COOPERATIVE, INC. By: _____ Title: _____ Date: _____	ILLINOIS MUNICIPAL ELECTRIC AGENCY By: _____ Title: _____ Date: _____

DYNEGY MARKETING AND TRADE, LLC By: _____ Title: _____ Date: _____	ILLINOIS POWER MARKETING COMPANY By: _____ Title: _____ Date: _____
PUBLIC CITIZEN, INC. By: _____ Title: _____ Date: _____	THE PEOPLE OF THE STATE OF ILLINOIS, BY ILLINOIS ATTORNEY GENERAL KWAME RAOUL By:  _____ Susan L. Satter Title: Chief, Public Utilities Bureau Date: July 29, 2025
SOUTHWESTERN ELECTRIC COOPERATIVE, INC. By: _____ Title: _____ Date: _____	ILLINOIS MUNICIPAL ELECTRIC AGENCY By: _____ Title: _____ Date: _____

DYNEGY MARKETING AND TRADE, LLC By: _____ Title: _____ Date: _____	ILLINOIS POWER MARKETING COMPANY By: _____ Title: _____ Date: _____
PUBLIC CITIZEN, INC. By: _____ Title: _____ Date: _____	THE PEOPLE OF THE STATE OF ILLINOIS, BY ILLINOIS ATTORNEY GENERAL KWAME RAOUL By: _____ Title: _____ Date: _____
SOUTHWESTERN ELECTRIC COOPERATIVE, INC. By: <u>Billy R. Wotila</u> Title: CEO Date: 07/29/2025	ILLINOIS MUNICIPAL ELECTRIC AGENCY By: _____ Title: _____ Date: _____

DYNEGY MARKETING AND TRADE, LLC By: _____ Title: _____ Date: _____	ILLINOIS POWER MARKETING COMPANY By: _____ Title: _____ Date: _____
PUBLIC CITIZEN, INC. By: _____ Title: _____ Date: _____	THE PEOPLE OF THE STATE OF ILLINOIS, BY ILLINOIS ATTORNEY GENERAL KWAME RAOUL By: _____ Title: _____ Date: _____
SOUTHWESTERN ELECTRIC COOPERATIVE, INC. By: _____ Title: _____ Date: _____	ILLINOIS MUNICIPAL ELECTRIC AGENCY By: <u></u> Title: <u>Vice President & General Counsel</u> Date: <u>July 29, 2025</u>

ILLINOIS INDUSTRIAL ENERGY CONSUMERS	MIDCONTINENT INDEPENDENT SYSTEM OPERATOR, INC.
By: 	By: _____
Title: Illinois Industrial Energy Consumers Attorney	Title: _____
Date: Eric Robertson July 28, 2025	Date: _____

ILLINOIS INDUSTRIAL ENERGY CONSUMERS	MIDCONTINENT INDEPENDENT SYSTEM OPERATOR, INC.
By: _____	By:  _____
Title:	Title: <i>MANAGING ASSISTANT GENERAL COUNSEL</i>
Date:	Date: <i>JULY 30, 2025</i>