



Local Clearing Requirement 2020 Michigan Supreme Court Decision

1. What is a Local Clearing Requirement? How is it set?

In order to ensure that sufficient electricity resources are planned to serve electricity customers and meet reliability requirements, some electric generation resources (power plants) need to be located within Michigan. Under federally approved rules and tariffs, the Midcontinent Independent System Operator (MISO), the regional grid operator for most of Michigan, determines each year the amount of generation capacity that must be located within specific geographic areas in order to meet federal reliability standards. For the planning year covering June 1, 2020 to May 31, 2021, MISO has determined that **99.6% of the generation capacity** used to serve Michigan customers in the lower peninsula must be physically located within that area. The amount of capacity that must be located within a local area to meet federal reliability standards is called the Local Clearing Requirement (LCR).

MISO determines the LCR following an open stakeholder process and technical studies. Since it was first instituted in 2014, Michigan's LCR for the lower peninsula has been relatively high (~95%) due to the reliability of Michigan's existing generating resources (how often they experience equipment outages), Michigan's geography as a peninsular state, and the amount of transmission capacity to import electricity into the state from elsewhere. The recent changes to MISO's calculation methodologies have made Michigan's LCR even higher, with nearly all of the resources needed to plan for the summer peak period of consumption having to be located within the local area.

2. Is a local clearing requirement referenced in Michigan law?

Yes. As part of the state reliability mechanism and required capacity demonstrations, Section 6w of PA 341 of 2016 defines the "local clearing requirement" as "the amount of capacity resources required to be in the local resource zone in which the electric provider's demand is served to ensure reliability in that zone as determined by the appropriate independent system operator for the local resource zone in which the electric provider's demand is served and by the commission under subsection (8)." It also requires the MPSC, in order to determine capacity obligations, to request that MISO "provide technical assistance in determining the local clearing requirement."

3. How did the MPSC implement the state reliability mechanism and capacity demonstration requirements of the 2016 Energy laws? Was a locational requirement imposed on individual energy providers?

The law requires providers to annually demonstrate to the MPSC that they have sufficient owned or contracted resources to meet capacity obligations four years into the future. Electric providers can meet their obligations in numerous ways: by entering into contracts with generators, owning existing or building new power plants, or by pursuing new programs to cut demand for electricity during peak times. Electric providers could also buy some of their capacity through regional resource auctions. Alternative electric suppliers who fail to demonstrate sufficient capacity to meet their customer demands must pay the incumbent utility the state reliability mechanism charge while municipal and cooperative utilities may be referred to the Attorney General's office for enforcement actions. The MPSC oversees enforcement for the incumbent investor-owned utilities.

The MPSC solicited feedback and held numerous workgroup meetings to address the details for implementing the state reliability mechanism and required capacity demonstrations. In an order issued on September 15, 2017 in [Case No. U-18197](#), the MPSC addressed the process for satisfying the capacity demonstration requirements of PA 341 of 2016. In that order, the Commission did not require individual providers to meet a LCR for the first cycle of capacity demonstrations (2017 – 2021); however, the MPSC indicated that it would open a new contested case to establish a locational requirement for future capacity demonstration cycles beginning in planning year 2022 and beyond.

The MPSC's order in U-18197 finding that PA 341 of 2016 granted the MPSC authority to impose a locational requirement on individual energy providers was appealed by two parties to the case. The MPSC's proceeding to establish a location requirement for future capacity demonstration cycles continued while the order in Case No. U-18197 was under appeal.

In an order issued June 28, 2018 in [Case No. U-18444](#), the MPSC approved a methodology to establish a locational requirement applicable to individual providers. The incremental capacity methodology adopted by the MPSC in the order required electric providers to demonstrate a minimum level of local resources equivalent to 2.7% of its peak load contribution for planning year 2022/2023 (capacity demonstration year 2019) and 5.3% of its peak lead contribution for planning year 2023/2024 (capacity demonstration year 2020).¹

Because the question of the MPSC's authority to establish a locational requirement applicable to individual providers was on appeal at the time the order in Case No. U-18444 was issued, the MPSC issued a stay of this order, effectively delaying the location requirement until the appeal was concluded in Case No. U-18197 and further action of the MPSC.

4. What prompted the appeal of the MPSC's decision in U-18197 to the Court of Appeals?

Energy Michigan, Inc. and the Association of Businesses Advocating Tariff Equity (ABATE) appealed the MPSC's order in Case No. U-18197 arguing that PA 341 of 2016 did not authorize the MPSC to impose a locational requirement applicable to individual electric providers. Energy Michigan, also argued that, if such a grant of authority was included in PA 341, the MPSC should have imposed the requirement through a rulemaking in accordance with the Michigan Administrative Procedures Act.

5. What did the Michigan Court of Appeals say?

In an [order](#) issued on July 12, 2018, the MI Court of Appeals held that PA 341 did not grant authority to the MPSC to impose a locational requirement on individual providers.

The Court of Appeals did not decide the issue of whether the MPSC's order complied with the Administrative Procedures Act because it decided the case on other grounds.

The MPSC appealed the decision of the Court of Appeals to the Michigan Supreme Court.

6. What did the Michigan Supreme Court say?

Following briefing by the parties and oral argument, the Michigan Supreme Court, in an [April 2, 2020 order](#), reversed the decision of the Court of Appeals and held that the MPSC was granted authority by PA 341 to impose a locational requirement applicable to individual providers. The case was remanded to the Court of Appeals for further review.

The MI Supreme Court held that, "In requiring that each provider, including alternative electric suppliers, meet an individual local clearing requirement, the MPSC did what the statute required of it to ensure reliability of retail electric markets in Michigan." The Court found that the lower court's decision "misread the statutory

¹ Staff's original recommendations were 1.5% (2022/2023) and 3% (2023/2024) of peak load contribution. These recommendations were updated per Commission order via staff memo to the docket on August 1, 2018 to 2.7% and 5.3% in order to account for publicly announced generating unit retirements.

language, misunderstood MISO's wholesale capacity measurements, and failed to appreciate how the MPSC's regulatory jurisdiction differs from MISO's."

In its order, the Court provided an extensive overview of electric operations and regulation, energy supply, and the wholesale market followed by an in-depth review of PA 341. In reviewing the statute, the Court held that the statute's use of identical language to describe the MPSC's authority to impose a planning reserve margin and to apply a local clearing requirement provides the requisite authority for the MPSC to set a locational requirement applicable to individual providers. The Court stated, "The parallel treatment of the MPSC's authority as to both capacity obligations [the planning reserve margin and the local clearing requirement] is meaningful – the MPSC can set a planning reserve margin requirement for each provider individually, and it can do the same for a local clearing requirement." The Court also stated that the statute's requirement for the MPSC to cooperate with MISO in setting the locational requirement requires coordination between the MPSC and MISO, not an identical application of MISO's locational requirement by the MPSC.

7. What are the next steps following the Michigan Supreme Court's Ruling?

Because the Court of Appeals did not address Energy Michigan's argument that the process used by the MPSC to impose the locational requirement violated the Administrative Procedures Act, the Court remanded the case to the Court of Appeals for a determination of that issue. The Court may order additional oral arguments or may issue an order based on the previous arguments presented.

8. Will the MPSC impose a locational requirement applicable to individual providers?

Not at this time. The stay of the Commission's order in Case No. U-18444 remains in place. Thus, there is not a locational requirement applicable to individual providers imposed by the Commission. There are additional court proceedings to fully resolve the outstanding legal issues related to orders in Case Nos. U-18197 and U-18444, namely whether the Commission must promulgate rules to institute the locational requirement. Even if the stay were lifted, the information used to calculate the locational requirement would need to be updated through Commission proceedings because the approved locational requirement in Case No. U-18444 covered only two planning cycles (2022/2023 and 2023/2024) and is out of date. Assuming expedited court and Commission proceedings on this issue, the earliest application of a locational requirement to individual providers would be in 2021 for planning year 2025/2026.

9. Are energy providers still subject to the local clearing requirement imposed by MISO?

Yes, as discussed above, Michigan's forward locational requirement is complimentary to, but distinct from, the MISO LCR. MISO's requirement applies to all energy providers in a specific geographic area in the upcoming planning year. For example, for providers in the lower peninsula, at least 99.6% of the generation collectively used to serve their customers must come from this local area. This is applied either by energy providers demonstrating to MISO that they own or have contracted for the minimum amount of local generation, or by participating in the annual planning auction. [See 2020 MISO Planning Resource Auction Results](#) Issue Brief. Michigan's locational requirement would apply four years into the future (once in effect) and is designed to meet the MISO LCR over time.

For more information, visit:

[MPSC Website](#)

[Forward Locational Requirement Issue Brief \(June 2018\)](#)

[Michigan's New Resource Adequacy Law Issue Brief \(June 2018\)](#)

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