

comments and protests in the docket.

I. MOTION FOR LEAVE TO ANSWER

Pursuant to Rule 212,³ the OMS respectfully moves for leave to file this Answer to respond to comments and protests submitted in the instant docket. Generally, the Commission's rules prohibit answers to comments or protests.⁴ However, the Commission will accept such answers for good cause, such as when the answer provides useful and relevant information that will assist the Commission in its decision-making process,⁵ or provides information helpful to the disposition of an issue.⁶ This Answer satisfies the above criteria by aiding the Commission in its decision-making process and providing information helpful to the disposition of issues and proposals raised by the parties.

II. ANSWER

There is a long-standing disagreement within the MISO stakeholder community about the role of the Planning Resource Auction ("PRA") and the Resource Adequacy Construct ("RAC"). Parties representing various merchant generators ("Competitive Generators") have been advocating, as they have in their comments and protests in this docket, that MISO adopt an Eastern-RTO style capacity market to provide higher capacity prices and therefore a greater opportunity for generators to obtain revenue.⁷ However, the Commission, as well as a

³ 18 C.F.R. § 385.212.

⁴ 18 C.F.R. § 385.213(a)(2).

⁵ See e.g., *Pioneer Transmission, LLC v. Northern Indiana Public Service Co. and Midwest Independent Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,057 at P 93 (2012); *Midwest Independent Transmission Sys. Operator, Inc.*, 131 FERC ¶ 61,285 (2010); *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,252 at P 19 (2010), reh'g denied, 137 FERC ¶ 61,075 (2011) (accepting answers that "provided information that assisted us in our decision making process"); *Duke Energy Kentucky, Inc.*, 122 FERC ¶ 61,182 at P 25 (2008) (accepting answers in proceeding on Wholesale Distribution Service agreements that "provided information that assisted us in our decision-making process"); *Tallgrass Transmission, LLC et al.*, 125 FERC ¶ 61,248 at P 26 (2008); *PJM Interconnection, L.L.C.*, 120 FERC ¶ 61,083 at P 23 (2007) (answer to protests permitted when it provides information to assist the Commission in its decision-making process).

⁶ See e.g., *CNG Transmission Corp.*, 89 FERC ¶ 61,100 at P 61,287, n. 11 (1999).

⁷ *Protest of the Electric Power Supply Association ("EPSA")* at 5, 7-10; *Protest of the NRG Companies and the Dynegy Companies ("NRG/Dynegy")* at 14-25; *Motion to Intervene and Protest of Main Line Generation, LLC*

majority of MISO stakeholders, have acknowledged that the role of the PRA in MISO is not the same as the capacity market structures in PJM and ISO New England. Long-term resource adequacy is within the exclusive jurisdiction of the state and local regulators in the MISO region. As such, over 90% of the load in MISO is served by vertically-integrated utilities with oversight by state and local regulators. Moreover, less than 5% of the capacity needs in MISO in the 2017-2018 planning year were obtained through the PRA.⁸

The MISO PRA therefore, is, and has been, merely a supplemental auction for capacity. It has neither been a mechanism to obtain capacity for long-term resource adequacy or to establish capacity prices in the region. This is the reason the Commission has consistently held, and should continue to support, that regional differences are wholly appropriate to accommodate the differences in the capacity construct within each RTO.

a. Long-term Resource Adequacy is Secure Under the Exclusive Jurisdiction of the State and Local Regulators in MISO Under the Current RAC

The Competitive Generators' claim that the current RAC has "failed to support resource adequacy in the region" is false.⁹ Not only have state and local regulators, in conjunction with the RAC, produced an adequate supply of resources in every year of the current construct's existence, it is projected to continue to do so through at least 2022¹⁰ with over 50 GW of generation in the interconnection queue.¹¹ The Competitive Generators have relied upon frequent misrepresentations of the OMS-MISO Resource Adequacy Survey ("Survey") results to make their case. The error-filled predictions made by the Competitive Generators have proven

("Main Line") at 8-9.

⁸ 2017-2018 PRA Results Presentation, slide 9, available at: <https://cdn.misoenergy.org/2017-2018%20Planning%20Resource%20Adequacy%20Results87196.pdf>.

⁹ EPSA at 2.

¹⁰ 2017 OMS-MISO Survey Results, available at: <https://cdn.misoenergy.org/20170809%20RASC%20Supplemental%20OMS-MISO%202017%20Survey%20Results87569.pdf>.

¹¹ See https://beta.misoenergy.org/planning/generator-interconnection/GI_Queue/.

wrong year-after-year, often neglecting the fact that new generation will come online that is not yet represented in the survey.¹² In fact, the most recent 2017-2018 PRA results cite an *increase* in supply and a *decrease* in demand as the reason behind lower PRA clearing prices.¹³ State and local resource adequacy planning with jurisdictional utilities have kept the lights on and will continue to do so in the future.

The Competitive Generators have also tried to undermine the effectiveness of the current construct by citing the Competitive Retail Solution (“CRS”) proposal.¹⁴ MISO crafted the CRS to address the differences in capacity procurement between fully regulated jurisdictions and those with retail markets. The Commission rejected this proposal, stating that MISO failed to support it as just and reasonable.¹⁵ However, the states that would have been subject to the CRS have mechanisms in place to address potential resource needs.¹⁶ Collectively these actions affirm that resource adequacy has been and will continue to be maintained through state and local action within the MISO region, rendering the Competitive Generators’ assertion that the current MISO construct is not just and reasonable false and unsubstantiated.

b. Requests to Institute Elements of an Eastern-RTO Style Capacity Market in MISO Have Been Previously Properly Rejected by the Commission and Remain Unjust and Unreasonable Today

The Competitive Generators argue that MISO’s current RAC captured in the Filing is not just and reasonable and should be rejected because it lacks (1) mandatory participation requirements, (2) a downward sloping demand curve, (3) a minimum offer price rule, and (4) a

¹² *Midwest Ind. Transmission Sys. Operator, Inc.*, 153 FERC ¶ 61,229 (Order of Rehearing) at P 11. For example, Indicated Capacity Suppliers incorrectly projected that MISO would have a capacity shortfall in 2016.

¹³ MISO 2017-2018 PRA Results Presentation, slide 2, available at: <https://old.misoenergy.org/Library/Repository/Report/Resource%20Adequacy/Planning%20Year%2017-18/2017-2018%20Planning%20Resource%20Adequacy%20Results.pdf>

¹⁴ NRG/Dynegy at 22; EPSA at fn. 14; Main Line at 4-7.

¹⁵ *Midcontinent Ind. Transmission Sys. Operator, Inc.*, 158 FERC ¶ 61,128 at P 6.

¹⁶ Mich. Pub. Act 341 and 342 of 2016 (effective Apr. 20, 2017); Ill. Pub. Act 099-0906 (“Future Energy Jobs Act”) (Dec. 2016).

forward procurement period.¹⁷ All of these elements, found in Eastern-style RTOs, have been previously rejected by the Commission for MISO on multiple occasions and the justification for those decisions remain the same today.¹⁸ The Commission based those findings on, among other things, the recognition of differences among regional needs based on market structures. The elements of the Eastern-style RTO capacity market demanded by the Competitive Generators would be unjust and unreasonable, as well as unnecessary, in the MISO region as long-term resource adequacy is effectively ensured under the exclusive jurisdiction of the state and local regulators.¹⁹

Mandatory Participation

Although MISO's original filing included a mandatory participation requirement, the Commission rejected it, stating MISO had not met its burden to show that the proposal was just and reasonable.²⁰ Subsequently, MISO argued that the voluntary nature of its RAC represents "a reasonable compromise position between those stakeholders that opposed any type of capacity auctions and those that advocated mandatory capacity auctions."²¹ The Commission accepted the voluntary construct because "[t]he voluntary auction will afford LSEs with an additional mechanism to procure needed capacity and increase transparency in the procurement of capacity."²² The Commission further emphasized that its acceptance was based "solely on the reasonableness of the auction mechanism in providing a useful alternative option for obtaining

¹⁷ EPSA at 5, 7-10; NRG/Dynegy at 14-25; Main Line at 8-9.

¹⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,060 at P39 (2008) ("Financial Settlement Order"), order on reh'g, *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,054 at P 30 (2009) ("Financial Settlement Order"). 153 FERC ¶ 61,229 (2015) ("Order on Rehearing").

¹⁹ In addition, it's worth noting that the RTOs referenced by EPSA are currently evaluating major modifications to their own price formation. See www.pjm.com/-/media/library/reports-notice/special-reports/2018/20180116-capacity-market-repricing-proposal-updated.ashx?la=en.

²⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199 at P 100 (2011) ("June 11 Order").

²¹ Financial Settlement Order, 125 FERC ¶ 61,060 at P 32.

²² *Id.* at PP 36-38.

capacity in the [MISO].”²³ The Commission reinforced that it did not expect that a mandatory auction would be needed at any point to ensure resource adequacy.²⁴

Downward Sloping Demand Curve

The Commission found that the use of a vertical demand curve in MISO is just and reasonable.²⁵ The Commission has also previously disagreed with arguments that “the MISO resource adequacy plan is producing unreasonable market outcomes that can be attributed to the vertical demand curve.”²⁶ The use of a downward sloping demand curve, leading to a variable capacity clearing requirement, complicates state-mandated resource planning. The OMS has previously pointed out that the “obligation to purchase capacity over and above what is actually needed and approved by a state commission would intrude on state jurisdiction over capacity purchases...”²⁷ As such, the Commission should again reject the calls of the Competitive Generators to institute a downward sloping demand curve in the PRA.²⁸

Minimum Offer Price Rule (“MOPR”)

The Commission has previously found that a MOPR is not just and reasonable in MISO. It found that buyers within MISO are generally unlikely to benefit from exercising market power by subsidizing uneconomic entry and the resulting reduction in capacity prices in MISO’s voluntary capacity market.²⁹ The Commission also concluded that utilities, who own the vast majority of capacity in MISO, would not significantly benefit from lower prices in MISO’s voluntary capacity market because the utilities do not need to procure a significant amount of capacity from MISO’s capacity market. Further, the Commission found that even if utilities had

²³ *Id.* at P 38.

²⁴ *Id.*

²⁵ June 11 Order at PP 238, 245.

²⁶ Order on Rehearing at P 155.

²⁷ OMS Initial Brief, ER11-4081-001 at 9 (Oct. 11, 2013).

²⁸ Financial Settlement Order at P 39.

²⁹ June 11 Order at P 66.

a significant incentive to exercise buyer market power – which they do not in MISO – any MOPR provisions would not likely be effective in deterring suppression of prices through the exercise of buyer market power.³⁰

The conditions that existed when the Commission previously rejected a MOPR in the MISO RAC still remain. The observation that “utilities do not need to procure a significant amount of capacity from MISO’s capacity market” holds true today.³¹ As previously stated, for example, less than 5% of all capacity in MISO was procured through the auction for the current planning year.³² The incentives to suppress price within the PRA are nonexistent, rendering the need for a MOPR nonexistent as well.

c. Substantive Changes to the Filing are Inappropriate Under *NRG*³³ and Should be Rejected

In July 2017, the United States Court of Appeals for the District of Columbia (“COA” or “Court”) issued an order in *NRG Power Marketing, LLC v. FERC* (“*NRG*”)³⁴ that provided guidance on the role of FERC and its limited options in decisions on Section 205 filings. To summarize the main point of the holding, the Court noted that, “Section 205 puts FERC in a ‘passive and reactive role’³⁵” and that “FERC may not go ‘beyond approval or rejection’ of a proposal to ‘adoption of an entirely different rate design’ than the proposal.”³⁶

The protest filed by Main Line Generation, LLC (“Main Line”) directly contravenes the clear direction of the Court in *NRG* that ironically was the impetus of the instant docket. Throughout its filing, Main Line urges the Commission to make major modifications to the

³⁰ June 11 Order at PP 66-68.

³¹ *Id.* at 66.

³² 2017-2018 PRA Results Presentation, slide 9.

³³ *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017) (“*NRG*”).

³⁴ *Id.*

³⁵ *Id.* at 11, citing *Advanced Energy Management Alliance v. FERC*, No. 16-1234, at 10 (D.C. Cir June 20, 2017).

³⁶ *Id.* at 13, citing *Western Resources*, 9 F3d 1568 at 1578 (D.C. Cir. 1993).

Filing to impose a downward-sloping demand curve,³⁷ a MOPR,³⁸ market mitigation measures,³⁹ and a longer auction period.⁴⁰ These are precisely the types of substantive modifications to a Section 205 filing that the Court in *NRG* found to be outside of FERC's authority and those at issue in the case under remand on the 2012 MISO resource adequacy order.⁴¹ As such, Main Line's proposed modifications to the Filing must be rejected outright as outside the scope of FERC's authority under the holding in *NRG*.

In closing, and in accordance with *NRG*,⁴² the OMS urges the Commission to approve the MISO's filing of its currently-effective RAC (Module E-1 and related provisions) without modification to ensure certainty for participants in the 2018-2019 PRA.

The OMS submits these comments as approved by its Executive Committee because they are aligned with previous positions taken on behalf of the majority of OMS members. OMS members reserve the right to file separate comments regarding the issues discussed in these comments.

Respectfully Submitted,

Tanya Paslawski

Tanya Paslawski
Executive Director
Organization of MISO States
E-mail: tanya@misostates.org
Tel: 515-243-0742

³⁷ Main Line at 9.

³⁸ *Id.* at 11.

³⁹ *Id.* at 13.

⁴⁰ *Id.* at 15.

⁴¹ *NRG Power Marketing LLC v. FERC*, No. 16-1027 (consolidated with No. 16-1019) (D.C. Cir. *pending*).

⁴² *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108 (D. C. Cir. 2017).

Dated: January 29, 2018

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 29th day of January 2018.

Tanya Paslawski