

decision-making process.³ AMP and APPA submit that this answer provides information that will assist the Commission in its decision-making and respectfully request that it be accepted.

II. ANSWER

A. The Protesting Parties Do Not Provide Any Valid Basis to Revisit MISO's Approved Resource Adequacy Construct

MISO's December 15 Filing submits, without any proposed changes, the currently effective Resource Adequacy construct in MISO's Tariff, which the Commission has found to be just and reasonable.⁴ Despite the Commission's previous findings that MISO's Resource Adequacy construct is just and reasonable, the Protesting Parties argue that the construct should be rejected (with directions that it be fundamentally modified) because it currently lacks certain elements, including: (1) mandatory participation of all supply and demand resources;⁵ (2) a buyer-side mitigation mechanism, such as a minimum offer price rule ("MOPR");⁶ (3) a downward sloping demand curve;⁷ and (4) a multi-year forward auction.⁸

The Protesting Parties' arguments in favor of these capacity market elements were fully considered and rejected by the Commission in Docket No. ER11-4081.⁹ Pointing to the "largely vertically-integrated nature of the MISO region"¹⁰ and the "wide range of factors in addition to

³ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 161 FERC ¶ 61,268 at P 27 (2018).

⁴ December 15 Filing, Transmittal Letter at 2 & Tabs C and D.

⁵ EPSA Protest at 2, 7-8; NRG/Dynegy Protest at 17-19.

⁶ EPSA Protest at 2, 9-10; Main Line Protest at 9-11; NRG/Dynegy Protest at 14-17.

⁷ EPSA Protest at 2, 8-9; Main Line Protest at 7-9; NRG/Dynegy Protest at 19-23.

⁸ EPSA Protest at 2, 9; Main Line Protest at 14-15; NRG/Dynegy Protest at 23-25.

⁹ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199 (2012), *order on reh'g*, 153 FERC ¶ 61,229 (2015), *petitions for review filed and pending on voluntary remand* ("ER11-4081 Orders"). EPSA concedes that the purported flaws in MISO's Resource Adequacy construct were "thoroughly discussed" in Docket No. ER11-4081. EPSA Protest at 4. See also NRG/Dynegy Protest at 5 (describing the Commission's conclusions in Docket No. ER11-4081 regarding the issues raised in the NRG/Dynegy Protest).

¹⁰ *MISO*, 153 FERC ¶ 61,229 at P 46.

the auction clearing prices” that drive capacity needs in MISO,¹¹ the Commission found a mandatory auction was unnecessary in MISO to ensure resource adequacy.¹² The Commission likewise concluded in Docket No. ER11-4081 that a MOPR would be ineffective in MISO and that there was no need for such a mechanism in the region.¹³ There would be little incentive to subsidize uneconomic entry in MISO, the Commission reasoned, because traditionally-regulated utilities “own the vast majority of capacity,” and “[t]hese utilities 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.”¹⁴ The Commission was similarly unconvinced by arguments to adopt a sloped demand curve, concluding that use of a vertical demand curve was just and reasonable for the MISO region.¹⁵ Finally, a one-year forward auction term was deemed reasonable and adequate “to ensure resource sufficiency”¹⁶ given that most load-serving entities (“LSEs”) in the region “will continue to obtain most – if not all – of their supplies outside the auction.”¹⁷

The Commission should reject the Protesting Parties’ attempts to revive arguments the Commission has considered and found unconvincing. The Commission may decline to revisit rates that it previously has found just and reasonable in the absence of changed circumstances or

¹¹ *Id.*

¹² *Id.* at P 50; *see also MISO*, 139 FERC ¶ 61,199 at PP 38-42.

¹³ *See MISO*, 139 FERC ¶ 61,199 at PP 66-70; *MISO*, 153 FERC ¶ 61,229 at PP 105-120.

¹⁴ *MISO*, 139 FERC ¶ 61,199 at P 66; *see also MISO*, 153 FERC ¶ 61,229 at PP 105, 108-110.

¹⁵ *MISO*, 139 FERC ¶ 61,199 at P 245; *MISO*, 153 FERC ¶ 61,229 at PP 147, 154-161.

¹⁶ *MISO*, 139 FERC ¶ 61,199 at P 187.

¹⁷ *Id.* Main Line also objects to the economic withholding market mitigation measures currently included in the MISO Tariff. *See* Main Line Protest at 11-13. As Main Line’s protest acknowledges, the Commission recently addressed these mitigation measures in Docket Nos. EL15-70-000, *et al.* *See Public Citizen, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 153 FERC ¶ 61,385 at P 93 (2015), *order on compliance and reh’g*, 154 FERC ¶ 61,224 (2016). Main Line did not challenge the Commission’s orders in that proceeding, and there is no basis for the Commission to consider Main Line’s collateral attack on the Commission’s conclusions here.

new evidence indicating that the rates have ceased to be just and reasonable.¹⁸ Enforcement of this changed circumstances/new evidence requirement is particularly appropriate in the rather unusual situation presented by the December 15 Filing, in which MISO is simply refileing existing, approved Tariff provisions “out of an abundance of caution”¹⁹ to allow the Commission to “reaffirm” the justness and reasonableness of the Resource Adequacy construct to provide market certainty in light of the D.C. Circuit’s ruling in *NRG Power Marketing, LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017) (“*NRG*”).²⁰

The Protesting Parties do not identify changed circumstances or new evidence that would warrant modifying the currently approved Resource Adequacy construct in this proceeding. On the contrary, their arguments rely heavily on record materials in Docket No. ER11-4081 that the Commission has already considered and addressed in the ER11-4081 Orders.²¹ By definition, materials and arguments that were presented to the Commission in Docket No. ER11-4081 are not new evidence concerning the existing Resource Adequacy construct, nor can they show changed circumstances.

The Protesting Parties also cite statements by MISO in connection with its Competitive Retail Solution (“CRS”) proposal in Docket No. ER17-284 to suggest that the current MISO

¹⁸ See, e.g., *PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,153 at P 58 (2017); *Louisiana Pub. Serv. Comm’n v. Entergy Corp.*, Op. No. 519, 139 FERC ¶ 61,107 at PP 120-121 (2012), *reh’g denied*, Op. 519-A, 153 FERC ¶ 61,188 (2015), *aff’d*, *Louisiana Pub. Serv. Comm’n v. FERC*, 860 F.3d 691 (D.C. Cir. 2017); *Pacific Gas & Elec. Co.*, 121 FERC ¶ 61,065 at PP 40-43 (2007).

¹⁹ December 15 Filing, Transmittal Letter at 2.

²⁰ See *id.* at 1-2.

²¹ See, e.g., EPSA Protest at 4 (contending that “[t]he flaws in MISO’s existing resource adequacy construct (and in the Commission’s RA Orders approving that construct) have been thoroughly discussed in Docket No. ER11-4081, and in briefs before the D.C. Circuit”); NRG/Dynegy Protest at 14 (arguing that “[t]he substantial record in the ER11-4081-000 docket initiated by the 2011 MISO Filing” supports the NRG/Dynegy contention that the MISO capacity market is flawed).

Resource Adequacy construct is not just and reasonable.²² Again, the Commission evaluated the evidence and arguments in Docket No. ER17-284, and did not find that the record demonstrated that the CRS would be a just and reasonable change to MISO's Resource Adequacy construct.²³ Moreover, the CRS would only have applied to retail choice areas, and MISO's justification for the CRS was largely an expected resource shortfall in Zone 4.²⁴ This expected shortfall has not materialized.

Finally, contrary to the arguments of NRG/Dynegy and Main Line, experience with MISO's Resource Adequacy construct since 2011 does not provide a basis for the elements they endorse.²⁵ In general, the Protesting Parties argue that low or volatile capacity prices in MISO, coupled with the lack of mandatory buyer participation, threaten resource adequacy in the region.²⁶ The Commission, however, considered similar arguments in Docket No. ER11-4081 and found they did not justify the capacity market elements supported by merchant generators.²⁷ In any case, the Protesting Parties make no attempt to rebut MISO's discussion of the OMS-MISO Resource Adequacy Survey, which indicates "that the MISO region is projected to maintain a capacity surplus of approximately 2.7 to 4.8 GW for 2018 and to maintain a surplus through at least 2022."²⁸ These surpluses, MISO explains, "are sufficient to cover the few LRZs with projected

²² See, e.g., Main Line Protest at 3-7; NRG/Dynegy Protest at 10, 13.

²³ *MISO*, 158 FERC ¶ 61,128 (2017). None of the Protesting Parties (or any other participant) requested rehearing of the Commission's order in Docket No. ER17-284.

²⁴ MISO stated in the CRS transmittal letter that "[w]ithout any change to MISO's existing resource adequacy construct, areas like Local Resource Zone 4 may be short of local resources. Zone 4 in particular could be short of local resource requirements by up to 1500 MW as soon as 2018." *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER17-284-000, MISO Transmittal Letter at 4 (Nov. 1, 2016).

²⁵ See, e.g., NRG/Dynegy Protest at 10 (asserting that "[f]ive years of history shows that the MISO capacity market, as a whole, is not just and reasonable.>").

²⁶ See, e.g., Main Line Protest at 3-7; NRG/Dynegy Protest at 11-14.

²⁷ See, e.g., *MISO*, 153 FERC ¶ 61,229 at PP 46-51, 145, 157.

²⁸ December 15 Filing, Transmittal Letter at 5 (citing Testimony of Laura Rauch at 15) (footnote omitted).

resource deficits,”²⁹ and, overall, the Survey’s projections “provide[] confidence in the near-term sufficiency of MISO Resource Adequacy processes, as laid out in Module E-1, in conjunction with the ownership of Resource Adequacy obligations by the states and Load Serving Entities throughout MISO.”³⁰

The reality is that MISO has held five Planning Resource Auctions (“PRAs”), beginning with the Planning Year 2013/14, under the current Resource Adequacy rules, without any of the features that the Protesting Parties request. The Protesting Parties present no evidence from any of these PRAs that would justify the requested changes to the current Tariff. Accordingly, neither recent experience, nor resource adequacy projections, provide a basis to revisit the approved MISO Resource Adequacy construct in this proceeding.

B. The Pending Voluntary Remand Proceedings in Docket No. ER11-4081 Do Not Prevent the Commission from Accepting MISO’s Filing

AMP and APPA recognize that certain of the Commission’s rulings in Docket No. ER11-4081 remain pending before the Commission on voluntary remand from the D.C. Circuit in appeals filed by NRG (No. 16-1027) and Midwest TDUs (No. 16-1019). Indeed, APPA’s limited protest in this docket specifically asked that acceptance of MISO’s December 15 Filing be made subject to the outcome of the voluntary remand of D.C. Circuit Case No. 16-1019 and any further appellate review.³¹ And as MISO explains, its “Resource Adequacy construct could be affected depending on how the Commission acts on remand” from NRG’s appeal in Case No. 16-1027.³² The pendency of these voluntary remands, however, does not prevent the Commission from accepting the existing Resource Adequacy construct Tariff provisions as just

²⁹ *Id.*

³⁰ *Id.*

³¹ See APPA Motion to Intervene and Limited Protest at 3-6 (Jan. 12, 2018).

³² December 15 Filing, Transmittal Letter at 2.

and reasonable, subject to the outcome of the remands and any further court proceedings.

The Commission's request for voluntary remand in Case No. 16-1027 was narrowly-focused on the need "to consider the implications" of the *NRG* decision on Docket No. ER11-4081.³³ Even if the Commission (or the court) were to conclude that the Commission exceeded its FPA section 205 authority under *NRG* in rejecting certain aspects of MISO's original proposal in Docket No. ER11-4081 favored by merchant generators (*i.e.*, a MOPR and mandatory participation for resource-deficient buyers), that conclusion would in no way undermine the Commission's *rationales* for finding these two elements to be unnecessary.³⁴ And in resubmitting the Resource Adequacy construct under FPA section 205 without these two elements, MISO has addressed prospectively any *NRG*-related concerns associated with excluding them.³⁵

Moreover, if Commission action on the voluntary remands or related appeals were to result in changes to MISO's Resource Adequacy construct, the Commission would have ample authority to fashion an appropriate remedy at that time, including considering whether such changes should be made effective only prospectively so as to avoid having to "rerun" MISO capacity auctions.³⁶ The pendency of the voluntary remands, however, does not prevent the Commission from accepting the existing Resource Adequacy construct, subject to the outcome

³³ *NRG Power Marketing, LLC v. FERC*, No. 16-1027, "Unopposed Motion of Respondent Federal Energy Regulatory Commission for Voluntary Remand" at 2 (D.C. Cir. Oct. 2, 2017).

³⁴ AMP and APPA maintain that the Commission did not so err.

³⁵ Contrary to *NRG/Dynegy's* argument, the Commission could not simply accept MISO's original filing in Docket No. ER11-4081 if it rejects MISO's filing in the instant docket. *NRG/Dynegy Protest* at 25-26. The Commission's previous finding that MISO failed to demonstrate that a MOPR and mandatory participation for resource-deficient buyers are just and reasonable would be inconsistent with acceptance of a capacity market construct that reflected these two elements. *See, e.g., PJM Interconnection, L.L.C.*, 161 FERC ¶ 61,252 at PP 41-42 (2017).

³⁶ *See* APPA Motion to Intervene and Limited Protest at 5 n.12; *see also* *NRG/Dynegy Protest* at 26 (acknowledging the breadth of the Commission's discretion in fashioning remedies and asserting that, in this case, "discretion strongly favors prospective application of the tariff, and weighs heavily against invalidating prior auctions.").

of the remands and any additional court proceedings.

III. CONCLUSION

The Commission should deny the protests filed by EPSA, Main Line, and NRG/Dynegy in this proceeding. Further, for the reasons set forth in APPA's limited protest and in the protest filed by Midwest TDUs, Commission acceptance of MISO's December 15 Filing should be made subject to the outcome of the voluntary remand of D.C. Circuit Case No. 16-1019 currently pending in Docket No. ER11-4081, and any further appellate review.

Respectfully submitted,

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Dated: January 29, 2018

CERTIFICATE OF SERVICE

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

Dated at Arlington, Virginia, this 29th day of January, 2018.

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