145 FERC ¶ 61,248
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Midcontinent Independent System Operator, Inc. — Docket No. ER14-136-000

ORDER ACCEPTING PROPOSED DESIGNATION
OF NARROW CONSTRAINED AREAS

(Issued December 18, 2013)

1. On October 18, 2013, Midcontinent Independent System Operator, Inc. (MISO) proposed, pursuant to section 205 of the Federal Power Act (FPA)[1] and at the recommendation of MISO's Independent Market Monitor (IMM), to designate two new Narrow Constrained Areas (NCAs) in accordance with the requirements of its Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff). The two new proposed NCAs are located in the MISO South region that will integrate into MISO as of December 19, 2013.[2] MISO also submitted an accompanying market power analysis of the MISO South region by the IMM pursuant to section 63.4.1(g) of the Tariff.[3] In this order, we accept for filing MISO's proposed designation of the two new NCAs, effective December 19, 2013.

---

[1] 16 U.S.C. § 824d (2012).

[2] MISO states that it anticipates that Entergy Corporation's Operating Companies, along with Cleco Power, Lafayette Utilities Systems, East Texas Power Cooperatives and South Mississippi Electric Power Association, will integrate into MISO effective December 19, 2013, an event it refers to as the "MISO South integration."

[3] Potomac Economics, *Study of Narrow Constrained Areas in the MISO South Region* (October 2013) at 1 (Potomac Study), attached to MISO's filing as Appendix A.

I. Background

A. Market Power Mitigation Under MISO's Tariff

2. MISO states that Module D of its Tariff designates the IMM as the entity responsible for monitoring MISO markets for the existence and exercise of market power. The NCA mitigation authority contained in the Tariff is one of three categories of mitigation authority under Module D, with the other two being Voltage and Local Reliability (VLR) and Broad Constrained Areas (BCAs).[4] The NCA mitigation measures are designed to mitigate market power that arises when transmission constraints bind in a manner that limits competition in local areas, which can create local market power. Under specified circumstances, the IMM has the authority to mitigate NCA market power through the imposition of default offers and sanctions.[5]

3. Section 63.4.1(a) of MISO's Tariff requires the IMM, on a yearly basis, or more frequently as the IMM deems necessary, to evaluate the patterns of congestion in the Transmission Provider Region to determine the constrained areas that should be identified as NCAs in accordance with procedures set forth in the Tariff. MISO states that the IMM performs an NCA analysis whenever new members are integrated into MISO.[6] MISO explains that there are two criteria for the designation of an NCA under the Tariff: first, the constraints must be binding in 500 or more hours in a 12-month period; and second, when the constraints are binding, one or more suppliers must be pivotal, in the sense that their generation resources are needed to manage and relieve the congestion.[7]

B. NCA Analysis for the MISO South Integration

4. When the MISO South integration is completed, MISO will act as the Balancing Authority Operator for the MISO South region, and each of the integrating utilities will be full participants in MISO's energy and ancillary services markets. MISO states that the MISO South integration will not result in significant changes to operations under the MISO energy and ancillary services markets, including the market monitoring requirements of the Tariff's Module D.

---

[4] MISO October 18, 2013 Filing Transmittal Letter (Transmittal) at 2-3 (citing Potomac Study at 1-2).

[5] *Id.*

[6] *Id.* at 3.

[7] *Id.* at 4 (citing Tariff, Module D, § 63.4.1(b)).

5. The IMM has conducted an NCA evaluation for the MISO South region, the Potomac Study, the results of which were submitted as an attachment to MISO's filing. MISO states that certain local reliability rules previously developed and implemented in the MISO South region are being independently evaluated by MISO and translated into Operating Guides. It states that because these Operating Guides are expected to qualify as VLR commitments under the Tariff,[8] which are mitigated using tighter thresholds than those established for NCAs, areas expected to be subject to the Operating Guides were excluded from the IMM's NCA determination.

6. MISO and the IMM explain that because MISO South is not yet within MISO, the IMM evaluated several sources of historical and forecasted data to determine the number of expected constrained hours in the MISO South region:[9]

- Historical Entergy Operating Company Weekly Procurement Process (WPP) modeling from the September 2012-August 2013 time period;
- Historical congestion management procedures from 2013, such as transmission line-loading relief (TLR) and local area protection (LAP) procedures; and
- Prospective PROMOD simulations, with a base model year projection for 2014 based upon MISO Hub Study data.[10]

MISO states that based upon this analysis, the IMM determined that four of the six control areas in the MISO South region experienced persistent congestion and Reliability Must-Run (RMR) issues. These areas are:

1) West Of The Atchafalaya Basin (WOTAB), which includes southwest Louisiana and all of the control area in eastern Texas;

---

[8] *See* Tariff, Module D, § 63.4.1(g); *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,171 (2012).

[9] Transmittal at 5; Potomac Study at 8-9.

[10] MISO explains that PROMOD is a proprietary electric market simulation tool used by MISO to simulate future market outcomes from MISO's Market Hub Study used in preparation for the integration of the MISO South region.

2) Western WOTAB: the area of Entergy Texas, Inc.'s transmission system generally defined as west of the Trinity River, including the Woodlands and Conroe load centers;

3) Amite South, which encompasses most of southeast Louisiana. This area includes all of the Entergy Louisiana, L.L.C.-South and Entergy New Orleans, Inc. service territories; and

4) Downstream of Gypsy (DSG): a load pocket within the Amite South load pocket. It encompasses all of the Entergy New Orleans, Inc. service territory (New Orleans) as well as the Entergy Louisiana, L.L.C.-South territory downstream of the Little Gypsy generating facility.

7. MISO states that the IMM's analysis of historical data and the PROMOD simulations indicate that while the Operating Guides may frequently trigger commitments in the DSG and Western WOTAB areas, constraints are likely to bind infrequently into these areas. MISO notes that while both areas showed the existence of pivotal suppliers in more than 67 percent of constraint hours tested, these constraints were not as frequent as those present in WOTAB and the Amite South regions. MISO explains that with respect to these areas, the IMM concluded that BCA mitigation measures are necessary and will be effective in addressing this concern.[11] As a result, MISO states that the IMM determined that neither DSG nor the Western WOTAB area will be designated as NCAs initially.

8. MISO states, however, that the IMM's analysis of the WOTAB and Amite South regions demonstrates that both prongs of the NCA designation test had been met for these areas. First, MISO states that the IMM projected, based upon PROMOD results, that one or more constraints would be binding in approximately 1,870 hours annually in the Amite South region and 6,000 hours for WOTAB. MISO states that the PROMOD findings were confirmed by the IMM through its analysis of the historical TLR/LAP and WPP data. It states that in Amite South, during the September 2012-August 2013 period, the IMM found 1,088 binding transmission constraint hours based on the TLR/LAP results, and an additional 591 binding constraint hours based on WPP data. For the WOTAB region during the same period, the IMM projected 1,837 binding constraint hours based on TLR/LAP and 3,440 binding constraint hours based on WPP.[12] MISO states that the historical data show a high frequency of binding constraints in nearly every month of the year for both areas.

[11] Transmittal at 7 (citing Potomac Study at 17).

[12] Potomac Study at 13-14.

9. MISO states that the IMM next found that both areas satisfied the second prong of the NCA designation test, the pivotal supplier analysis. Testing each constraint into these areas, the IMM found that, during periods where a constraint either was binding, or close to binding,[13] both areas had at least one pivotal supplier in almost all hours tested; i.e., 94 percent for WOTAB and 93 percent for Amite South. The IMM attributes the high pivotal supplier ratio to the fact that a large share of the resources affecting the constraints is owned by Entergy.[14]

10. Under the Tariff's conduct and impact approach toward mitigation, generation offers of energy at prices that exceed generator reference levels by pre-specified conduct thresholds are subject to possible mitigation. Offers that fail the conduct test are subject to mitigation if they also fail an impact test, which occurs if the change in Locational Marginal Price (LMP) exceeds a pre-specified threshold. Such offers are mitigated through the substitution of default bids at the reference level prices.

11. The IMM calculated the conduct and impact thresholds that will initially apply to the NCAs upon integration.[15] The Tariff formula for determining the thresholds takes the cost of new entry (CONE) of a new peaking generator in the appropriate load zone, subtracts the net revenues that generators would receive from other services they provide under the Tariff, and divides the remainder by the number of binding constraint hours for that area.[16] MISO states that the IMM calculated the CONE to apply to WOTAB and Amite South based on MISO's recent filing with annual calculations of CONE for each local resource zone.[17] The net revenues estimate was developed using historical price data derived from the Entergy WPP and MISO ancillary service and capacity market revenues. MISO states that the IMM's calculation of annual constrained hours was based on a combination of historical WPP and TLR/LAP counts.

---

[13] The IMM defined "close to binding" as within 5 percent of the limit.

[14] Potomac Study at 16.

[15] *Id*. at 18.

[16] Tariff, Module D, § 64.1.2(c), (d).

[17] The IMM used MISO's Zone 9 figures as the CONE for both NCAs. The MISO Zone 9 figure is based on capital cost estimates from the Energy Information Administration for Mississippi, Louisiana, and Texas and was accepted by the Commission in October 2013. *See* Delegated Letter Order, Docket No. ER13-2310-000 (Oct. 31, 2013).

12. Based on this calculation, the IMM's analysis determined that thresholds of $31.20 and $30.89 are appropriate for the Amite South and WOTAB regions, respectively:

	Amite South	**WOTAB**
CONE (MISO Zone 9)	$86,530	$86,530
Net Revenue	$34,145	$24,747
Net CONE	$52,385	$61,783
Binding Constraint Count	1,679	2,000
Threshold	$31.20	$30.89

13. In determining which resources are electrically inside of the NCA and, hence, subject to mitigation, MISO states that the IMM identified the generators with the largest effects on the NCA constraints, as defined by each resources' Generator Shift Factors (GSFs). The GSF indicates what portion of a resource's output will flow over a particular transmission constraint. To identify generators for inclusion in a given NCA, the IMM first identified the most chronically constrained binding constraints (primary constraints) and then determined the relief capability of all units with a negative GSF on each identified primary constraint. Resources were then sorted for each constraint by ascending GSF and tabulated into a cumulative share of relief available at each increasing GSF level. Through this process, the IMM identified a GSF cutoff of 90 percent of the relief capability on each of the constraints and included resources larger than that cutoff in the NCA. The IMM ultimately identified 45 generator nodes for inclusion in the WOTAB NCA and 18 within the Amite South NCA based on this analysis.[18]

14. The IMM notes that power flows, generation commitments and congestion may change significantly upon integration, and states it will therefore continue to review all regions in MISO South to identify changing circumstances, and will adjust the thresholds for NCA mitigation measures to reflect post-integration realities.[19]

15. MISO asserts that the IMM's continued monitoring efforts, its NCA analysis, and the mitigation measures proposed are sufficient to help ensure that market power cannot be exercised and are consistent with the Commission's statements in Order No. 697.[20] It

---

[18] The binding constraints that define the NCA and the NCA generators are listed respectively in Appendices A and B of the Potomac Study.

[19] Transmittal at 9 (citing Potomac Study at 8, 20).

[20] *Id.* at 9-10 (citing *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at PP 4, 241-243, *clarified,* 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order

(continued…)

also notes the Commission's 2008 acceptance of MISO's ancillary services market power analysis as satisfactory under the Commission's required market power analysis, in which the IMM's conduct and impact approach was deemed appropriate to address the market power risks identified.[21] MISO notes that the market monitoring and mitigation measures resulting from that filing are incorporated in Module D of the Tariff to address all of MISO's energy and ancillary services products.

16. MISO asserts that market monitoring and mitigation measures apply to all entities participating in MISO's markets, including those that will be participating as a result of the MISO South integration, and that all new entities will have reference levels established by the IMM pursuant to Module D of the Tariff.[22] In addition, it states that all sellers that will be participating in MISO's markets, including those that will be participating as a result of the MISO South integration, must have market-based rate authority, which requires that the Commission review and approve a market power study performed by the seller, consistent with Order No. 697 and the Commission's implementing regulations.[23] MISO notes that in addition to the NCA designations, the Commission recently accepted market monitoring and mitigation measures for generation resources committed to meet VLR needs,[24] which MISO states provide additional safeguards to prevent the exercise of market power by resources providing voltage and local reliability support.

No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Montana Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Pub. Citizen, Inc. v. FERC*, 133 S. Ct. 26 (2012)).

[21] *Id.* at 10-11 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172 at PP 2, 89 (2008)).

[22] *Id.* at 11 (citing Tariff, Module D, § 64.1.4).

[23] *Id.* (citing 18 C.F.R. § 35.36). We interpret that citation as an attempt to cite another regulatory provision, 18 C.F.R. § 35.37 (2013), which stands for the asserted point.

[24] *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,171 (2012).

17. MISO states that, taken together, MISO's existing portfolio of market monitoring and mitigation measures, including its NCA designations, fully address the potential exercise of market power, consistent with the Commission's market power analysis requirements. MISO states that the IMM also supports the position that existing monitoring and mitigation measures are sufficient and that no additional market power analysis is needed.[25]

18. MISO requests an effective date of December 19, 2013 for the new NCA designations, which is the effective date of the MISO South integration.

II. Notice of Filing and Responsive Pleadings

A. Notice

19. Notice of MISO's filing was published in the *Federal Register*, 78 Fed. Reg. 64,487 (2013), with interventions and protests due on or before November 8, 2013.

20. NRG Companies,[26] Exelon Corp., Wisconsin Electric Power Co., Lafayette Utilities System, ExxonMobil Beaumont Refinery, and Entergy Services, Inc. and its six operating company affiliates filed timely motions to intervene. ExxonMobil Oil Corp. (ExxonMobil) filed a timely motion to intervene and a protest. MISO filed an answer to ExxonMobil's protest.

B. ExxonMobil's Protest

21. ExxonMobil states that it is the owner of the Beaumont Refinery Complex (Beaumont facility) and associated generation facilities near Beaumont, Texas. The IMM found that the Beaumont facility was one of 45 generator nodes that could affect constraints in the WOTAB NCA and should thus be listed among MISO South region generators subject to potential NCA mitigation.[27] ExxonMobil protests MISO's filing to the extent that MISO seeks to apply its mitigation measures for NCAs to the Beaumont facility when the Beaumont facility is selling energy to an interconnected public utility

---

[25] *Id.* (citing Potomac Study at 20).

[26] The NRG Companies are Louisiana Generating LLC, NRG Power Marketing LLC, GenOn Energy Management, LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, NRG Sterlington Power LLC, Cottonwood Energy Company LP and NRG Wholesale Generation LP.

[27] Potomac Study at 19 and Appendix B.

pursuant to section 210 of the Public Utilities Regulatory Policy Act of 1978 (PURPA).[28] ExxonMobil states that the Beaumont facility is a Qualifying Facility under PURPA, and questions its inclusion in Appendix B of the Potomac Study as a generator potentially subject to NCA mitigation.[29]

22. ExxonMobil states that to the extent that the GSF analysis used by the IMM to identify generators with the greatest effect on the WOTAB NCA relied on the Beaumont facility's nameplate capacity of 478 megawatts (MW), it may overestimate the Beaumont facility's effect on the NCA. ExxonMobil first states that when the Beaumont facility is operating, it uses on average, approximately 115 MW of electricity in its refining and chemical processes. According to ExxonMobil, electrical energy used on site is not exported and therefore cannot affect the NCA. Second, if the Beaumont facility's refinery is not operating at full capacity, the turbines are not generating at full capacity because there is no need for the steam. ExxonMobil states that using the Beaumont facility's nameplate rating in the GSF analysis when it is not operating would overstate the effect that the Beaumont facility's turbines can have on the NCA. Third, it contends that when the Beaumont facility is not operating at full capacity, the NCA will experience both reduced load and reduced generation, which should be reflected in the market power analysis.[30]

23. ExxonMobil states that MISO's filing "does not permit Beaumont to understand whether any of these points is appropriate to the GSF analysis."[31] It states that subject to protections for nonpublic information, ExxonMobil is willing to provide detailed information on its operations and sales to the IMM to further refine its analysis and requests that the Commission allow it to question and understand the basis for the Beaumont facility's inclusion in the WOTAB NCA. It states that the Commission should not determine that the Beaumont facility is an NCA resource until ExxonMobil, the IMM and Commission Staff, if willing to participate, have reviewed the assumptions in the GSF analysis, as they relate to the Beaumont facility.

24. ExxonMobil also protests the application of the NCA Tariff provisions to the Beaumont facility's avoided cost sales as a Qualifying Facility. It states that when the Beaumont facility, or any Qualifying Facility, is selling its output to a utility at avoided

---

[28] ExxonMobil Protest at 1, 4 (citing Pub. L. 95-617, 92 Stat. 3117 (November 8, 1978)).

[29] *Id.* at 2.

[30] *Id.* at 4.

[31] *Id*.

cost, it is a price taker and that no conduct or impact threshold can be violated because no offer is placed. ExxonMobil argues that the Commission's regulations do not allow a Qualifying Facility's avoided cost payment to be capped based on a transmission provider's tariff.

25. ExxonMobil states that applying the terms and conditions applicable to NCAs to a Qualifying Facility's avoided cost sales would have the effect of forcing a Qualifying Facility to be a market participant in MISO's markets. ExxonMobil asserts that this would be contrary to the Commission's holding in *Southwest Power Pool, Inc.*, where the Commission declined to compel participation in an energy imbalance market given that participation could "trigger deviation charges for [] QFs exercising their PURPA rights to deliver power to their host utility."[32]

26. In addition, ExxonMobil protests the definition of physical withholding in Module D of the Tariff if applied to Qualifying Facilities. ExxonMobil states that as defined in Tariff section 63.3, physical withholding includes "refusing to provide Offers or schedules for an Electric Facility." It states that this definition is not appropriate for a Qualifying Facility that may choose to sell at avoided cost instead of submitting offers and schedules. It also states that the definition in section 63.3(a)(ii)[33] is particularly inappropriate for the Beaumont facility because the gas turbines may have to be de-rated or even taken offline when a process line is not operating, or is operating at reduced capacity, otherwise there would be excessive steam production. It states that operating the gas turbines without their steam host would violate the Beaumont facility's status as a Qualifying Facility. ExxonMobil requests that the Commission require MISO to revise Module D in this proceeding to "uphold the Commission's rules and regulations for Qualifying Facilities."[34]

C. MISO's Answer

27. In its answer, MISO states that the IMM has confirmed that ExxonMobil's Beaumont facility is appropriately included in the list of generation resources in the WOTAB NCA. It states that while the definition of an NCA does require the expectation of 500 or more binding hours and the presence of a pivotal supplier, which is impacted by the size and dispatch of generators that impact the binding constraints, once the extent of

---

[32] *Id.* at 5 (quoting *Southwest Power Pool, Inc.*, 125 FERC ¶ 61,314, at P 38 (2008) (*SPP*)).

[33] This provision of the Tariff actually concerns economic withholding of a generation resource, not physical withholding.

[34] ExxonMobil Protest at 6.

the NCA is determined, inclusion of individual generators in the NCA is based solely on the electrical properties (e.g., GSFs).[35] It states that the inclusion of the Beaumont facility in the WOTAB NCA is a result of the facility's impact on transmission constraints that define the NCA, and is not impacted by the assumed nameplate capacity of the facility. MISO states that based upon the IMM's analysis, the GSFs associated with the Beaumont facility are highly significant with respect to many of the constraints into the WOTAB NCA.[36]

28. MISO states that the IMM reports the following GSFs derived from modeling data for some of the most significant constraints that define the WOTAB NCA:

Constraint	GSF
Grimes - Mt Zion 138 kV	-5.7%
Mossville - Marshall 138 kV	-10.3%
Nelson AT1 500 / 230 kV	-33.3%
Ppg - Rose Bluff 230 kV	-13.3%

29. MISO states that these relatively large negative GSFs indicate that the Beaumont facility provides substantial relief for these constraints and confirm that the Beaumont facility should be included in the WOTAB NCA.

30. MISO also contends that offer mitigation under the Tariff is not a price cap on sales at avoided cost.[37] MISO states that it understands that the Beaumont facility will operate as a "hybrid" Qualifying Facility (i.e., it will offset its host load with Qualifying Facility generation, and sell the net output of the facility into MISO's markets). It states that pursuant to the Tariff, avoided cost sales to a host utility are accomplished through the use of Financial Schedules which facilitate the settlement of bilateral contracts outside of MISO's market settlement process. If a Market Participant submits a Financial Schedule, MISO states that it will not settle the energy associated with the transaction through its market settlement system; rather, the Market Participant will settle with its counter party (i.e., the host utility) at the agreed price for energy. MISO states that the IMM's mitigation of energy offers submitted in MISO's markets will have no impact on

[35] MISO Answer at 5-6.

[36] *Id.* at 6.

[37] *Id.*

the sale of energy at avoided cost because the price of energy under a Financial Schedule is determined by the parties to the Financial Schedule, not MISO's LMP.[38]

31. In response to ExxonMobil's argument that the application of the MISO NCA market mitigation provisions will force a Qualifying Facility to be a Market Participant in MISO's markets, MISO states that ExxonMobil voluntarily applied for and has been certified as a MISO Market Participant and chose to register the Beaumont facility as a generation resource in MISO's markets. It states that rather than registering its facility as a generator in the MISO market, ExxonMobil could have elected to operate the Beaumont facility as a behind-the-meter Qualifying Facility and continue to "put" power to its host utility. MISO states that such put sales would not be subject to the market monitoring and mitigation measures under Module D of the Tariff since ExxonMobil would not be participating as a Market Participant in MISO's markets.

32. MISO states that as a Market Participant, however, ExxonMobil has agreed to comply with the terms and conditions of the Tariff, including MISO's market monitoring and mitigation provisions in Module D, through execution of the standard form Market Participant Service Agreement, which is Attachment W to the Tariff. It states that the market monitoring provisions of MISO's Tariff do not force a Qualifying Facility to become a Market Participant; rather, these provisions are only applicable to Qualifying Facilities, such as ExxonMobil, that have voluntarily registered as a Market Participant pursuant to MISO's Tariff.

III. Discussion

A. Procedural Matters

33. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

34. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or another answer unless otherwise ordered by the decisional authority. We will accept MISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

35. We find that MISO and the IMM have supported the finding that the two proposed NCAs – Amite South and WOTAB – meet the Tariff's criteria for establishing an NCA,

---

[38] *Id.* at 7.

namely that there are at least 500 constrained hours during a given 12-month period and the existence of at least one pivotal supplier. The data relied upon for these determinations necessarily include a combination of historical, pre-integration operating data for the MISO South region and projections for operations following integration. We also find that the conduct and impact thresholds to apply to the NCAs upon designation have been appropriately calculated.

36. After an earlier designation of NCAs by MISO, the Commission required the IMM, via MISO, to file an informational report summarizing the effectiveness or changes required to the NCA, such as re-defining the NCA with a updated GSF or updating the NCA threshold value to incorporate new net annual fixed costs data, on a yearly basis from the date of that order, or sooner if necessary.[39] As part of the informational reports that have subsequently been filed with the Commission pursuant to that requirement, the IMM has filed updated evaluations of all of MISO's existing NCA designations, including the applicable NCA thresholds, using updated data, summaries of mitigation that was implemented in those NCAs for MISO administered energy markets, and an assessment of the effectiveness of the NCAs.[40]

37. In the circumstances involved in this proceeding, there is a particular need for such information, as the IMM states that it is possible that based upon patterns that emerge after the MISO South region integrates with MISO, alterations to the NCA definitions or thresholds may be needed. Thus, the Commission will require the IMM, through MISO, to file an informational report summarizing the effectiveness or changes required to the new NCAs, such as re-defining the NCAs with updated GSF data or updating the NCAs' threshold values to incorporate new net annual fixed costs data, on a yearly basis from the date of this order, or sooner if necessary. The IMM may combine this analysis for the MISO South region with its existing informational reports for NCAs. This requirement is consistent with Tariff section 63.4.1(a)'s direction to the IMM to evaluate patterns of congestion to determine the constrained areas that should be identified as NCAs on at least an annual basis.

38. We also find that MISO's and the IMM's market power analysis and proposed NCA mitigation measures, in conjunction with the market-wide monitoring and mitigation measures currently in place under Module D of the Tariff, are sufficient to address market power concerns. In Order No. 697, the Commission noted that

---

[39] *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,020, at P 34 (2007).

[40] *See, e.g.*, Informational Filing of Midwest Independent Transmission System Operator, Inc.'s Independent Market Monitor, Docket No. ER07-235-000 (Feb. 21, 2013).

monitoring and mitigation measures accepted by the Commission for regional transmission organizations such as MISO help ensure that market power has been adequately mitigated.[41] With respect to ancillary services, the Commission found that the IMM's ancillary services market power analysis satisfied the Commission's market power analysis requirement.[42] As noted by MISO, the Commission there accepted the IMM's conduct and impact approach as an appropriate approach to address market power risks,[43] and the market monitoring and mitigation measures from that filing were incorporated in Module D of the MISO Tariff. In addition, as MISO notes, the Commission recently accepted MISO's market monitoring and mitigation measures for generation resources committed to meet VLR needs, which will provide additional safeguards to prevent against the exercise of market power by resources providing voltage and local reliability support.[44] The requirement that market-based rate sellers, including Entergy, must satisfy the Commission's standards for market-based rate authority also will assist in addressing potential market power concerns.[45]

39. As for ExxonMobil's protest, ExxonMobil first contends that it cannot determine whether the Beaumont facility was properly included among the list of generating units potentially subject to energy offer mitigation within the NCA. It contends that to the extent that the IMM's analysis relied upon the Beaumont facility's nameplate capacity of 478 MW, it may have overestimated the Beaumont facility's effect on the NCA given the Beaumont facility's use of 115 MW of electricity in refining and chemical processes when it is operating, and the inability of the Beaumont facility to generate and export electrical energy when the Beaumont facility's refinery and chemical operations are not operating at capacity.

---

[41] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 4, 241-43.

[42] *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172, at PP 53-58 (2008).

[43] *Id.* P 89.

[44] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,171 (2012) (conditionally accepting a MISO proposal to mitigate the exercise of market power with regard to offers for resources committed to address VLR issues).

[45] For example, market-based rate sellers are required to file Electric Quarterly Reports and must timely report any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority in accordance with Order No. 697. Order No. 697, FERC Stats. & Regs. ¶ 31,252 at PP 1009-1045 (codifying the requirement, as amended, at 18 C.F.R. § 35.42 (2013)). *See also Entergy Arkansas, Inc.*, 145 FERC ¶ 61,243 (2013)

40. However, we find that the Beaumont facility was appropriately included within the NCA. The Potomac Study and MISO's answer make clear that after the NCA is determined based upon the Tariff factors, the determination of which generators to include in the NCA area was made based solely upon a ranking of GSFs upon the constraints, and not based upon the capacity of the units.[46] We find that MISO's reliance upon a GSF ranking for a determination of which units to include is a just and reasonable approach for determining units subject to inclusion in the NCA and potential mitigation given that the GSF measures the units with the largest effects upon the NCA constraints. We also find persuasive MISO's listing of significant negative GSFs for some of the most significant constraints that define the proposed WOTAB NCA. This approach is also consistent with the Commission's past holdings in this area. In a previous order accepting designation of two NCAs within the MISO footprint,[47] the Commission noted that using a GSF cutoff "to define the NCA is appropriate because it includes the generators most able to avoid or resolve a binding constraint while excluding generators that are unlikely to have a significant impact."[48]

41. ExxonMobil next questions whether energy offer mitigation for generators within an NCA would violate the Beaumont facility's PURPA rights to sell power at avoided costs. ExxonMobil states that applying the terms and conditions applicable to NCAs to a Qualifying Facility's avoided-cost sales would have the effect of forcing a Qualifying Facility to be a market participant, contrary to a previous holding by the Commission.[49]

42. In its answer, MISO states that it has proposed to offer Qualifying Facilities integrating into MISO the opportunity to elect from two options for avoided-cost sales. MISO has stated that under the first option, operating "behind-the-meter," Qualifying Facilities' avoided-cost sales would not be subject to market monitoring and mitigation measures because they would sell all of their output to the host utility and would not be MISO Market Participants.[50]

---

[46] *See* Potomac Study at 18; MISO Answer at 5.

[47] *Midwest Indep. Transmission Sys. Operator, Inc*., 118 FERC ¶ 61,020 (2007).

[48] *Id.* P 30; *see also id.*, Exhibit 1 at ¶ 36 (Affidavit Testimony of David B. Patton, Ph.D).

[49] ExxonMobil Protest at 5 (citing *SPP*, 125 FERC ¶ 61,314).

[50] MISO Answer at 7; *see also Council of the City of New Orleans, Louisiana*, 145 FERC ¶ 61,057, at P 3 (2013).

43. Under the second option, which MISO terms its "hybrid" option, Qualifying Facilities will offset their host load with Qualifying Facility generation, and sell the net output of the facility into MISO's markets.[51] This option, which MISO states ExxonMobil has elected with respect to the Beaumont facility, would allow a Qualifying Facility to participate in the MISO market, and in that case it would be required to comply with all conditions of the Tariff, including mitigation.[52]

44. MISO clarifies, however, that under the hybrid Qualifying Facility option, avoided-cost sales to a host utility would be accomplished through the use of Financial Schedules that facilitate the settlement of bilateral contracts outside of MISO's market settlement process and in a manner not subject to energy offer mitigation. MISO states "the IMM's mitigation of generation offers in MISO's markets will have no impact on the sale of energy at avoided cost because the price of energy under a [Financial Schedule] is determined by the parties to the [Financial Schedule], not MISO's locational marginal price or 'LMP.'"[53] Thus, MISO's explanations of its options indicate that under either option, behind-the-meter or hybrid, a Qualifying Facility's sales at an agreed-upon rate or avoided cost to host utilities would not be subject to energy offer mitigation.[54]

45. Finally, we reject ExxonMobil's protest of parts of the definition of physical withholding in section 63.3 of Module D of the Tariff if they are applied to Qualifying Facilities. We find this matter outside the scope of this proceeding, which concerns designation of NCAs under the Tariff and consideration of MISO's related market power analysis. ExxonMobil must file a complaint if it wishes to change a definition in a filed rate previously accepted by the Commission.[55]

---

[51] *See* MISO Answer at 6.

[52] *Id.* at 6-7.

[53] *Id.* at 7. An agreed-to rate, such as a rate under a Financial Schedule, satisfies the avoided cost requirements of PURPA and the Commission's regulations. 18 C.F.R. § 292.301(b) (2013).

[54] It is not clear from MISO's answer how it defines "host utility." We note that Qualifying Facility sales pursuant to the PURPA mandatory purchase requirement are not limited to the directly connected utility. In any event, it appears that such sales by ExxonMobil will be made pursuant to Financial Schedules, which are outside of MISO's settlement system and not subject to mitigation.

[55] *See United Illuminating Co.*, 107 FERC ¶ 61,003, at P 28 (2004) ("If [Cross-Sound Cable Company] wants to challenge the tariff, it must file a complaint. It cannot challenge the lawfulness of the filed rate except through a section 206 complaint.").

<u>The Commission orders</u>:

(A) MISO's designation of two new NCAs is accepted for filing, as discussed in the body of this order, effective December 19, 2013.

(B) MISO is directed to require the IMM to submit informational reports regarding the two new NCAs within one year of the date of this order and annually thereafter, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.