

161 FERC ¶ 61,268
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

Midcontinent Independent System Operator, Inc.

Docket No. ER17-2097-001

ORDER ACCEPTING TARIFF REVISIONS

(Issued December 21, 2017)

1. On July 14, 2017 (July 14 Filing), as amended on October 6, 2017, Midcontinent Independent System Operator, Inc. (MISO) submitted, pursuant to section 205 of the Federal Power Act (FPA),¹ revisions to the market power mitigation measures in its Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff) to establish Dynamic Narrow Constrained Areas (Dynamic NCAs). In this order, we accept MISO's proposed Tariff revisions, effective January 4, 2018.

I. Background

2. Under MISO's existing Tariff provisions, MISO applies mitigation measures to address locational market power resulting from transmission congestion that can occur in Narrow Constrained Areas (NCAs) and Broad Constrained Areas (BCAs). An NCA is an electrical area identified by MISO's Independent Market Monitor (Market Monitor) that is defined by one or more Binding Transmission Constraints or Binding Reserve Zone Constraints that are expected to bind for at least 500 hours during a 12-month period and contain at least one pivotal supplier.² A BCA is an electrical area in which sufficient competition usually exists even when there are one or more Binding Transmission Constraints or Binding Reserve Zone Constraints, or into which these constraints bind

¹ 16 U.S.C. § 824d (2012).

² MISO, FERC Electric Tariff, Module D, § 63.4.1.b (34.0.0).

infrequently, but within which a transmission or reserve constraint can result in substantial locational market power under certain market or operating conditions.³

3. In NCAs and BCAs, MISO's Market Monitor applies conduct and impact tests to energy and ancillary services offers to determine whether to apply mitigation measures. A resource offer that fails both the conduct and impact tests may be subject to mitigation measures.⁴ Under the conduct test, the Market Monitor identifies economic or physical withholding or uneconomic production by assessing whether any component of a resource's offer differs from its reference level by at least the applicable conduct threshold amount.⁵ Reference levels are intended to reflect a resource's marginal costs, including legitimate risk and opportunity costs, or justifiable technical characteristics for physical offer parameters, and are determined for each offer parameter pursuant to the MISO tariff.⁶ Under the impact test, the Market Monitor applies impact thresholds to assess whether the conduct at issue causes a change in one or more market clearing prices, or day-ahead or real-time Revenue Sufficiency Guarantee payments, by an amount that exceeds the applicable impact threshold.⁷

II. July 14 Filing and Deficiency Letter Response

4. In the July 14 Filing, MISO states that its proposal would allow MISO to implement a third type of constrained area called a Dynamic NCA. According to MISO, a Dynamic NCA is intended to address situations of severe transitory congestion that are not currently accounted for under MISO's existing market power mitigation provisions for BCAs or NCAs.⁸ For example, MISO explains that although a given transmission constraint is not expected to bind for a total of 500 hours or more in a given year based

³ *Id.* § 63.4.2.a (31.0.0).

⁴ *Id.* §§ 64.3 (31.0.0), 65.1 (31.0.0).

⁵ *Id.* §§ 64.1.1 (37.0.0), 64.1.2 (38.0.0), 64.1.3 (34.0.0).

⁶ *Id.* § 64.1.4 (46.0.0).

⁷ *Id.* § 64.2.1 (36.0.0). A Revenue Sufficiency Guarantee credit is a make-whole payment provided to certain resources when the sum of revenue from Locational Marginal Prices (LMPs) and Marginal Clearing Prices does not fully cover the incremental energy offer costs, production costs, and/or operating reserve costs of such resources. *See id.*, Module A, §§ 1.D (42.0.0), 1.R (46.0.0), Module C, §§ 39.3.2B (44.0.0), 40.3.5 (30.0.0).

⁸ MISO July 14 Filing at 4.

on historical data, thus not warranting an NCA designation, that constraint can ultimately bind over shorter periods at a rate that exceeds 500 hours per year (e.g., at a rate greater than approximately 9.6 hours per week). MISO states that its current market power mitigation provisions for NCAs would not be applicable to offers that affect such a constraint, even if the constraint raises significant locational market power concerns. MISO adds that even if a given area is expected to be affected by a constraint that binds in 500 or more hours in a given year, locational market power could still exist and be exercised before an adequate record can be completed to support a filing that establishes an NCA in the area. Similarly, MISO states that Dynamic NCAs are designed to address constraints that are too severe to be addressed by BCA mitigation.⁹ MISO's Market Monitor explains that BCA mitigation has more lenient mitigation thresholds, as compared to NCA mitigation, and is effective for addressing only sporadic congestion under normal conditions that can arise on the MISO system.¹⁰

5. MISO proposes to designate a new Dynamic NCA when: (1) transmission constraints into the electrical area have bound for at least 15 percent of the hours during the last five days, or a transmission and/or generation outage or re-occurring condition that had previously caused a binding transmission constraint during at least 15 percent of the hours during a continuous five day period begins; and (2) the conduct and impact tests have been satisfied by one or more resources in an electrical area affecting the binding transmission constraint.¹¹ In addition, MISO proposes to terminate a Dynamic NCA designation when: (1) the outages or other conditions causing the binding transmission constraint(s) defining the Dynamic NCA have been resolved; or (2) no mitigation has occurred in the Dynamic NCA during the prior 30 days.¹²

6. Under MISO's proposal, to both establish a Dynamic NCA and apply associated mitigation measures in the associated area, MISO would use the applicable conduct and impact thresholds to identify any offers that should be mitigated to that resource's reference level.¹³ In several instances, MISO proposes to apply existing BCA and/or

⁹ *Id.*

¹⁰ Patton Affidavit at 4-5.

¹¹ MISO July 14 Filing at 4-5; MISO, FERC Electric Tariff, Module D, § 63.4.1.i (36.0.0).

¹² MISO July 14 Filing at 6-7.

¹³ In the event that a binding transmission constraint defines both an NCA and a Dynamic NCA, MISO proposes that the lower of the applicable conduct or impact thresholds would apply.

NCA thresholds in Dynamic NCAs, including certain existing conduct thresholds for identifying uneconomic production and physical withholding.¹⁴ MISO proposes to identify economic withholding in Dynamic NCAs by using the existing NCA conduct thresholds, with the exception of incremental energy and minimum generation offers. In particular, MISO currently applies a formula in NCAs to determine the conduct threshold for identifying economic withholding in energy and minimum generation offers and to determine the impact threshold for identifying a substantial impact on LMPs.¹⁵ For the economic withholding conduct test for incremental energy and minimum generation offers in Dynamic NCAs, MISO proposes to apply a \$25/MWh threshold.¹⁶ MISO also proposes to apply a \$25/MWh impact threshold to identify a substantial effect on LMPs in Dynamic NCAs.

7. MISO states that the proposed \$25/MWh Dynamic NCA threshold for identifying economic withholding conduct in incremental energy and minimum generation offers and for identifying LMP impacts is lower than the corresponding BCA conduct and impact thresholds,¹⁷ and is at the low range of the current corresponding NCA thresholds, which range from \$25.88/MWh to \$100/MWh.¹⁸ MISO asserts that it is reasonable to set the proposed \$25/MWh Dynamic NCA thresholds for identifying certain economic withholding conduct and LMP impacts at the low end of the current corresponding NCA thresholds because a Dynamic NCA is expected to be congested in more than 15 percent of the hours during which it is designated, as compared to the standard used for NCAs, which is approximately 6 percent of hours.¹⁹ MISO further contends that the proposed \$25/MWh Dynamic NCA thresholds are comparable to an existing BCA and NCA

¹⁴ *Id.* at 9.

¹⁵ This NCA formula divides the annual fixed costs of a new peaking generation per MW by the total number of hours over the prior 12 months in which a binding transmission or reserve zone constraint occurred within the relevant area, not to exceed 2000 hours.

¹⁶ *Id.*

¹⁷ In BCAs, energy and minimum generation offers must be at least \$25/MWh and must exceed a resource's reference level by the lower of 300 percent or \$100/MWh to satisfy the conduct test for economic withholding. The impact threshold to determine an impact on LMPs in BCAs is an increase of 200 percent or \$100/MWh. MISO, FERC Electric Tariff, Module D, §§ 64.1.2.a (38.0.0), 64.2.1.b (36.0.0).

¹⁸ MISO July 14 Filing at 5.

¹⁹ *Id.*

threshold for Revenue Sufficiency Guarantee payments,²⁰ and that the Commission has approved \$25/MWh conduct and impact thresholds for similar market power mitigation measures in ISO New England, Inc. (ISO-NE).²¹

8. MISO states that when Dynamic NCAs are declared or removed, appropriate notifications will be posted using the existing Automated Mitigation Procedures interfaces on the MISO Portal and/or the MISO Communications System. MISO states that such notifications will identify the transmission constraint and Commercial Pricing Node(s) included in the Dynamic NCA. MISO adds that notifications in the form of XML messages will also be sent to affected market participants if the offers of their generation resources in a Dynamic NCA are mitigated.²²

9. MISO contends that establishing Dynamic NCAs will properly mitigate the risk that resources exercise market power during transitory but significant transmission constraints that are not currently addressed by existing BCA and NCA mitigation measures. MISO provides an analysis from its Market Monitor to support the need for Dynamic NCAs. In this analysis, the Market Monitor applied the proposed Dynamic NCA criteria to real-time energy market outcomes in MISO during 2015 and 2016 and found that 25 Dynamic NCAs would have been declared under MISO's instant proposal. The transmission constraints that would have resulted in 25 Dynamic NCA designations had an average duration of 9 days, average LMP impacts ranging from \$6.50/MWh to \$424/MWh, and maximum LMP impacts ranging from \$105/MWh to \$1,400/MWh.²³

10. On September 6, 2017, Commission staff issued a deficiency letter requesting additional information regarding MISO's proposal, and on October 6, 2017, MISO submitted its response (Deficiency Letter Response). Among other things, MISO's Deficiency Letter Response: (1) clarifies that a Dynamic NCA can be designated in the

²⁰ In BCAs and NCAs, economic withholding of a resource may warrant mitigation of day-ahead or real-time Revenue Sufficiency Guarantee payments if the generation offer results in an increase in a resource's production costs and operating reserve costs that exceeds the greater of \$25/MWh or 25 percent from the resource's applicable reference levels or if the resource satisfies certain conduct thresholds associated with uneconomic production. MISO proposes that this requirement would also apply in Dynamic NCAs. MISO, FERC Electric Tariff, Module D, § 64.1.2.f (40.0.0).

²¹ MISO July 14 Filing at 5.

²² *Id.* at 7.

²³ *Id.*

same area where a standard NCA already exists; (2) provides a full list of the categories of conduct and the associated conduct and impact thresholds applicable to designating Dynamic NCAs and mitigation; and (3) provides more information on the Market Monitor's procedures for re-designating a previously designated Dynamic NCA. MISO's Deficiency Letter Response also amends its proposed Tariff to remove erroneous or confusing references to internal Tariff provisions and clarifies certain Tariff provisions.²⁴

11. MISO requests an amended effective date for the proposed Tariff revisions of January 4, 2018.²⁵

III. Notices and Responsive Pleadings

12. Notice of MISO's July 14 Filing was published in the *Federal Register*, 82 Fed. Reg. 33,902 (2017), with interventions and protests due on or before August 4, 2017. NRG Power Marketing LLC and GenOn Energy Management, LLC (NRG Companies); Entergy Services, Inc. (Entergy);²⁶ Xcel Energy Services Inc. (Xcel);²⁷ American Municipal Power, Inc.; Exelon Corporation; Ameren Services Company (Ameren);²⁸ Wisconsin Electric Power Company; and Cooperative Energy filed timely motions to intervene. Midwest Municipal Transmission Group, Great Lakes Utilities, WPPI Energy, Southern Minnesota Municipal Power Agency, Missouri River Energy Services, and Missouri Joint Municipal Electric Utility Commission (collectively, Midwest TDUs) filed a timely motion to intervene and comments. On August 4, 2017, NRG Companies filed comments and a limited protest of MISO's July 14 Filing. On August 22, 2017, MISO filed a motion for leave to answer and answer to NRG Companies' comments and limited protest. On August 25, 2017, Entergy filed a motion for leave to answer and answer to NRG Companies' comments and limited protest.

²⁴ MISO Deficiency Letter Response at 1-14.

²⁵ *Id.* at 13.

²⁶ Entergy filed on behalf of Entergy Arkansas, Inc., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc.

²⁷ Xcel filed on behalf of Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation.

²⁸ Ameren filed on behalf of Ameren Illinois Company, Ameren Transmission Company of Illinois, and Union Electric Company.

13. Notice of MISO's Deficiency Letter Response was published in the *Federal Register*, 82 Fed. Reg. 48,070 (2017), with interventions and protests due on or before October 27, 2017. None was filed.

IV. Comments, Protests, and Answers

14. Midwest TDUs support the proposal and note that the need for Dynamic NCAs was first identified in the Market Monitor's 2012 State of the Market Report.²⁹ Midwest TDUs assert that the proposed \$25/MWh Dynamic NCA thresholds and process for initiating and terminating Dynamic NCAs are reasonable, well-designed to achieve the focused goal, and are amply justified by MISO and the Market Monitor. Midwest TDUs further state that the proposal addresses a real concern and that MISO has empirically demonstrated that the application of Dynamic NCA mitigation could have mitigated substantial offers in 2015 and 2016. Midwest TDUs contend, therefore, that the proposed Tariff revisions to establish Dynamic NCAs are necessary and appropriate to enable the Commission to fulfill its statutory obligation to protect consumers from excess rates, and that while further mitigation may be warranted in the future to protect against the exercise of market power, MISO's proposal is an important step in the right direction.³⁰

15. NRG Companies filed comments on MISO's proposal and a limited protest to the \$25/MWh Dynamic NCA thresholds for use in MISO South. NRG Companies argue that the Commission should require MISO to address the underlying cause of congestion in MISO, which NRG Companies attribute to flaws in MISO's outage coordination process. NRG Companies note that, according to MISO, the basis for the designation of the proposed Dynamic NCA is the existence of severe transitory congestion in MISO. However, NRG Companies state that transmission and generation outages are the main cause for congestion across MISO, and a large percentage of the outages causing the congestion are planned outages *pre-approved* by MISO.³¹ According to NRG Companies, if MISO considered the economic impact of outages in its outage approval process, then congestion and the alleged need for Dynamic NCAs would substantially decrease. NRG Companies argue that MISO does not currently have the ability to deny or postpone planned outages for economic reasons and can only do so for reliability reasons. As a result, NRG Companies claim that MISO's inability to meaningfully review and reschedule outage requests exacerbates congestion in MISO. NRG Companies argue that if the Commission adopts MISO's Dynamic NCA proposal, the

²⁹ Midwest TDUs Comments at 4.

³⁰ *Id.* at 4-6.

³¹ NRG Companies Protest at 9.

Commission should also require MISO to take further steps to address the underlying cause of congestion in MISO.³²

16. NRG Companies state that if the Commission is inclined to adopt MISO's proposal, then NRG Companies protest the proposed \$25/MWh conduct and impact thresholds for Dynamic NCAs.³³ According to NRG Companies, MISO's justifications for its proposal fail to take into consideration the significant differences between MISO North³⁴ and MISO South and fail to recognize that MISO does not operate as one cohesive Independent System Operator (ISO). NRG Companies contend that MISO does not justify the application of \$25/MWh thresholds in Dynamic NCAs in MISO South. NRG Companies assert that while a \$25/MWh threshold is comparable to current conduct and impact thresholds in MISO North NCAs, \$25/MWh is far below the two current MISO South NCA thresholds, which are \$64.49/MWh in the WOTAB NCA and \$100.00/MWh in the AMITE South NCA.³⁵ NRG Companies argue that the NCA thresholds in MISO South are higher than those in MISO North because the NCA thresholds are based off of the number of constrained hours in the NCA and the two MISO South NCAs had a substantially lower number of constrained hours as compared to the MISO North NCAs.³⁶ NRG Companies state that when NCA mitigation was initially implemented, both MISO and its Market Monitor recognized the importance of establishing NCA thresholds that decline as congestion increases.³⁷ NRG Companies argue that, just as different NCA thresholds reflect the characteristics of their sub-regions, MISO should adopt different Dynamic NCA thresholds for each MISO sub-region (i.e., MISO South and MISO North).³⁸

³² *Id.* at 9-11.

³³ *Id.* at 2.

³⁴ We interpret "MISO North" as a reference to MISO Midwest, which is the portion of the MISO footprint that excludes MISO South.

³⁵ *Id.* at 11-12.

³⁶ *Id.* at 12.

³⁷ *Id.* at 13 (citing Midwest Indep. Transmission System Operator, Inc. and Indep. Market Monitor Dr. David B. Patton, Joint Filing of the Midwest ISO Market Mitigation Measures, Docket No. ER03-323-000, at 14 (filed Dec. 2002)).

³⁸ *Id.*

17. NRG Companies further argue that MISO's attempt to justify the proposed \$25/MWh Dynamic NCA thresholds by comparing them to other markets is unsupported.³⁹ NRG Companies explain that while ISO-NE and the New York Independent System Operator, Inc. (NYISO) may have similar mitigation thresholds to MISO, ISO-NE and NYISO: (1) do not have the same congestion issues as MISO; and (2) operate as unified markets, while MISO does not. NRG Companies state that the value of MISO's real-time congestion in 2016 was \$1.4 billion,⁴⁰ as compared to \$529 million of real-time congestion in NYISO in 2016⁴¹ and \$38.9 million of both real-time and day-ahead congestion in ISO-NE in 2016.⁴² NRG Companies argue that a review of the substantial litigation over the MISO North/MISO South constraint indicates that MISO does not operate as a cohesive ISO. According to NRG Companies, MISO cannot merely point to the thresholds in strikingly different ISOs and suggest that it is sufficient justification to support the same thresholds in MISO North and MISO South.⁴³

18. Lastly, NRG Companies argue that placing unduly low thresholds on MISO South regions without justification may prevent generators from recovering their actual costs on a highly congested system. NRG Companies state that the Commission recognized the importance of not over-mitigating resource offers when it first accepted the formula MISO uses to calculate the thresholds used in NCAs.⁴⁴ Specifically, NRG Companies argue that the Commission rejected arguments to lower the NCA thresholds, finding that the proposed (now current) calculation of the NCA thresholds provided "a careful balance between the need to mitigate market power and to provide an efficient incentive to invest."⁴⁵ NRG Companies argue that the \$25/MWh thresholds MISO proposes to use

³⁹ *Id.*

⁴⁰ *Id.* (citing MISO Independent Market Monitor, MISO Board Markets Committee, *Summary of 2016 MISO State of the Market Report* at 6 (July 20, 2017)).

⁴¹ *Id.* at 13-14 (citing Market Monitoring Unit for the New York ISO, *2016 State of the Market Report for the New York ISO Markets* at 20 (May 2017)).

⁴² *Id.* at 14 (citing ISO New England Inc. Internal Market Monitor, *ISO New England's Internal Market Monitor 2016 Annual Markets Report* at 90 (May 30, 2017)).

⁴³ *Id.*

⁴⁴ *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 316 (2004) (TEMT II Order) (internal citations omitted)).

⁴⁵ *Id.* (citing TEMT II Order, 108 FERC ¶ 61,163 at P 317 (internal citations omitted)).

for Dynamic NCAs in both MISO North and MISO South fail to account for the significant differences between these sub-regions and may not allow suppliers to recover the costs that are incurred to relieve binding constraints.⁴⁶

19. In its answer to NRG Companies' protest, MISO argues that the cause of transitory congestion in MISO's system is irrelevant and that the Dynamic NCA proposal is intended to recognize and remedy the substantial market power that can be exercised in periods with severe and transitory congestion. As such, MISO contends that NRG Companies' argument about the root causes of transmission congestion in MISO do not provide a basis for rejecting the Dynamic NCA proposal.⁴⁷ MISO adds that even if the Commission were to agree with NRG Companies and require MISO to address the underlying causes of congestion on MISO's system, the Commission should still accept the proposal because the exercise of market power, which could be substantial, should be mitigated regardless of its underlying cause.⁴⁸ MISO contends that the Market Monitor supports MISO's proposal and regards it as complementary to the efforts to address congestion and market power. MISO states that although it continually seeks ways to reduce congestion, these efforts do not remove the need to effectively mitigate local market power. MISO asserts that the Commission should accept the Dynamic NCA proposal because it would enable MISO and the Market Monitor to effectively detect, prevent, and mitigate market power that results from constraints that are not yet accounted for under current Tariff provisions for BCAs and NCAs.⁴⁹

20. Regarding NRG Companies' protest of the proposed level for certain Dynamic NCA conduct and impact thresholds (i.e., \$25/MWh), MISO asserts that \$25/MWh is supported by both reason and precedent. MISO states that the \$25/MWh figure was not derived from the formula approved for NCAs because it is not possible to use such a formula for transitory congestion. However, MISO contends that the proposed \$25/MWh level is comparable with the conduct and impact threshold used in MISO's more chronically constrained NCAs.⁵⁰

21. In its answer to NRG Companies' protest, Entergy disputes NRG Companies' assertion that MISO has failed to integrate into one cohesive market, arguing that MISO

⁴⁶ *Id.* at 14-15.

⁴⁷ MISO Answer at 3.

⁴⁸ *Id.* at 4.

⁴⁹ *Id.* at 4-5.

⁵⁰ *Id.* at 5-6.

operates as a single energy and ancillary services market across its entire footprint.⁵¹ Entergy argues that the presence of congestion does not indicate that the MISO market is inefficient or not fully integrated. Entergy states that to meet its regional planning obligations, MISO compares congestion costs with the costs of new transmission facilities to determine whether to build such facilities, and if the costs of a new transmission facility exceed the cost of congestion, then the efficient result is to incorporate the congestion into market clearing prices and not build the facility.⁵²

22. Entergy argues that NRG Companies fail to demonstrate why MISO's alleged lack of a single cohesive market means that MISO must propose tariff changes that give it authority to revoke, for economic reasons, permission for planned generation and transmission outages. Entergy contends that there is no connection between the presence or absence of one cohesive market and MISO's coordination of planned generation and transmission outages.⁵³

23. Entergy disputes NRG Companies' argument that MISO South is extremely congested, noting that MISO South congestion is consistently less than one-third of MISO's total congestion. Entergy also contends that NRG Companies' comparisons to congestion levels in ISO-NE and NYISO are not apt because MISO is geographically much larger and serves three times the load served by either of those markets.⁵⁴

24. Entergy argues that NRG Companies have no authority to make a proposal to change the MISO Tariff. Entergy states that only MISO or other entities with FPA section 205 filing rights can propose changes to its Tariff. Entergy contends that NRG Companies must meet the burden under section 206 of the FPA to show that the existing provisions related to transmission and generation outage scheduling are unjust and unreasonable. Further, Entergy asserts that the Commission has held that a protest in a section 205 proceeding does not expand the scope of the proceeding nor can it convert a section 205 filing to a section 206 complaint.⁵⁵

⁵¹ Entergy Answer at 3-4.

⁵² *Id.* at 4-5.

⁵³ *Id.* at 8-9.

⁵⁴ *Id.* at 9.

⁵⁵ *Id.* at 9-10 (citing *Southern Co. Servs., Inc.*, 116 FERC ¶ 61,070, at P 26 (2006)).

25. Finally, Entergy asserts that there is no record to support a change to MISO's outage coordination authority and disputes NRG Companies' argument that "[t]ransmission and generation outages are the main cause for the high congestion across MISO."⁵⁶ Entergy argues that planned outages are one of the many causes of congestion, noting that the Commission has a pending complaint by the Market Monitor regarding congestion associated with MISO resources that are pseudo-tied with PJM Interconnection, L.L.C.⁵⁷ Entergy states that any Commission action to address congestion in MISO should focus on this pending complaint, which Entergy states was filed pursuant to proper Commission procedures.⁵⁸

V. Discussion

A. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

28. We find MISO's proposal to be just and reasonable and accept MISO's proposed Tariff revisions, effective January 4, 2018, as requested. Establishing Dynamic NCAs will improve MISO's current market power mitigation procedures by providing an additional means to limit the exercise of market power during periods of transient but severe congestion. As the Market Monitor explains, severe congestion associated with transitory transmission constraints in locations outside of existing NCAs may provide opportunities for the exercise of market power that the market power mitigation thresholds applicable within BCAs were not designed to address. MISO's Dynamic NCA proposal will strengthen its existing market power mitigation measures and ensure

⁵⁶ *Id.* at 10 (citing NRG Companies Protest at 9).

⁵⁷ *Id.* at 11 (citing Potomac Economics, Ltd, Complaint, Docket No. EL17-62-000 (filed Apr. 5, 2017)).

⁵⁸ *Id.*

that the potential exercise of market power during such transitory conditions is properly mitigated.⁵⁹

29. We find NRG Companies' argument that MISO should modify its generation and transmission outage coordination process to address a potential underlying cause of transitory congestion in the MISO region to be outside the scope of this proceeding. MISO's proposal focuses on preventing resources from exercising market power due to certain transitory conditions in the MISO region, not the underlying causes of those conditions or potential modifications to MISO's outage coordination process. If NRG Companies believe that MISO's Tariff is unjust and unreasonable with respect to MISO's process for approving planned outages, they may raise this issue in the MISO stakeholder process and/or file a complaint with the Commission pursuant to section 206 of the FPA.

30. We reject NRG Companies' argument that the proposed \$25/MWh Dynamic NCA thresholds for identifying economic withholding conduct in incremental energy and minimum generation offers and for identifying LMP impacts are not just and reasonable because of differences between MISO Midwest and MISO South. NRG Companies' arguments regarding the cohesiveness of MISO as a whole is not germane to this proceeding; rather, MISO's proposal focuses on mitigating market power that may arise due to transitory congestion. NRG Companies do not demonstrate how distinctions between MISO Midwest and MISO South could manifest as lower market power risks within Dynamic NCAs in MISO South or otherwise necessitate the application of higher Dynamic NCA mitigation thresholds in MISO South. Although NRG Companies argue that the proposed thresholds are too low for MISO South, these thresholds still enable a resource to submit incremental energy and minimum generation offers that exceed its applicable reference level by up to \$25/MWh, and to impact LMPs by up to \$25/MWh. We do not find that these \$25/MWh conduct and impact thresholds are unreasonably low in a competitive market where resources are expected to submit offers equal to their short-run marginal costs. Further, as MISO maintains, the proposed \$25/MWh thresholds are justified because they are comparable to the current thresholds in MISO's most chronically-constrained NCAs, and MISO's Market Monitor expects Dynamic NCAs to exhibit severe and chronic congestion during periods when they are designated.⁶⁰ Accordingly, we find that the proposed Dynamic NCA thresholds are just and reasonable.

⁵⁹ Patton Affidavit at 3, 5-6.

⁶⁰ *Id.* at 10. The Market Monitor notes that the Dynamic NCA designation requirement that transmission constraints must have bound for at least 15 percent of the hours during a five-day period is equivalent to a rate of 1,300 hours per year, which is more than twice the minimum annual rate of 500 hours per year required for designating an NCA. *Id.*

The Commission orders:

MISO's proposed Tariff revisions are hereby accepted for filing, effective January 4, 2018, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.