

125 FERC ¶ 61,156
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Jon Wellinghoff.

Midwest Independent Transmission
System Operator, Inc.

Docket Nos. ER04-691-088
ER04-691-089

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued November 7, 2008)

1. On November 5, 2007, the Commission issued an order on the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) April 17, 2007 compliance filing regarding its proposal to allocate real-time Revenue Sufficiency Guarantee (RSG) costs.¹ The Commission conditionally accepted the Midwest ISO's compliance filing and provided guidance about the proper interpretation of the existing tariff provisions.

2. In this order, the Commission addresses requests for clarification and/or rehearing of the Second Compliance Order. The Commission also accepts in part and rejects in part the Midwest ISO's December 5, 2007 compliance filing, which was made in response to the Second Compliance Order. This order further clarifies the provisions of the Revenue Sufficiency Guarantee charge in effect since market start and the effective date for refunds.

I. Background

3. Section 40.3.3 of the Midwest ISO Open Access Transmission and Energy Markets Tariff (tariff) charges market participants withdrawing energy in the real-time energy market a real-time Revenue Sufficiency Guarantee charge based on their virtual supply offers and real-time load, injection, export and import deviations. The purpose of the Revenue Sufficiency Guarantee charge is to ensure that any generator scheduled or dispatched by the Midwest ISO after the close of the day-ahead energy market – either

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,132 (2007) (Second Compliance Order).

through the Reliability Assessment Commitment or the real-time energy market – will receive no less than its offer price for start-up, no-load and incremental energy. Revenue Sufficiency Guarantee credits are paid to units in the Reliability Assessment Commitment or in the real-time market that do not earn sufficient real-time energy revenues to cover start-up and no-load costs.

4. This proceeding began on March 31, 2004 with the Midwest ISO's proposal to delete a reference to virtual supply offers from the tariff provision governing the real-time Revenue Sufficiency Guarantee. The effect of the proposed change would have been that Revenue Sufficiency Guarantee costs would not have been allocated to virtual supply offers.

5. On April 25, 2006, the Commission issued an order rejecting the Midwest ISO's proposal to remove references to virtual supply from the tariff provisions related to calculating Revenue Sufficiency Guarantee charges.² The Commission further found that because the Midwest ISO had not been including virtual supply offers in its Revenue Sufficiency Guarantee calculations, it had violated its tariff and must make appropriate refunds.³

6. The First Rehearing Order affirmed the Initial Order's rejection of the Midwest ISO proposal to not allocate Revenue Sufficiency Guarantee costs to virtual supply offers. It required the Midwest ISO to determine the amount of Revenue Sufficiency Guarantee costs caused by virtual supply offers and to resubmit a proposal to allocate Revenue Sufficiency Guarantee costs to virtual supply offers based on a cost-causation analysis. The First Rehearing Order required the Midwest ISO to make tariff revisions, including specification of a tolerance band that would be used in determining liability for Revenue Sufficiency Guarantee charges and eligibility for Revenue Sufficiency Guarantee credits. It clarified that refunds would be required for Revenue Sufficiency Guarantee charges incorrectly assessed to imports and for incorrect assessments of Revenue Sufficiency Guarantee charges and credits for deviations from dispatch instructions. In addition, the requests for rehearing of the Initial Order persuaded the Commission to change course and exercise its equitable discretion not to require refunds

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 115 FERC ¶ 61,108, at P 48-49 (Initial Order), *order on reh'g*, 117 FERC ¶ 61,113 (2006) (First Rehearing Order), *order on reh'g*, 118 FERC ¶ 61,212 (Second Rehearing Order), *order on reh'g*, 121 FERC ¶ 61,131 (2007) (Third Rehearing Order).

³ Initial Order, 115 FERC ¶ 61,108 at P 26.

for the Midwest ISO's failure to include virtual supply offers in its calculation of Revenue Sufficiency Guarantee charges.⁴

7. On March 15, 2007, the Commission denied rehearing of the First Rehearing Order with regard to allocating Revenue Sufficiency Guarantee charges to virtual supply offers. The Commission reiterated that "the Midwest ISO's tariff requires allocation of Revenue Sufficiency Guarantee costs to virtual supply offers, and . . . the Midwest ISO violated its tariff by failing to do so. There no longer seems to be any dispute that this is how the tariff should properly be read."⁵ The Commission then revisited the issue of whether to exercise its discretion to require refunds, and, based on a balancing of equities, reaffirmed its prior decision not to impose refunds.⁶ Also on March 15, 2007, the Commission rejected the Midwest ISO's proposal to allocate costs based on net virtual offers, *i.e.*, virtual offers minus virtual bids, and required the Midwest ISO to: (1) reinsert language requiring the actual withdrawal of energy by market participants; (2) either revise the tariff language to reflect partial-hour Security Constrained Unit Commitment instructions or provide an explanation of its efforts to incorporate this refinement in its software development; (3) correct the citation for the definition of real-time Revenue Sufficiency Guarantee; and (4) provide revisions, including the reference to Unit Dispatch System, for the definitions of economic maximum and minimum dispatch. The Commission also clarified that the then-currently-effective tariff, which allocated Revenue Sufficiency Guarantee costs to virtual supply offers, remained in effect.⁷

8. On November 5, 2007, the Commission denied requests for rehearing of the Second Rehearing Order and the First Compliance Order.⁸ In a concurrently-issued order, the Commission conditionally accepted the Midwest ISO's April 17, 2007 proposed tariff sheets, filed to comply with the First Compliance Order.⁹ The Commission found that the Midwest ISO's April 17, 2007 compliance filing and

⁴ First Rehearing Order, 117 FERC ¶ 61,113 at P 92-96.

⁵ Second Rehearing Order, 118 FERC ¶ 61,212 at P 88 (internal citation omitted).

⁶ *Id.* P 88-98.

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,213 (First Compliance Order), *order on reh'g*, Third Rehearing Order, 121 FERC ¶ 61,131 (2007).

⁸ Third Rehearing Order, 121 FERC ¶ 61,131 (2007).

⁹ Second Compliance Order, 121 FERC ¶ 61,132 (2007).

revisions proposed by the Midwest ISO complied with the Commission's directives. However, the Commission required the Midwest ISO to make a further compliance filing to include the term "aggregate" to the denominator of the per-unit Revenue Sufficiency Guarantee rate.¹⁰

9. On December 5, 2007, the Midwest ISO made a filing to comply with the Second Compliance Order (December 5, 2007 Compliance Filing).

II. Notice of Filing and Responsive Pleadings

10. Requests for clarification and/or rehearing of the Second Compliance Order were filed by: Ameren Services Company, Wisconsin Electric Power Company and Northern Indiana Public Service Company (collectively, Ameren/Wisconsin Electric/NIPSCO); EPIC Merchant Energy, LP and SESCO Enterprises LLC (collectively, EPIC/SESCO); the Integrys Energy Group, Inc. companies¹¹ (Integrys); Lehman Brothers Commodity Services, Inc. and Credit Suisse Energy LLC (collectively, the Financial Participants);¹² Otter Tail Power Company (Otter Tail); Wabash Valley Power Association, Inc. (Wabash)¹³ and Wisconsin Electric Power Company (Wisconsin Electric).

11. Otter Tail Power Company (Otter Tail) filed an answer to the requests for rehearing of Ameren/Wisconsin Electric/NIPSCO and Integrys.

12. Notice of the December 5, 2007 Compliance Filing was published in the *Federal Register*, 72 Fed. Reg. 73,016 (2007), with interventions and protests due on or before December 26, 2007. Comments and protests were filed by: Ameren Services Company

¹⁰ *Id.* P 23.

¹¹ For purposes of their filing, the Integrys Energy Group, Inc. companies include: Wisconsin Public Service Corporation, Upper Peninsula Power Company and Integrys Energy Services, Inc.

¹² Financial Participants' request for rehearing indicates that Morgan Stanley Capital Group Inc. (Morgan Stanley) supports the request.

¹³ Wabash filed a motion to intervene out of time as part of its request for rehearing. Wabash is already a party to this proceeding. *Midwest Independent Transmission System Operator, Inc.*, 107 FERC ¶ 61,191, at Appendix A (2004), *order on reh'g*, 111 FERC ¶ 61,042, *order on reh'g*, 112 FERC ¶ 61,311 (2005), *aff'd sub nom. Wisconsin Public Power, Inc. v. FERC*, 493 F.3d 239 (D.C. Cir. 2007). When an entity is already a party in a particular docket, it need not file a separate motion to intervene in individual sub-dockets to maintain its party status.

and Northern Indiana Public Service Company (collectively, Ameren/NIPSCO); CAM Energy Trading, EPIC Merchant Energy and SESCO Enterprises (collectively, the Financial Marketers); Indianapolis Power & Light Company (Indianapolis Power & Light); Integrys; the Financial Participants (including Morgan Stanley); the Midwest TDUs;¹⁴ the Organization of MISO States (OMS); Otter Tail; Wabash; and Wisconsin Electric.¹⁵ The Midwest ISO and Otter Tail filed answers to the protests. The Midwest TDUs filed an answer to the Midwest ISO's answer.

III. Discussion

A. Procedural Matters

13. Pursuant to the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2008), prohibits answers to requests for rehearing. Accordingly, we will reject Otter Tail's answer to the requests for rehearing of Ameren/Wisconsin Electric/NIPSCO and Integrys.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept the answers of the the Midwest ISO,

¹⁴ For purposes of their filing, the Midwest TDU include: Great Lakes Utilities, Indiana Municipal Power Agency, Lincoln Electric System, Madison Gas & Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Prairie Power, Inc., Southern Minnesota Municipal Power Agency, and Wisconsin Public Power Inc.

¹⁵ The Financial Marketers, Indianapolis Power & Light, and Wabash filed motions to intervene as part of their respective comments and protests. They are already parties to this proceeding. As noted *supra* note 13, Wabash is already a party to this proceeding. Indianapolis Power & Light became a party at the same time as Wabash, as did EPIC Merchant Energy and SESCO Enterprises, members of the Financial Marketers. *Midwest Independent Transmission System Operator, Inc.*, 107 FERC ¶ 61,191 at Appendix A. The remaining member of the Financial Marketers, CAM Energy, became a party in the First Compliance Order. 118 FERC ¶ 61,213 at P 7, 10. When an entity is already a party in a particular docket, it need not file a separate motion to intervene in individual sub-dockets to maintain its party status.

Otter Tail, and the Midwest TDUs because they have provided information that assisted us in our decision-making process.

B. Requests for Rehearing

1. Rate Mismatch

16. Throughout the course of this proceeding, a number of parties have argued that the current tariff provisions produce a rate mismatch; that is, that the Revenue Sufficiency Guarantee charge and the Revenue Sufficiency Guarantee rate are determined on two different bases, resulting in a shortfall in the amount of Revenue Sufficiency Guarantee charges that the Midwest ISO recovers. In the Second Compliance Order, the Commission clarified that, if the current tariff provisions are properly enforced, there is no “rate mismatch.”

Per the terms of the tariff in the [April 17, 2007 compliance filing], the denominator in the [Revenue Sufficiency Guarantee] rate in section 40.3.3.a.iii is based on the sum of the absolute values of the amounts in section 40.3.3.a.ii(a)-(d). We interpret this formulation to mean that the [Revenue Sufficiency Guarantee] rate denominator is the aggregate of the amounts for market participants withdrawing energy on that day, since they are entities being assessed the [Revenue Sufficiency Guarantee] charges in section 40.3.3.a.ii. Therefore, the amounts in the individual [Revenue Sufficiency Guarantee] charges in section 40.3.3.a.ii should sum to the same summed and aggregate number in the denominator of section 40.3.3.a.iii, thereby eliminating the possibility of developing the [Revenue Sufficiency Guarantee] charge and [Revenue Sufficiency Guarantee] rate on different bases and resulting in a shortfall in recovery of [Revenue Sufficiency Guarantee] costs. The fact that the [Revenue Sufficiency Guarantee] charge is calculated on a daily basis and the [Revenue Sufficiency Guarantee] rate is computed hourly does not change our conclusion that the summed amounts in the [Revenue Sufficiency Guarantee] charge should equal the aggregate and summed amounts in the [Revenue Sufficiency Guarantee] rate. As the Commission noted in the [First] Rehearing Order, the hourly analysis in the [Revenue Sufficiency Guarantee] rate is aggregated to a daily settlement amount. This interpretation of the complete tariff provision, as submitted to us in the [April 17, 2007 compliance filing], represents our determination of the most reasonable meaning for the

[Revenue Sufficiency Guarantee] charge and rate formulation.^{16]}

a. Requests for Rehearing

17. EPIC/SESCO argue that the Commission erred by changing the Revenue Sufficiency Guarantee rate in the Second Compliance Order. First, EPIC/SESCO argue that the Second Compliance Order improperly altered the divisor of the Per-Unit Revenue Sufficiency Guarantee Rate found in section 40.3.3.a.iii. They argue that previous Commission orders have stated that the divisor of the Per-Unit Revenue Sufficiency Guarantee Rate must include all virtual supply offers made by all market participants in the same day, without regard to whether the market participants actually withdrew energy, but the Second Compliance Order states that only virtual supply offers made by market participants also withdrawing energy in the same day are included in the rate calculation.¹⁷

18. Second, EPIC/SESCO assert that the Second Compliance Order improperly established a new Revenue Sufficiency Guarantee rate that is different from either the existing rate on file or the rate proposed by the Midwest ISO by changing the inputs in the rate formula. EPIC/SESCO argue that the Second Compliance Order improperly alters the existing Revenue Sufficiency Guarantee rate to reduce or eliminate the under-collection of Revenue Sufficiency Guarantee costs. While that may or may not be a desirable goal, EPIC/SESCO avers that the Commission cannot make such changes in an order on compliance. EPIC/SESCO also argue that the Commission's attempt to do so is inconsistent with prior orders¹⁸ and the failure to explain the rationale for this deviation from the Commission's prior precedent is legal error. EPIC/SESCO further argue that, as the Commission has previously stated in this proceeding, such a change can only be effectuated by the Commission through an FPA section 206 investigation.¹⁹ EPIC/SESCO further assert that the Second Compliance Order's findings in this regard make it impossible for a market participant to know whether its Revenue Sufficiency Guarantee liabilities will be determined by a rate that includes all virtual supply offers, or

¹⁶ Second Compliance Order, 121 FERC ¶ 61,132 at P 26 (internal citations omitted).

¹⁷ EPIC/SESCO Request for Rehearing at 7 (citing Second Rehearing Order, 118 FERC ¶ 61,212 at P 58; Second Compliance Order, 121 FERC ¶ 61,132 at P 26).

¹⁸ *Id.* at 11 (citing Second Rehearing Order, 118 FERC ¶ 61,212 at P 45-48).

¹⁹ *Id.* at 7 (citing Second Rehearing Order, 118 FERC ¶ 61,212 at P 22).

only those virtual supply offers made by participants also withdrawing energy.²⁰ EPIC/SESCO ask that the Commission either clarify that the change in the inputs was a non-binding statement or grant rehearing of its decision to accept the Midwest ISO's April 17, 2007 compliance filing.

19. In addition, EPIC/SESCO argue that the Commission erred in failing to address several arguments raised in their protest to the Midwest ISO's April 17, 2007 compliance filing. They argue that the Commission failed to consider: (1) that the April 17, 2007 compliance filing replaced the cost components used to calculate Revenue Sufficiency Guarantee charges with different, ill-defined components; (2) whether a participant withdrawing energy in one hour of the day is required to pay Revenue Sufficiency Guarantee charges on all of its virtual supply offers made during any part of the day, or only on virtual supply offers made during the same hour in which it actually withdraws energy; and (3) that the new rate proposed in the April 17, 2007 compliance filing fails to provide market participants with a rate that allows them to determine their Revenue Sufficiency Guarantee liability.

20. Ameren/Wisconsin Electric/NIPSCO ask the Commission to clarify that the Midwest ISO must resettle its markets to provide refunds, with interest, and change the settlement rules, as required by the Second Compliance Order. In the alternative, these parties seek rehearing with respect to how the Midwest ISO should be required to implement the order. They assert that the Midwest ISO is relying on alleged inconsistencies involving the Second Compliance Order to argue that no resettlements are required. They argue that the Commission should clarify that there is no inconsistency between paragraphs 23 and 26 of the Second Compliance Order, and no inconsistency between and paragraph 23 of the Second Compliance Order and paragraph 58 of the Second Rehearing Order.

21. Ameren/Wisconsin Electric/NIPSCO argue that there is no ambiguity in the Second Compliance Order because that order clarifies that all virtual offers and deviations means all virtual offers and deviations of market participants withdrawing energy that day. They also argue that there is no confusion with respect to the Commission's prior orders because the Second Compliance Order clarifies that "all virtual offers and deviations" includes only the virtual offers and deviations of those market participants withdrawing energy on a given day. Thus, Ameren/Wisconsin Electric/NIPSCO say, the Revenue Sufficiency Guarantee rate denominator should include the aggregate of the virtual supply offers and other deviations only of those market participants actually withdrawing energy.

²⁰ *Id.* at 12 -13 (arguing that this uncertainty violates the filed rate doctrine).

22. Ameren/Wisconsin Electric/NIPSCO further maintain that the Midwest ISO's implementation of the Second Compliance Order has not been consistent with paragraph 26 of that order, because the Midwest ISO calculates the Revenue Sufficiency Guarantee rate using a denominator that comprises all virtual supply offers and deviations, but then assesses that rate only on those market participants deemed to be "actually withdrawing energy" in the relevant interval. Ameren/Wisconsin Electric/NIPSCO therefore aver that because the Midwest ISO's market settlements and resettlements since the Second Compliance Order are inconsistent with paragraph 26 of that order, the Commission should clarify that the Midwest ISO must revise its market settlement rules and provide refunds, with interest, to market participants of excess Revenue Sufficiency Guarantee charges collected. Ameren/Wisconsin Electric/NIPSCO argue their request for clarification is consistent with the Commission's conclusion in the Order on the Revenue Sufficiency Guarantee Complaints that the Midwest ISO interpretation was in error and required refunds; all the Commission needs to do here is to provide the same clarification.²¹ If the Commission declines to clarify the Second Compliance Order, Ameren/Wisconsin Electric/NIPSCO request rehearing with respect to the proper implementation of that order to ensure that the Midwest ISO does not continue to assess charges that have been found to be unjust, unreasonable, and unduly discriminatory.

23. Integrys argues that the Commission erred in failing to identify a rate mismatch. It argues that, contrary to the Commission's statements in paragraph 26 of the Second Compliance Order, the Midwest ISO's rate under-collects the Revenue Sufficiency Guarantee costs "because all virtual supply offer [megawatt-hours] are included in the denominator of the rate, but the rate derived is assessed only on virtual supply offer [megawatt-hours] of Market Participants that are also withdrawing [e]nergy from the [m]arket that day."²²

24. Integrys maintains that a "careful reading" of section 40.3.3.a.ii makes clear that the Revenue Sufficiency Guarantee rate calculation does not include virtual supply offer [megawatt-hours] as a component in the denominator. It argues that because section 40.3.3.a.ii only applies to market participants that actually withdraw energy in the day, as the Commission stated in P 26, "the amounts in the individual Revenue Sufficiency Guarantee charges in section 40.3.3.a.ii. should sum to the same summed and aggregate

²¹ Ameren/Wisconsin Electric/NIPSCO Request for Rehearing at 10 (citing *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,205, at P 86 (2007) (Order on Revenue Sufficiency Guarantee Complaints)). An order on rehearing of the Order on Revenue Sufficiency Guarantee Complaints is being issued concurrently in Docket No. EL07-86-001, *et al.*

²² Integrys Request for Rehearing at 3.

number in the denominator of section 40.3.3.a.iii, thereby eliminating the possibility of developing the Revenue Sufficiency Guarantee charge and Revenue Sufficiency Guarantee rate on different basis and resulting in a shortfall of Revenue Sufficiency Guarantee costs.”²³

25. Integrys also argues that the Midwest ISO is using paragraph 23 of the Second Compliance Order (which states that inclusion of the virtual supply offers in the denominator of the Revenue Sufficiency Guarantee rate is consistent with the tariff) to support its current methodology.²⁴ It argues that the Commission erred in paragraph 23 by finding that inclusion of virtual supply offers in the denominator of the Revenue Sufficiency Guarantee rate is consistent with the tariff. Integrys argues that the Commission should direct the Midwest ISO to resettle Revenue Sufficiency Guarantee rates back to April 26, 2006 to assess the Revenue Sufficiency Guarantee rate as required in the plain tariff language.

26. Wisconsin Electric argues that in the Midwest ISO’s resettlement of the markets back to April 1, 2005, the Midwest ISO included all deviations in the denominator of the Real-Time First Pass Distribution Rate, rather than only those deviations that were deemed to actually withdraw energy. Wisconsin Electric argues that virtual supply deviations are not responsible for Real-Time Revenue Sufficiency Guarantee First Pass Distribution charges until April 25, 2006. Wisconsin Electric argues that this misinterpretation has caused a massive cost shift onto load-serving entities. It asks the Commission to order resettlement back to the start of the energy markets on April 1, 2005.

27. Wabash also argues that the Second Compliance Order does not need any clarification. It maintains, however, that the Midwest ISO is “inexplicably ignoring and/or claiming to be ambiguous” the Commission’s interpretation and direction provided for in that order. Wabash argues that although the Second Compliance Order (and the orders on the Revenue Sufficiency Guarantee Complaints) makes clear how the Midwest ISO should resettle and issue refunds, the Midwest ISO is arguing that it does not require resettlement or issuance of refunds. Wabash asks the Commission to clarify that the Midwest ISO must resettle the markets and issue refunds dating back to April 1, 2005. Specifically, Wabash asserts that from April 1, 2005 through April 24, 2006 the tariff requires that the Midwest ISO calculate, resettle and issue refunds using all market

²³ *Id.* at 8 (citing Second Compliance Order at P 26).

²⁴ Integrys Request for Rehearing at 9 (citing and appending Midwest ISO, RSG: FERC Orders on Rehearing and Compliance, Presentation at RSG Task Force meeting (Nov. 16, 2007)).

participants making withdrawals of energy except virtual supply offers withdrawing energy. After April 25, 2006, the tariff requires that the Midwest ISO should calculate, resettle and issue refunds so that the rate denominator will include all market participants withdrawing energy in the operating day (including virtual supply offers withdrawing energy in the operating day).

b. Commission Determination

28. We grant clarification as to whether the Revenue Sufficiency Guarantee charge has a mismatch between the numerator and denominator, and therefore under-recovers Revenue Sufficiency Guarantee costs. As an initial matter, we recognize the Midwest ISO is in the process of resettling bills and, therefore, the issue at hand is the proper interpretation of the effective tariff. We also note that all the Commission statements on the rate mismatch in this proceeding have been restricted to interpretations of the tariff in effect and have not been determinations to change the rate in effect.²⁵

29. From market start to March 14, 2007 (the day before the effective date of tariff

²⁵ Relevant in this regard is the Commission statement that the tariff remains unchanged except for the specific components included in the numerator and denominator, such as imports and exports.

We clarify that since the Midwest ISO proposal is being rejected, the currently-effective tariff provisions relating to the real-time [Revenue Sufficiency Guarantee] charge in section 40.3.3 remain in effect. We clarify that the currently-effective tariff includes the provisions of section 40.3.3 approved by the Commission in March 2005 . . . as adjusted for those provisions approved by Commission order in this docket, such as an allocation to imports and exports and various revisions relating to dispatch procedures. We clarify that the currently effective tariff assigns [Revenue Sufficiency Guarantee] charges to market participants withdrawing energy and the [Revenue Sufficiency Guarantee] cost allocation includes an allocation to virtual supply offers.

provisions conditionally accepted in the Second Compliance Order),²⁶ the effective Revenue Sufficiency Guarantee charge provision is as follows:

On any Day when a Market Participant actually withdraws any Energy the Market Participant shall be charged a Real-Time Revenue Sufficiency Guarantee Charge. The Market Participant's Real-Time Revenue Sufficiency Guarantee Charge for that Hour shall equal the product of: (i) the Market Participant's total Load purchased in the Real-Time Energy Market during the Operating Day (in MWh), all Virtual Supply for the Market Participant in the Day-Ahead Energy Market, and Resource Uninstructed Deviation quantities (MWh), and (ii) the per-unit Real-Time Revenue Sufficiency Guarantee Charge. The per-unit Real-Time Revenue Sufficiency Guarantee charge for any given Day shall equal: (i) the aggregate Real-Time Revenue Sufficiency Guarantee charge in that Hour attributed to Resources committed in any [Reliability Assessment Commitment] processes conducted in the Operating Day divided by (ii) the sum of the total uncovered Load withdrawn in the Operating Day (in MWh), all Virtual Supply for that Market Participant in the Day-Ahead Energy Market, and for deviations from Dispatch Instructions, of all Market Participants withdrawing during that Hour for the Operating Day.²⁷

30. The virtual supply components of this provision are: (1) in the numerator, the virtual supply offers of an individual market participant that withdraws energy; and (2) in the denominator, the sum of the virtual supply offers for all market participants who withdraw energy on a given day. We again find that there is no mismatch, since the definition of virtual supply – as well as the other load and deviation components – in the numerator matches the definition of the summed components in the denominator. Therefore, the Commission's statement in the Second Rehearing Order that the divisor of the charge includes all virtual supply – not just virtual supply offered by market participants withdrawing energy – was in error. The interpretation in the Second

²⁶ With respect to the period starting on March 15, 2007, the discussion of the December 5, 2007 Compliance Filing, *infra* section III.C, provides the tariff language that will be the basis for settlement of bills based on the language of the currently-effective tariff and additional required modifications.

²⁷ Original Sheet Nos. 577 and 578.

Rehearing Order would represent a new rate, contrary to the specific requirements of the Second Compliance Order in paragraph 93. The Commission did not intend to establish a new rate, nor is it permissible to do so in the current section 205 proceeding. We expect the Midwest ISO billing will be based on the interpretation in this order. To the extent it is not, the Midwest ISO should provide refunds starting on April 25, 2006²⁸ through March 14, 2007.

31. With regard to Integrys' assertion that virtual supply offers have not been part of the Revenue Sufficiency Guarantee charge denominator, we clarify, as discussed above, that the Revenue Sufficiency Guarantee charge has included virtual supply in the denominator since market start-up. Therefore, the Commission was correct to continue including virtual supply in the denominator. We believe that the source of Integrys' confusion is that the Midwest ISO did not include *all* virtual supply components required by the Commission until the April 17, 2007 compliance filing. As discussed below, we clarify that virtual offers continue to be part of the numerator and denominator of the Revenue Sufficiency Guarantee charge.

2. Hourly Calculation of Revenue Sufficiency Guarantee Rate and Charge

32. In the Second Compliance Order, the Commission accepted the Midwest ISO's omission of the phrase "for that Hour" from the Revenue Sufficiency Guarantee rate and charge provision. The Commission found that it had accepted the deletion of this phrase in previous orders.²⁹

a. Requests for Rehearing

33. The Financial Participants request clarification that the energy withdrawal requirement in the Revenue Sufficiency Guarantee charge should be applied hourly, and request restoration of tariff language to make clear that the energy withdrawal requirement is applied hourly. Alternatively, the Financial Participants request rehearing on the basis that the Commission did not previously approve deletion of the hourly application of the energy withdrawal requirement. The Financial Participants argue that such a tariff amendment would be unlawful because the Commission did not have

²⁸ The Commission exercised its discretion and did not require refunds from the start of the Midwest ISO energy markets in 2005 and April 25, 2006. First Rehearing Order, 117 FERC ¶ 61,113 at P 92-96.

²⁹ Second Compliance Order, 121 FERC ¶ 61,132 at P 25.

authority to increase the applicability of the Revenue Sufficiency Guarantee charges to virtual supplies in this section 205 proceeding.³⁰

34. In support of their request for rehearing, the Financial Participants cite to the language of the tariff in effect at market start that specifies the Revenue Sufficiency Guarantee charge “*for that Hour shall equal . . .*”³¹ The Financial Participants note the Commission did not direct the Midwest ISO to remove the hourly reference in any orders prior to the Second Compliance Order and assert that, to the contrary, prior orders support a determination that the Revenue Sufficiency Guarantee charge is applied on an hourly basis.³² The Financial Participants argue that removal of that phrase would result in application of Revenue Sufficiency Guarantee charges to virtual supply offers for every hour of each day the virtual supplier or importer actually withdrew energy without any nexus to the hours during which the market participant actually withdrew energy. They argue that this result is contrary to the logical interpretation of the Revenue Sufficiency Guarantee charge provisions that the Revenue Sufficiency Guarantee charge is applied to market participants for the hours that the market participant makes actually withdrawals of energy.³³ Accordingly, the Financial Participants argue that the Commission should have rejected the Midwest ISO’s deletion of the hourly nexus.

b. Commission Determination

35. We deny rehearing on two grounds. First, the Financial Participants’ request is out of time since the Commission accepted deletion of the phrase “for that Hour” in the

³⁰ Financial Participant’s Request for Rehearing at 15 (citing Second Rehearing Order, 118 FERC ¶ 61,212 at P 22). Financial Participants also assert that the Commission may not require results that are fundamentally inapposite to the utility’s filing and the previously-accepted tariff, nor may it institute its own approach that would alter the status quo in a way the public utility did not propose under section 205.

³¹ See P 29, *supra* for the complete language of the provision in effect at market start (emphasis added).

³² Financial Participants Request for Rehearing at 10 (citing First Rehearing Order, 117 FERC ¶ 61,113 at P 151).

³³ Financial Participants also note that since the denominator of the Revenue Sufficiency Guarantee rate of the tariff in effect at market start is based on market participants withdrawing energy during the hour, it does not make sense to apply the rate to volumes determined on a daily basis. They assert such a rate would over-recover Revenue Sufficiency Guarantee costs. Financial Participant’s Request for Rehearing at 9.

Initial Order and affirmed its decision in the First Rehearing Order.³⁴ The Commission simply repeated this affirmation in the Second Compliance Order, when the Midwest ISO filed tariff sheets with the provisions approved by the Commission.³⁵ Accordingly, we disagree with the Financial Participants' assertion that the Commission did not previously approve deletion of the provision. The proper forum to raise this argument would have been on rehearing of the First Rehearing Order or the Second Compliance Order but Financial Participants did not raise this issue at either time.

36. Second, we find that including the phrase "for that Hour" is not consistent with section 40.3.3.a.ii, which states "[o]n any Day when a Market Participant actually withdraws Energy, the Market Participant shall be charged" the Revenue Sufficiency Guarantee charge.³⁶ And indeed, the Commission has required the Midwest ISO to assess the charge on an hourly basis that is aggregated to a daily settlement amount.³⁷ "With regard to the phrase 'for that Hour,' the Commission accepted the deletion of this phrase in its previous orders. . . . [W]e do not consider that phrase part of the phrase in the currently effective tariff stating that market participants are assessed Revenue Sufficiency Guarantee charges *on any day* they withdraw energy."³⁸ Moreover, "removal of the phrase does not change the calculation of the Revenue Sufficiency Guarantee charge since the per-unit charge (and therefore the charge to customers) is calculated on an hourly basis."³⁹

C. December 5, 2007 Compliance Filing

1. Revenue Sufficiency Guarantee Charge and Rate Mismatch

a. The Second Compliance Order

37. In the Second Compliance Order, the Commission directed the Midwest ISO to file tariff revisions as proposed by the Midwest ISO in its answers to protests of the

³⁴ First Rehearing Order, 117 FERC ¶ 61,113 at P 151.

³⁵ Second Compliance Order, 121 FERC ¶ 61,132 at P 25 & n.15.

³⁶ Midwest ISO tariff, section 40.3.3.a.ii.

³⁷ First Rehearing Order, 117 FERC ¶ 61,113 at P 151.

³⁸ Second Compliance Order, 121 FERC ¶ 61,132 at P 25 & n.15 (emphasis added).

³⁹ *Id.* P 25.

April 17, 2007 compliance filing. Specifically, the Midwest ISO was required to add virtual supply offers to the Revenue Sufficiency Guarantee rate and the term “aggregate” to the denominator of the per-unit Revenue Sufficiency Guarantee rate.⁴⁰

38. In addition, the Commission responded to commenter concerns regarding the allocation of Revenue Sufficiency Guarantee costs and clarified its understanding of the Revenue Sufficiency Guarantee charge and rate provisions of the tariff. The Commission stated that since the denominator in the Revenue Sufficiency Guarantee rate is based on the sum of the absolute values of amounts in section 40.3.3.a.ii(a)-(d), the Revenue Sufficiency Guarantee rate denominator is the aggregate of the amounts for market participants withdrawing energy on that day, since they are the entities being assessed the Revenue Sufficiency Guarantee charge in section 40.3.3.a.ii. Accordingly, the Commission concluded the rate formulation eliminates the possibility of developing the Revenue Sufficiency Guarantee charge and Revenue Sufficiency Guarantee rate on different bases and resulting in a shortfall in recovery of Revenue Sufficiency Guarantee costs since the amounts in the individual Revenue Sufficiency Guarantee charges should sum to the same summed and aggregate number in the denominator.⁴¹

b. December 5, 2007 Compliance Filing

39. In the December 5, 2007 Compliance Filing, the Midwest ISO submitted the change required to add virtual supply offers to the Revenue Sufficiency Guarantee rate and the term “aggregate” to the denominator of the per-unit Revenue Sufficiency Guarantee rate. The Midwest ISO also states that it interprets the Second Compliance Order, in conjunction with prior orders, as supportive of the inclusion of all virtual supply offers – not just virtual offers by market participants withdrawing energy – in the calculation of the denominator of the Revenue Sufficiency Guarantee rate.⁴² At the same time, the Midwest ISO cites to Commission determinations that the Revenue Sufficiency Guarantee denominator should be limited to the aggregate of amounts for market participants withdrawing energy,⁴³ and denying relief regarding the alleged mismatch between the Revenue Sufficiency Guarantee charge and the Revenue Sufficiency

⁴⁰ *Id.* P 23.

⁴¹ Second Rehearing Order, 118 FERC ¶ 61,212 at P 26.

⁴² December 5, 2007 Compliance Filing at 3 (citing Second Compliance Order, 121 FERC ¶ 61,132 at P 23; Second Rehearing Order, 118 FERC ¶ 61,212 at P 58).

⁴³ *Id.* (citing Second Compliance Order, 121 FERC ¶ 61,132 at P 26).

Guarantee rate but directing refunds.⁴⁴ For these reasons, the Midwest ISO puts all parties “on notice” of its interpretation.

c. Comments and Protests

40. Otter Tail supports the Midwest ISO’s December 5, 2007 Compliance Filing. Otter Tail states that the Midwest ISO satisfied its obligation to make the specific changes directed in the Second Compliance Order. Otter Tail also argues that the Second Compliance Order did not order a compliance filing to incorporate its interpretation of the tariff provisions in paragraph 26. Accordingly, the Midwest ISO was correct in providing tariff language that was consistent with the Commission’s guidance throughout these proceedings – that the denominator of the Revenue Sufficiency Guarantee charge should include all virtual supply offers irrespective of whether they are associated with actual energy withdrawals – and contrary only to the new, conflicting interpretative language of the Second Compliance Order.

41. The Financial Marketers also support the December 5, 2007 Compliance Filing. They argue that the Midwest ISO’s interpretation represents the only method of complying with the “apparently conflicting” directives of the Second Compliance Order. They argue that any other interpretation would significantly alter the existing rate – a change that can only be undertaken pursuant to an FPA section 206 investigation.

42. In contrast, the majority of commenters protest the Midwest ISO’s proposed tariff revisions and interpretation of the Commission’s prior orders. These entities, including Ameren/NIPSCO, Indianapolis Power & Light, Integrys, the Midwest TDUs, the OMS, Wabash and Wisconsin Electric, argue that the Midwest ISO has not complied with the Commission’s directives with respect to real-time Revenue Sufficiency Guarantee rate and charge calculations. They argue that the Midwest ISO is misinterpreting any ambiguity in paragraph 26 of the Second Compliance Order. These entities maintain that the Second Compliance Order clarifies that all virtual offers and deviations means all virtual offers and deviations of market participants withdrawing energy that day. They also argue that there is no inconsistency with the First Rehearing Order because the (subsequent) Second Compliance Order clarified that all virtual supply offers includes only the virtual supply offers of those market participants withdrawing energy.

43. Indianapolis Power & Light, Wabash and Wisconsin Electric assert that the Midwest ISO’s interpretation has resulted in large, inappropriate cost shifts to load-serving entities. Indianapolis Power & Light also notes that the denominator should be

⁴⁴ *Id.* (citing Order on Revenue Sufficiency Guarantee Complaints, 121 FERC ¶ 61,205 at P 86).

made up of only those parties that pay the rate, and failure to remove parties from whom recovery is not authorized will result in under-recovery and fails cost-causation requirements. Indianapolis Power & Light believes the best approach would be for the Commission to reconsider its position on refunds, ask for the pending appeal in the United States Court of Appeals to be remanded, and require Midwest ISO to charge the true as-filed rate.

44. Integrys argues that the Midwest ISO's proposed changes are outside the scope of the December 5, 2007 Compliance Filing and, therefore, must be rejected. Integrys asserts that adding virtual supply offers to the components of the rate charge is a modification of the rate in a compliance filing in violation of Commission precedent. Integrys maintains that Commission's conclusion that there is no rate mismatch is only true if virtual supply offers are not included in the rate calculations.

45. The entities protesting the Midwest ISO's December 5, 2007 Compliance Filing ask that the Commission reject the December 5, 2007 Compliance Filing and direct the Midwest ISO to modify its tariff provision, reset the market, and provide refunds consistent with the Second Compliance Order.

d. Answers

46. Otter Tail reasserts that the Commission has consistently held that the Revenue Sufficiency Guarantee rate denominator includes all virtual supply offers, irrespective of actual energy withdrawals. It notes that, in the Second Rehearing Order, the Commission specifically required that "the divisor to the charge includes all virtual supply – not just virtual supply offered by market participants withdrawing energy."⁴⁵ Otter Tail adds that the Revenue Sufficiency Guarantee rate and rate design have not changed since market start-up, and that it is just and reasonable. It argues that requests for resettlement back to market start-up is beyond the scope of the Second Compliance Order and a collateral attack on the Commission's prior orders. Finally, Otter Tail argues that the Commission should reject Indianapolis Power & Light's suggestion that the Commission request the Court of Appeals remand the Revenue Sufficiency Guarantee orders.

47. In its answer, the Midwest ISO argues that the Revenue Sufficiency Guarantee rate's denominator properly includes all virtual supply offers regardless of actual energy withdrawals. The Midwest ISO argues that the "clarification" of paragraph 26 of the Second Compliance Order does not constitute a compliance directive or reverse the Second Rehearing Order's finding that the Revenue Sufficiency Guarantee rate's denominator properly includes all virtual supply offers regardless of actual energy

⁴⁵ Otter Tail January 10 Answer at 5 (citing Second Rehearing Order at P 58).

withdrawals. The Midwest ISO states that, even if the Commission were to reverse paragraph 58 of the Second Rehearing Order, no refunds are warranted.

48. In their answer, the Midwest TDUs challenge the Midwest ISO's request that the Commission exercise its discretion not to require the Midwest ISO to resettle Revenue Sufficiency Guarantee charges, and provide associated refunds, in accordance with the tariff interpretation set forth in the Second Compliance Order. The Midwest TDUs argue that this is a request that should have been made in a request for rehearing. The Midwest TDUs argue that the Midwest ISO did not seek rehearing of the Commission's clear statements in the Second Compliance Order nor the Initial Order on Complaints in this regard and therefore, it has waived its request to pursue this argument.

49. The Midwest TDUs further argue that the tariff interpretation set forth in paragraph 26 of the Second Compliance Order does not modify the group of customers to which the Revenue Sufficiency Guarantee Charges applies:

It remains the case (pending resolution of the related complaint proceedings) that market participants making virtual supply offers must also actually withdraw energy on a given day in order to be subject to [Revenue Sufficiency Guarantee] charges on that day as a result of their virtual trading activities. The effect of the Commission's clarification in the [Second Compliance] Order is only to increase the unit rate for those [Revenue Sufficiency Guarantee] charges that apply to market participants who actually withdraw energy on a given day (by reducing the denominator used to calculate that unit rate) and reduce the [Revenue Sufficiency Guarantee] charges assigned as a residual uplift charge to network load.⁴⁶

The Midwest TDUs argue that this is very different than the situation the Commission faced in the First Rehearing Order. The Midwest TDUs argue that the uncertainties associated with these kinds of changes are no different than the uncertainties to which market participants have been subject with respect to Revenue Sufficiency Guarantee charges.

50. Finally, the Midwest TDUs argue that the Midwest ISO is incorrect in asserting that any change to eliminate the mismatch problem should be prospective. The Midwest TDUs support the Commission's statements in paragraph 26 of the Second Compliance

⁴⁶ Midwest TDUs January 25 Answer at 3.

Order, and paragraph 86 of the Order on Revenue Sufficiency Guarantee Complaints, that refunds should be made in this case to make Revenue Sufficiency Guarantee charges consistent with the Commission's tariff interpretation. The Midwest TDUs argue, however, at a minimum, the very latest date as of which the mismatch should be rectified is August 10, 2007, the refund effective date in the complaint proceedings.

e. Commission Determination

51. We first address compliance requirements. A number of protesters argue that the Commission did not intend to impose a compliance requirement in paragraph 26 of the Second Compliance Order. Although we agree with those parties that paragraph 26 does not contain specific compliance instructions, we also agree with Otter Tail and the Financial Marketers that it was proper for the Midwest ISO to provide tariff sheets that attempt to implement the Commission's interpretation of specific tariff provisions.

52. We reject the phrase proposed by the Midwest ISO for the denominator of the Revenue Sufficiency Guarantee rate – “and all virtual supply offers in the Day-Ahead Energy Market of all Market Participants” – since that phrase does not comply with the Second Compliance Order⁴⁷ and results in a rate change, an action that is not permissible in this section 205 proceeding. As discussed above, the Second Compliance Order clarified that the currently-effective tariff provisions remain in effect as adjusted for provisions approved by Commission order. The tariff effective at the time of the Second Compliance Order clearly restricted the virtual offer component to the market participant withdrawing energy and the denominator should represent the sum for market participants withdrawing energy.⁴⁸ This is the appropriate language, and we will require the Midwest ISO to file it in a compliance filing. To the extent the Midwest ISO was relying on a Commission statement in the Second Rehearing Order,⁴⁹ that statement was

⁴⁷ Responding to Otter Tail, our rulings here are appropriate because they address specific compliance requirements regarding the virtual supply component that was missing from the April 16 Filing.

⁴⁸ The language in the denominator of the Revenue Sufficiency Guarantee charge in the tariff at market start was “all Virtual Supply for that Market Participant in the Day-Ahead Energy Market” and all components sum to an amount applicable to all Market Participants withdrawing during that Hour for the Operating Day. *See supra* P 34.

⁴⁹ Quoting the Second Rehearing Order, Midwest ISO argues that “the divisor to the charge includes *all* Virtual Supply Offers – not just Virtual Supply Offers by market participants withdrawing energy – and therefore may result in under-recovery” of Revenue Sufficiency Guarantee costs. Midwest ISO Transmittal Letter at 3 (Dec. 5, 2007) (quoting Second Rehearing Order, 118 FERC ¶ 61,212 at P 58).

in error since it did not accurately reflect the tariff in effect, as explained more fully above.⁵⁰

53. We also reject the proposed phrase “and all Virtual Supply Offers for the Market Participant in the Day-Ahead Energy Market” on Fourth Revised Sheet No. 578 since that phrase is identical to the phrase on First Substitute Third Revised Sheet No. 577, and is therefore unnecessary.

54. We recognize that the Midwest ISO is undertaking settlement and billing adjustments for these provisions, and accordingly that parties desire certainty on the basis for settlement starting on March 15, 2007 (the effective date of the April 17, 2007 compliance filing). We clarify that the effective tariff provision for the period starting March 15, 2007, adjusted for revisions required by this order, should be as follows:

(ii) On any Day when a Market Participant actually withdraws Energy, the Market Participant shall be charged a Real-Time Revenue Sufficiency Guarantee Charge. The Market Participant’s Real-Time Revenue Sufficiency Guarantee Charge shall be based on all Virtual Supply Offers for the Market Participant in the Day-Ahead Energy Market and for deviations based on the sum of the absolute value for the following four elements (a) Load deviations in the Real-Time Energy Market during the Operating Day (based on the difference between real-time Metered Load and Load scheduled in the Day-Ahead Energy Market, measured at each commercial node), (b) Import schedule deviations (based on the difference between real-time Import scheduled quantities and Imports scheduled in the Day-Ahead Energy Market), (c) Export schedule deviations (based on the difference between real-time Export scheduled quantities and Exports scheduled in the Day-Ahead Energy Market), and (d) injections of Energy including: (1) any difference between Energy output based on the Metered quantity of Energy (MWh) versus the hourly integrated Dispatch Instruction in the Real-Time Energy Market (excluding MW designated for either Regulation Down or Regulation Up); (2) any negative difference between Energy scheduled in the Day-Ahead Energy Market and real time Economic Minimum Dispatch amounts (excluding Resources committed in any

⁵⁰ *Supra* P 34.

[Reliability Assessment Commitment] processes conducted for the Operating Day); and (3) any negative difference between real time Economic Maximum Dispatch amounts and Energy scheduled in the Day-Ahead Energy Market. The Sum of the absolute value for such amounts set forth in Section 40.3.3.ii.(a) through (d) shall be multiplied by the per unit Real-Time Revenue Sufficiency Guarantee Charge rate to determine the Real-Time Revenue Sufficiency Guarantee Charge to be paid by the Market Participant, provided, that, no charges shall be assessed for any difference caused by lags in the State Estimator and Unit Dispatch System tracking of unit output that complies with Dispatch Instructions.

(iii) The per unit Real-Time Revenue Sufficiency Guarantee Charge deviation rate for any given Hour shall equal: (a) the aggregate Real-Time Revenue Sufficiency Guarantee Charge payment in that Hour attributed to Resources committed in any [Reliability Assessment Commitment] processes conducted for the operating day divided by the greater of: (b) the aggregate of the amounts set forth in Section 40.3.3.a.ii(a) through (d) and *the aggregate of the amounts set forth in Section 40.3.3.a.ii for Virtual Supply for Market Participants in the Day-Ahead Energy Market*; or (c) the aggregate of the Economic Maximum Dispatch amounts of all Resources committed in any [Reliability Assessment Commitment] processes conducted for the Operating Day exceeds the aggregate of the Real-Time Revenue Sufficiency Guarantee Charges to Market Participants, the excess shall be funded through an assessment of debits on all Market Participants on a *pro-rata* basis, based on their Load Ratio Share across the Transmission Provider Region. (emphasis added)

55. We further clarify that the purpose of the italicized revisions required by this order is to ensure that the revised tariff and the tariff in effect since market start-up are consistent. We direct the Midwest ISO to submit a compliance filing with the required revisions within 30 days of the date of this order.

56. With the clarifications provided in, and revisions required by, this order, we expect there will not be a mismatch between the numerator and denominator of the Revenue Sufficiency Guarantee charge – in the same way there was no mismatch in the tariff effective from market start-up to March 14, 2007, as discussed above. Since the revised tariff is consistent with the effective tariff prior to March 15, 2007 and there is no

mismatch in the Revenue Sufficiency Guarantee charge, we consider this revised tariff language to be the appropriate basis for settlement. To the extent the Midwest ISO has been settling customer bills on a different basis, we require refunds.

57. For the reasons discussed above, we find the Midwest ISO's interpretation of the Revenue Sufficiency Guarantee charge and rate to be in error and require it to make appropriate refunds to its customers. Inasmuch as the Commission concluded in the Second Compliance Order that there is no rate mismatch, it is not the Midwest ISO's prerogative to declare in a compliance filing that there is a rate mismatch and put parties on "notice" that this is its determination. Such an action nullifies the intent of the Commission and is contrary to a specific Commission directive.⁵¹

2. Hourly Calculation of Revenue Sufficiency Guarantee Rate and Charge

a. Comments and Protests

58. As noted in their request for clarification and/or rehearing, the Financial Participants request clarification that the energy withdrawal requirement in the Revenue Sufficiency Guarantee charge should be applied hourly, and request restoration of tariff language to make clear that the energy withdrawal requirement is applied hourly. Alternatively, the Financial Participants request rehearing on the basis that the Commission did not previously approve deletion of the hourly application of the energy withdrawal requirement.

59. Indianapolis Power & Light disagrees with the Financial Participants that the Commission erred in applying Revenue Sufficiency Guarantee costs to virtual supply offers of an entity that actually withdraws energy at any time during the day.

b. Answers

60. In its answer, the Midwest ISO states that its deletion of the phrase "for that Hour" is appropriate. It states that, despite the fact that the Second Compliance Order

⁵¹ The Commission has previously held that compliance filings must be limited to the specific directives ordered by the Commission. The purpose of a compliance filing is to make the directed changes and the Commission's focus in reviewing them is whether or not they comply with the Commission's previously-stated directives. *See, e.g., NorthWestern Corp.*, 113 FERC ¶ 61,215, at P 9 (2005); *Tampa Elec. Co.*, 113 FERC ¶ 61,159, at P 37 (2005); *AES Huntington Beach, LLC*, 111 FERC ¶ 61,079, at P 60 (2005).

references an order that does not support deletion of that phrase, the Second Compliance Order's approval of the deletion of that phrase makes the Midwest ISO's December 5, 2007 Compliance Filing accurate.

c. Commission Determination

61. The issues raised by the Financial Participants and Indianapolis Power & Light regarding the hourly calculation of the Revenue Sufficiency Guarantee rate and charge are discussed in section III.B.2, *supra*. In accordance with this discussion, we will not require restoration of the deleted phrase "for that Hour."

3. Rates Subject to Refund

a. Comments and Protests

62. Indianapolis Power & Light argues that the December 5, 2007 Compliance Filing fails to meet the Commission's general and specific directives regarding Revenue Sufficiency Guarantee cost allocation.

b. Commission Determination

63. The issues raised by Indianapolis Power & Light regarding the basis for determining rates during the respective refund periods since market start are discussed in section III.C, *supra*.

The Commission orders:

(A) The requests for clarification and/or rehearing of the Second Compliance Order are hereby granted in part and denied in part, as discussed in the body of this order.

(B) The Midwest ISO's December 5, 2007 Compliance Filing is hereby conditionally accepted for filing, effective March 15, 2007, as discussed in the body of this order.

(C) The Midwest ISO is hereby directed to make a further compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Moeller not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.