132 FERC ¶ 61,184
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER09-411-002 ER09-411-003 ER09-411-004

ORDER GRANTING REHEARING IN PART, DENYING REHEARING IN PART, CONDITIONALLY ACCEPTING TARIFF SHEET, ACCEPTING COMPLIANCE FILING AND REQUIRING FURTHER COMPLIANCE FILING

(Issued August 30, 2010)

1. On December 12, 2008, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (tariff) to exempt certain resources, including intermittent resources, from real-time Revenue Sufficiency Guarantee charges and to change other miscellaneous tariff provisions (December 12, 2008 Filing). In an order issued on August 7, 2009,[1] the Commission accepted and suspended these proposed revisions and made them effective January 6, 2009, subject to refund and further order. The Commission also conditionally accepted the other miscellaneous tariff provisions and required further compliance filings. Several parties sought rehearing, as detailed below.

2. The Midwest ISO subsequently submitted two compliance filings required by the Initial Order. On September 8, 2009, the Midwest ISO filed proposed tariff revisions, as well as a plan and a timeline for analyzing the incurrence of real-time Revenue Sufficiency Guarantee costs (September 8, 2009 Compliance Filing). On December 7, 2009, the Midwest ISO filed the results of a Revenue Sufficiency Guarantee Task Force (RSG Task Force) analysis of this issue and the recommendations of both the RSG Task

[1] *Midwest Indep. Transmission Sys. Operator, Inc.*, 128 FERC ¶ 61,142 (2009) (Initial Order).

Force and the Midwest ISO based on their evaluations of the results of the analysis (December 7, 2009 Compliance Filing).[2]

3. In this order, we accept in part and reject in part the proposed real-time Revenue Sufficiency Guarantee charge exemptions. We conditionally accept in part and reject in part the tariff provisions regarding the proposed exemptions that were submitted in the December 12, 2008 Filing, subject to further compliance. We also conditionally accept the September 8, 2009 Compliance Filing, subject to further compliance, and we accept the December 7, 2009 Compliance Filing, as discussed below. Finally, we grant in part and deny in part the requests for rehearing of the Initial Order.

I. Background and Summary of Filings

4. Under section 40.2.19 of the Midwest ISO tariff, a generation or demand response resource receives a real-time Revenue Sufficiency Guarantee credit if the Midwest ISO commits it through the Reliability Assessment Commitment process[3] after the close of the day-ahead energy and operating reserve markets and if the resource then receives insufficient real-time energy and operating reserve revenues to cover its as-offered production costs.[4] To fund the Revenue Sufficiency Guarantee credits, pursuant to section 40.3.3 of the tariff, market participants are charged a real-time Revenue Sufficiency Guarantee charge based on their virtual supply offers and real-time load, injection, export, and import deviations from day-ahead schedules.

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[2] The RSG Task Force is a group that the Midwest ISO and its stakeholders formed to analyze and discuss issues associated with allocating Revenue Sufficiency Guarantee costs.

[3] The Reliability Assessment Commitment process ensures that sufficient resources will be available and online to meet load, operating reserve, and other demand requirements in the real-time market. The process occurs prior to the day-ahead energy and operating reserve markets, between the day-ahead and real-time markets, and during the real-time markets.

[4] Real-time Revenue Sufficiency Guarantee credits ensure that generation and demand response resources recover their production and operating reserve costs. For generation resources and Demand Response Resources – Type II, these costs include their start-up, no-load, energy, and operating reserve offers costs. For Demand Response Resources – Type I, these costs include their shut-down, hourly curtailment, energy, and operating reserve offer costs. Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet Nos. 238 and 248, First Revised Sheet No. 1111.

5. On April 25, 2006, in Docket No. ER04-691-065, the Commission issued an order rejecting the Midwest ISO's proposal to, among other things, remove references to virtual supply offers from the tariff provisions related to calculating real-time Revenue Sufficiency Guarantee charges.[5] 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.[6] The Commission subsequently exercised its discretion on rehearing and held that these refunds were not required.[7]

6. In August 2007, three groups of utilities filed complaints under section 206(b) of the Federal Power Act (FPA),[8] alleging that the real-time Revenue Sufficiency Guarantee charge contained in the tariff unduly discriminated among classes of market participants. The Commission found that the complainants had shown that the rate in question may be unjust, unreasonable, or unduly discriminatory but that they had not shown that their proposed alternative rate was just and reasonable.[9] In order to develop a more complete record, the Commission set the complaints for paper hearing and investigation.[10]

7. On November 10, 2008, the Commission issued an order finding that the complainants had met their burden of proof under section 206(b) of the FPA by demonstrating that the Revenue Sufficiency Guarantee charge cost allocation in effect was unjust and unreasonable and that the proposed alternative cost allocations are just

[5] *Midwest Indep. Transmission Sys. Operator, Inc.*, 115 FERC ¶ 61,108, at P 48-49 (Revenue Sufficiency Guarantee Order), *order on reh'g*, 117 FERC ¶ 61,113 (2006) (First Rehearing Order), *order on reh'g*, 118 FERC ¶ 61,212, *order on reh'g*, 121 FERC ¶ 61,131 (2007).

[6] Revenue Sufficiency Guarantee Order, 115 FERC ¶ 61,108 at P 26.

[7] First Rehearing Order, 117 FERC ¶ 61,113 at P 92-96.

[8] 16 U.S.C. § 824e (2006).

[9] *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,205 (2007), *order on reh'g*, 125 FERC ¶ 61,162 (2008).

[10] *Id.* P 94. The Commission held the paper hearing in abeyance pending the completion of a stakeholder process. The Commission commenced the paper hearing in August 2008.

and reasonable.[11] The Commission found that the complainants' proposed alternative cost allocation (the Interim Rate) was just and reasonable and should replace the then-effective cost allocation. The Interim Rate went into effect on November 10, 2008. With regard to a second alternative (the indicative allocation or Indicative Rate), the Commission found that the proposal formed the basis for a just and reasonable cost allocation, but needed further adjustments to conform to the nascent ancillary services market. The Commission therefore allowed the Midwest ISO to file its Indicative Rate when it has a complete and final proposal. The Midwest ISO made that filing on February 23, 2009, and it is currently pending before the Commission.

8. In the December 12, 2008 Filing in the instant proceeding, the Midwest ISO proposed to modify certain Revenue Sufficiency Guarantee charge provisions and to make other miscellaneous tariff revisions. The Midwest ISO proposed to revise tariff section 40.3.3.a.ii(d) to clarify that only those resource deviations that are "not otherwise exempt from hourly [e]xcessive [e]nergy [c]alculations and Excessive/Deficient Energy Deployment Charges" are subject to Revenue Sufficiency Guarantee charges.[12] The exemption would apply to the following resources: (1) resources following Midwest ISO directives during emergencies; (2) resources in test mode, or start-up or shut-down mode; (3) resources that trip and go off-line; (4) resources involved in a contingency reserve deployment; (5) resources covered by the deactivation of the dispatch band option; (6) resources affected by other events or conditions beyond their control; and (7) intermittent resources.

9. On February 9, 2009, Commission staff notified the Midwest ISO that the December 12, 2008 Filing was deficient and requested additional information, including: (1) a description of each exemption being proposed or otherwise clarified; (2) a justification for each exemption, including the policy basis and a cost-causation analysis for each exemption; and (3) a discussion of the RSG Task Force's findings regarding the exemptions, including any relevant meeting minutes or work papers. The Midwest ISO filed a response on March 11, 2009.

10. On May 8, 2009, Commission staff notified the Midwest ISO that its response was deficient. Staff requested further information, including: (1) a detailed description of how the Midwest ISO forecasts, schedules, and dispatches intermittent and other resources that are exempt from real-time Revenue Sufficiency Guarantee charges under

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[11] *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,161 (2008) (Order on Paper Hearing), *order on reh'g*, 127 FERC ¶ 61,121 (2009) (Paper Hearing Rehearing Order), *reh'g pending*.

[12] Midwest ISO, December 12, 2008 Filing, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 1096.

the proposal; and (2) a detailed description of how the Midwest ISO determines the amount of headroom needed for intermittent and other resources that are exempt from real-time Revenue Sufficiency Guarantee charges under the proposal.[13] The Midwest ISO filed a response on June 8, 2009.

11. In the Initial Order, the Commission accepted, suspended, and made effective January 6, 2009, the Midwest ISO's proposed tariff revisions regarding the exemptions, subject to refund and further order. The Commission found that the proposed exemptions had not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. The Commission required the Midwest ISO to submit a 30-day compliance filing to provide a proposed plan and timeline for the RSG Task Force to analyze how the deviations that are subject to the proposed exemptions may cause real-time Revenue Sufficiency Guarantee costs. The Commission also directed the Midwest ISO to submit a 90-day compliance filing to provide further support for its proposed exemptions or, as appropriate, to amend its proposal based on the RSG Task Force's findings and recommendations.[14] In addition, the Commission conditionally accepted the other, miscellaneous tariff provisions and required the Midwest ISO to submit in its 30-day compliance filing revisions that appropriately designate the proposed tariff sheets under the Midwest ISO tariff.[15]

12. The Midwest ISO submitted its 30-day compliance filing on September 8, 2009. It consisted of a plan and timeline for conducting the RSG Task Force analysis and revised tariff sheets.

13. The Midwest ISO submitted its 90-day compliance filing on December 7, 2009.[16] It consisted of the results of the RSG Task Force analysis and the recommendations of the RSG Task Force and the Midwest ISO.

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[13] "Headroom" refers to the sum of the differences between the real-time economic maximum dispatch and dispatch targets for the energy of resources committed in Reliability Assessment Commitment processes conducted for the operating day, resulting from various factors including, but not limited to, intra-hour changes in demand.

[14] Initial Order, 128 FERC ¶ 61,142 at P 51.

[15] *Id.* P 59.

[16] The Commission granted the Midwest ISO's motion for extension of time to submit its 90-day compliance filing. *Midwest Indep. Transmission Sys. Operator, Inc.*, Notice of Extension of Time, Docket No. ER09-411-000 (Oct. 15, 2009).

14. The Independent Market Monitor for the Midwest ISO, Potomac Economics Ltd. (Market Monitor), performed the required analysis on behalf of the RSG Task Force.[17] The Market Monitor Study states that, to varying degrees, all of the deviations that are exempted under the proposal cause real-time Revenue Sufficiency Guarantee costs. In particular, the study found that the exempted deviations jointly account for approximately seven percent (or $5.3 million) of real-time Revenue Sufficiency Guarantee costs between January 6, 2009 and September 30, 2009, with approximately $3.3 million and $1 million of that amount attributable to intermittent resources or resources covered by deactivation of the dispatch band option, respectively.[18]

15. Based on these findings, the RSG Task Force voted to recommend eliminating the proposed exemptions for intermittent resources and for resources covered by deactivation of the dispatch band option. The RSG Task Force found that cost causation exists in both cases and that there is the potential for material cost shifts and discriminatory treatment in the case of the intermittent resource exemption.[19] The RSG Task Force made several additional recommendations regarding the allocation of real-time Revenue Sufficiency Guarantee costs, the provision and auditing of operator logs, the implementation of a look-ahead tool, and further studies.[20]

16. The Midwest ISO states that it agrees with the recommendations of the RSG Task Force to eliminate two of the proposed exemptions, but it does not withdraw this aspect of its proposal. The Midwest ISO notes that it has proposed tariff revisions to assign real-time Revenue Sufficiency Guarantee costs to intermittent resources on a prospective basis in a separate proceeding.[21] The Midwest ISO also states that it submitted a proposal to remove the dispatch band option from its tariff in a contemporaneous filing,

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[17] Midwest ISO, December 7, 2009 Compliance Filing, Tab C, Midwest ISO Revenue Sufficiency Guarantee Cost Study (Market Monitor Study).

[18] *Id.* Tab C, Market Monitor Study at 7-8.

[19] *Id.* Transmittal Letter at 8-9.

[20] *Id.* Transmittal Letter at 9-10. The tariff proposal at issue does not address these recommendations, so we note that they are outside of the scope of this proceeding. In addition, we note that the Midwest ISO does not propose to exempt virtual supply offers from real-time Revenue Sufficiency Guarantee charges, so this issue is also outside of the scope of this proceeding.

[21] *Id.* Transmittal Letter at 17. *See also* Midwest ISO February 23, 2009 Filing, Docket No. EL07-86-000, *et al.*

which would render the associated exemption moot on a prospective basis.[22] In addition, the Midwest ISO contends that the other five proposed exemptions should be retained because they are consistent with existing real-time Revenue Sufficiency Guarantee charge exemptions, because the deviations in question are non-discretionary and cause minimal Revenue Sufficiency Guarantee costs, and because the exemptions provide an incentive to follow Midwest ISO operating procedures and directives.[23] Finally, the Midwest ISO argues that the Commission should deny the RSG Task Force's other recommendations.

II. Requests for Rehearing, Notice of Filings, and Responsive Pleadings

17. The Midwest ISO, Xcel Energy Services, Inc. (Xcel) and Wisconsin Electric Power Company (Wisconsin Electric) filed requests for rehearing or clarification of the Initial Order. Westar Energy, Inc. (Westar) filed an answer and a supplemental answer to the Midwest ISO. EPIC Merchant Energy, LP (EPIC), SESCO Enterprises LLC (SESCO), The AI Funds, Inc., Jump Power, LLC (Jump Power), and Solios Power, LLC (Solios Power), (collectively, Financial Marketers) collectively filed an answer to the three rehearing requests. Northern Indiana Public Service Company (Northern Indiana), DC Energy Midwest, LLC (DC Energy), and EPIC collectively filed an answer to the Midwest ISO's rehearing request.

18. Notice of the September 8, 2009 Filing was published in the *Federal Register*, 74 Fed. Reg. 48,256 (2009), with interventions and protests due on or before September 29, 2009. Ameren Services Company (Ameren)[24] and Northern Indiana filed motions to intervene. Financial Marketers and Xcel submitted comments.

19. Notice of the December 7, 2009 Filing was published in the *Federal Register*, 74 Fed. Reg. 66,632 (2009), with interventions and protests due on or before December 28, 2009. On December 11, 2009, American Wind Energy Association (AWEA) and Wind on the Wires (WOW) filed a motion to intervene and a request for a 14-day extension of the comment date. The Commission extended the comment date

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[22] *Id.* The Commission has accepted the Midwest ISO's proposal to remove the dispatch band option from its tariff. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 130 FERC ¶ 61,150 (2010).

[23] *Id.* Transmittal Letter at 21-23.

[24] Ameren states that it has intervened on behalf of Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Company, Illinois Power Company, Ameren Energy Marketing Company, Ameren Energy Generating Company, and AmerenEnergy Resources Generating Company.

through January 11, 2010.[25] Additional motions to intervene were submitted by Edison Mission Energy (Edison Mission), Coalition of Midwest Transmission Customers (Midwest Transmission Customers), Iberdrola Renewables, Inc. (Iberdrola Renewables), E.ON Climate & Renewables North America Inc. (E.ON C&R), Indianapolis Power & Light Company (IPL), E.ON U.S., LLC (E.ON U.S.),[26] Madison Gas & Electric Company (Madison), Cargill Power Markets, LLC (Cargill), Invenergy Wind North America LLC (Invenergy), and Renewable Energy Systems Americas Inc. (RES Americas). Solar Energy Industries Association (SEIA) filed a motion to intervene out of time on January 12, 2010.

20. Motions to intervene and protest or comments, or protests or comments, were submitted by Ameren; Duke Energy Corporation (Duke);[27] Detroit Edison Company (Detroit Edison); NextEra Energy Power Marketing, LLC, RES Americas, Edison Mission, and Invenergy (collectively, Intermittent Generators); Financial Marketers;[28] Dynegy Power Marketing, Inc. (Dynegy); AWEA, WOW, and SEIA (collectively, Intermittent Organizations); MidAmerican Energy Company (MidAmerican); Midwest Transmission Dependent Utilities (Midwest TDUs);[29] RRI Energy, Inc. (RRI Energy); Northern Indiana; Integrys Energy Group, Inc. (Integrys); FirstEnergy Service Company (FirstEnergy); E.ON C&R; DC Energy; Xcel; Wisconsin Electric; and Cargill and Westar. The Midwest ISO filed an answer to the protests. Westar filed an answer to the Midwest ISO's answer.

21. The Midwest ISO also filed motions opposing the interventions of E.ON C&R, E.ON U.S., Iberdrola Renewables, Midwest Transmission Customers, Edison Mission, IPL, Madison, and SEIA. The Midwest ISO characterizes all of these interventions as filed substantially late and without adequate justification. The Midwest ISO notes that under Rule 214(d) of the Commission's Rules of Practice and Procedure,[30] the

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[25] *Midwest Indep. Transmission Sys. Operator, Inc.*, Notice of Extension of Time, Docket No. ER09-411-004 (Dec. 22, 2009).

[26] E.ON U.S. states that it has intervened on behalf of Louisville Gas and Electric Company and Kentucky Utilities Company.

[27] Duke states that it has intervened on behalf of Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.

[28] For the purposes of this filing, Financial Marketers include EPIC, SESCO, Big Bog Energy LP, Jump Power, Solios Power, and JPTC, LLC.

[29] For the purposes of this filing, Midwest TDUs also include Madison.

[30] 18 C.F.R. § 385.214(d) (2010).

Commission has authority to grant or deny late interventions, taking into consideration: (1) whether the movant has good cause for failing to make a timely filing; (2) whether permitting the intervention would disrupt the proceeding; (3) whether the movant's interest is not adequately represented by other parties in the proceeding; (4) whether permitting the intervention would prejudice or place additional burdens upon the existing parties; and (5) whether the motion conforms to the content requirements of an intervention. The Midwest ISO also states that, under Commission precedent, parties seeking to intervene after the issuance of a Commission determination bear a heavy burden to demonstrate good cause for granting such late interventions.[31] The Midwest ISO maintains that the entities whose intervention it opposes have not satisfied these requirements.

22. The Midwest ISO states that this proceeding was initiated over a year ago, and the parties in question have had adequate notice and opportunity to intervene and submit comments. It states that the Initial Order resolved issues raised in this proceeding, in light of the interests of parties admitted at the time, and that the Midwest ISO and its stakeholders have put significant time and effort into complying with the Commission's directives in that order. The Midwest ISO maintains that, given the highly developed record here, granting the late motions to intervene will be prejudicial and burdensome for the parties that have participated in this proceeding over the past year if the movants seek to supplement the record.

23. In response to the Midwest ISO, Iberdrola Renewables, Edison Mission, Midwest Transmission Customers, and E.ON C&R state that they filed their motions to intervene prior to the deadline specified in the Commission's notice and that the motions therefore are timely. E.ON C&R states that an opportunity to intervene is standard Commission practice in the case of compliance filings.

III. <u>Discussion</u>

A. <u>Procedural Matters</u>

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the

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[31] *E.g.*, Midwest ISO, January 4, 2010 Motion in Opposition to Late Intervention at 5 (citing Paper Hearing Rehearing Order, 127 FERC ¶ 61,121 at P 15-16 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003); *H.Q. Energy Services (U.S.), Inc. v. New York Indep. Sys. Operator, Inc.*, 100 FERC ¶ 61,028, at P 61,072 (2002); *North Baja Pipeline LLC*, 99 FERC ¶ 61,028, at 61,109-10 (2002); *Florida Power & Light Co.*, 99 FERC ¶ 61,318, at 62,358 (2002))).

Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), the Commission will grant the late-filed motion to intervene of SEIA, given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the answer of the Midwest ISO to protests because it provided information that assisted us in our decision-making process. We are not persuaded to accept Westar's answer to the Midwest ISO's answer to protests.

26. Over the Midwest ISO's objection, we will accept the motions to intervene of E.ON C&R, E.ON U.S., Iberdrola Renewables, Midwest Transmission Customers, Edison Mission, IPL, Madison, and SEIA. With the exception of SEIA's motion, which was filed one day after the comment date, all of these motions were timely, although some of the entities that made them incorrectly styled their filings as motions to intervene out of time.[32] The arguments that the Midwest ISO raises in opposition to the timely motions are thus without merit, and, as noted above, SEIA's motion satisfies the standards of Rule 214(d).[33] The Commission cases that the Midwest ISO cites to support its motion are not applicable here. Those cases establish that parties seeking to intervene after the issuance of a dispositive order in a proceeding bear a heavy burden to demonstrate good cause for granting the intervention. All of those cases involve motions to intervene on rehearing. That is not the posture of this proceeding. The December 7, 2009 Compliance Filing is a compliance filing that until now has not been the subject of a dispositive order. Entities are not prevented from intervening in the sub-docket that was established for this filing simply because they did not intervene at an earlier stage of this proceeding.

27. Westar filed an answer and a supplemental answer to the Midwest ISO's request for rehearing. Financial Marketers collectively filed an answer to the three rehearing requests. Northern Indiana, DC Energy, and EPIC collectively filed an answer to the Midwest ISO's rehearing request. Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure, the Commission does not permit answers to requests for rehearing.

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[32] This was the case with Iberdrola Renewables and E.ON U.S.

[33] We note that SEIA is a signatory to a timely protest.

B. Requests for Rehearing of the Initial Order in Docket No. ER09-411-002

1. Rehearing Requests

28. Xcel states that the Commission has not explained why the Midwest ISO's proposed exemptions are unreasonable. It contends that the Midwest ISO has provided substantive support for the exemptions, in particular citations to Commission orders that support exemptions of similar resources from uninstructed deviation penalties or Excessive/Deficient Energy Deployment Charges. According to Xcel, the Commission simply concluded in the Initial Order that the exemptions may be unjust and unreasonable, and did not support that conclusion. Xcel maintains that, if the Commission does not grant rehearing, it should provide further support for this conclusion. Wisconsin Electric states that the Commission did not provide a basis for determining that the Midwest ISO's proposal was not shown to be just and reasonable.

29. Xcel maintains that the Initial Order invalidated market participants' past reliance on the exemptions and creates uncertainty as to how Revenue Sufficiency Guarantee charges will be assessed. It argues that any changes should be prospective only.

30. Xcel states that the Initial Order made directives involving the RSG Task Force that cannot be carried out in the allotted time. It maintains that the RSG Task Force does not have access to the data needed to accomplish the required analysis and must hire a third party to perform the analysis. Xcel argues that the Commission should grant additional time for completion of the analysis.

31. Xcel states that, if the Commission does not grant its rehearing requests, it should clarify: (1) that the Midwest ISO may seek to justify the proposed exemptions in a subsequent compliance filing; (2) the scope of the directives regarding the RSG Task Force and the treatment of exemptions if the Midwest ISO does not submit adequate support for them; and (3) that any findings related to the exempt resources in this proceeding apply only to the Interim Rate and that any similar questions arising with respect to the Revenue Sufficiency Guarantee Redesign Proposal pending in Docket Nos. EL07-86, EL07-88, and EL07-92 (Redesign Proposal) or other time frames should be studied independently.

32. Wisconsin Electric asks the Commission to clarify whether it viewed the Midwest ISO's revisions to its tariff as a clarification of the existing tariff or as a new proposal that has not been found to be just and reasonable.

33. Wisconsin Electric notes that, in the Initial Order, the Commission accepted the supplemental protest filed by Financial Marketers, but it did not accept the answers to that protest of either the Midwest ISO or Ameren and Northern Indiana. Wisconsin Electric asks the Commission to clarify that neither Financial Marketers' supplemental

protest, nor any information it contains, serves as the basis for the Commission's determinations in the Initial Order. Wisconsin Electric notes that Financial Marketers simultaneously filed their supplemental protest in other dockets involving Revenue Sufficiency Guarantee charges, and it wants to ensure that, by accepting the supplemental protest in the instant docket, the Commission is not accepting it for any purposes beyond this proceeding. Wisconsin Electric states that its principal concern is that Financial Marketers reargue in the supplemental protest issues that have largely been resolved before the Commission.

34. Wisconsin Electric states that the RSG Task Force process required in the Initial Order ignores the committee process and structure established in the Midwest ISO's tariff. Wisconsin Electric states that it is concerned that the RSG Task Force has no authority to advance recommendations to the Commission. The Midwest ISO states that the Initial Order requires it to make a 90-day compliance filing based on the findings and recommendations of the RSG Task Force. The Midwest ISO states that this could be construed as requiring it simply to adopt the RSG Task Force's recommendations, although it has the duty and authority to propose tariff revisions based on its own independent assessment of relevant factors.

35. The Midwest ISO maintains that the Initial Order contains statements that are unclear or erroneous in that they could imply that the RSG Task Force's analysis should include data and issues pertaining to cost allocation issues, including the treatment of headroom, under the pending Redesign Proposal. For instance, the Midwest ISO notes that the Initial Order references required headroom for intermittent resources, but the tariff revisions proposed here do not establish a separate allocation of headroom-related commitment costs, and that the current tariff does not mention headroom. The Midwest ISO argues that the RSG Task Force's analysis should focus only on the proposed tariff revisions that the Initial Order accepted, not the Redesign Proposal. The Midwest ISO maintains that some RSG Task Force participants have argued that the Initial Order allows open-ended analysis that includes data and questions that are not directly related to the tariff revisions at issue here. Finally, the Midwest ISO requests that the Commission make available an appropriate alternative dispute resolution process, or direct the holding of a technical conference, to address and resolve disputes over the data and issues that may or should be covered by the RSG Task Force analysis.

2. Commission Determination

36. We disagree with Xcel and Wisconsin Electric that the Commission did not support its conclusion in the Initial Order that the Midwest ISO's proposal may be unjust and unreasonable. First of all, section 205 of the FPA requires the Midwest ISO to bear the burden of showing that its proposed change in the tariff is just and reasonable. The Midwest ISO made no such showing. Instead, it maintained that the purpose of the revisions in question was simply "to *clarify* that resource deviations subject to [Revenue Sufficiency Guarantee] charges are only those not otherwise exempt from such

charges…."[34] To classify a change as a clarification rather than a tariff revision implies that the change has already been shown to be just and reasonable, and the Midwest ISO made no showing that would support a finding that the Commission already determined that all of the proposed exemptions were just and reasonable. At most, the Midwest ISO sought to justify its proposal on policy matters. However, it did not address other factors that are pertinent to a just and reasonable cost allocation, such as cost causation principles.[35] When an applicant does not concede that it is making a change in its tariff, and as a result does not make the showing that is necessary to demonstrate that the change it in fact is making is just and reasonable, the Commission has no basis to make a determination that the proposal is just and reasonable. Given that the entire burden of supporting the change lies with the Midwest ISO, we do not know what further support for the Commission's conclusion Xcel and Westar consider necessary. These points also answer Wisconsin Electric's question regarding whether the Commission views the Midwest ISO's filing as a clarification of the tariff or a new proposal. It represents a change in the filed rate, as discussed below.

37. While Xcel maintains that the Initial Order did not allow the RSG Task Force sufficient time to complete the tasks that the order required, it does not specify how much time should have been allotted or provide information that would allow the Commission to infer what amount of time would be appropriate. Xcel thus makes no specific request that we could act on in a reasoned manner. We note that the Commission provided an extension of time to ensure sufficient time to complete the analysis.[36]

38. We further disagree with Xcel that the Initial Order inappropriately invalidated market participants' past reliance on the exemptions at issue in this proceeding. These exemptions have never been on file with the Commission, or approved as just and reasonable. And in any event, the Initial Order permitted the Midwest ISO to continue to exempt certain market activities, pending the study and the compliance filing required in the Initial Order, and specifically noted that the rate might be unjust and unreasonable.[37]

39. With respect to Xcel's clarification requests, we note that nothing in the Initial Order precludes the Midwest ISO from seeking to justify the proposed exemptions in a subsequent compliance filing. The findings in this proceeding apply only to the Interim

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[34] Midwest ISO Rehearing Request at 2 (emphasis supplied).

[35] *See, e.g.,* Initial Order, 128 FERC ¶ 61,142 at P 28-34.

[36] *Midwest Indep. Transmission Sys. Operator, Inc.*, Notice of Extension of Time, Docket No. ER09-411-000 (Oct. 15, 2009).

[37] *Id.* P 50-51.

Rate, which is effective at this time. Similar questions arising with respect to the Redesign Proposal or other previous time frames will be dealt with in other proceedings.

40. With regard to Wisconsin Electric's inquiry concerning whether Financial Marketers' supplemental protest provides a basis for our determinations in the Initial Order and the possible role of that filing in other proceedings, we note that the bases for our determinations in the Initial Order are set out in that order. Our decisions in other proceedings are made on the basis of the record in those proceedings.

41. We agree with Wisconsin Electric and the Midwest ISO that the Midwest ISO cannot be required to accept RSG Task Force recommendations over its own views on a topic. Any submission by the Midwest ISO must be based on its own independent assessment of relevant factors.

42. With respect to the Midwest ISO's and Westar's requests concerning the scope of the Market Monitor Study, we agree with the Midwest ISO that the scope of the study should be limited to an analysis of how, and to what extent, the seven deviations exempted under the proposal cause additional unit commitments and associated real-time Revenue Sufficiency Guarantee costs. The Commission required the study solely to gather further cost causation information that would aid it in determining whether the proposed exemptions are just and reasonable. Therefore, the study should consider "other things that the RSG Task Force deems relevant" only to the extent that those other things are relevant to an analysis of how the proposed exemptions cause real-time Revenue Sufficiency Guarantee costs. As the Midwest ISO requests, we clarify that the study need not consider tariff revisions pending in other proceedings.[38] Furthermore, we will grant rehearing and will not require the study to consider "other issues pertinent to cost allocation" because the Midwest ISO did not propose any changes to its Revenue Sufficiency Guarantee cost allocation other than the proposed exemptions and, therefore, this information is not relevant to the cost causation analysis needed here. In addition, we will not require the study to consider "forecasting methods," as the Midwest ISO sufficiently addressed this issue in its June 8, 2009 response to the Commission's data request.

43. Finally, we deny the Midwest ISO's request for an alternative dispute resolution process or a technical conference. This proceeding and its procedures provide an adequate forum for the resolution of any outstanding issues.

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[38] In particular, the study's consideration of headroom need not consider changes to the treatment of headroom submitted in the Redesign Proposal.

C. Proposed Exemptions in Docket No. ER09-411-000

1. Existing Tariff Provisions

a. December 12, 2008 Filing

44. The Midwest ISO's December 12, 2008 Filing proposes to revise section 40.3.3.a.ii(d) of the Midwest ISO tariff to clarify that deviations subject to real-time Revenue Sufficiency Guarantee charges are those resource deviations "not otherwise exempt from hourly [e]xcessive [e]nergy [c]alculations and Excessive/Deficient Energy Deployment Charges pursuant to [s]ection 40.3.4.d" of the tariff.[39] The Midwest ISO states that this limitation is already implied in the current version of section 40.3.3.a.ii(d) but that it is appropriate to add the proposed language to the tariff to state the limitation explicitly. The purpose of this revision is to exempt the seven types of deviations mentioned above from real-time Revenue Sufficiency Guarantee charges.

b. Comments on December 12, 2008 Filing

45. Financial Marketers and DC Energy argue that the tariff does not imply that the proposed deviations are exempt from real-time Revenue Sufficiency Guarantee charges, and they point out that the Midwest ISO has not identified any existing tariff language that clearly grants such an exemption. Financial Marketers contend that exempting the proposed deviations would violate the filed rate doctrine and that the proposed tariff revision is not a mere clarification but a rate change. DC Energy also argues that the Midwest ISO's filing includes a new rate proposal that exempts from Revenue Sufficiency Guarantee charges deviations that are not exempt under the current tariff.

46. DC Energy contends that exemptions from Excessive/Deficient Energy Deployment Charges and from Revenue Sufficiency Guarantee charges serve different purposes. DC Energy states that an exemption from Excessive/Deficient Energy Deployment Charges is an exemption from a penalty for failure to perform as required, and this is different from an exemption from the Revenue Sufficiency Guarantee charges that a market participant causes. DC Energy argues that the proposed parenthetical reference to section 40.3.4 in section 40.3.3.a.ii is vague and could cause discriminatory cost shifting.

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[39] Midwest ISO, December 12, 2008 Filing, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 1096.

c. **Answers**

47. The Midwest ISO contends that the proposed revision simply references existing real-time Revenue Sufficiency Guarantee charge exemptions and does not add new exemptions to the tariff. It argues that the proposed revision does not give it unfettered discretion to determine Revenue Sufficiency Guarantee exemptions because it only excludes from the Revenue Sufficiency Guarantee charge denominator deviations that are already "otherwise exempt" from excessive energy calculations and from Excessive/Deficient Energy Deployment Charges under section 40.3.4.d of the tariff.

48. The Midwest ISO maintains that it is appropriate to exempt from real-time Revenue Sufficiency Guarantee charges transactions that are exempt from Excessive/Deficient Energy Deployment Charges. The tariff specifically exempts deviations caused by following the Midwest ISO's instructions from Real-Time Offer Revenue Sufficiency Guarantee Make-Whole Payments if the resources are manually redispatched or if they are following Midwest ISO emergency directives.[40] The Midwest ISO also states that the Commission has recognized that when following the Midwest ISO's directives, certain resources "will not be subject to uninstructed deviation penalties and [Revenue Sufficiency Guarantee] uplift charges, or lose eligibility to receive a full [Revenue Sufficiency Guarantee] make-whole payment."[41] The Midwest ISO contends that real-time Revenue Sufficiency Guarantee charges should not be imposed on deviations that are due to state estimator and unit dispatch system lags in tracking output.

49. DC Energy responds that the Midwest ISO's entire justification for its filing depends on whether the existing tariff already exempts certain deviations from real-time Revenue Sufficiency Guarantee charges. If it does not, the change has no basis because the Midwest ISO has not offered any cost causation analysis to support it. DC Energy argues that the Midwest ISO does not identify anything in the existing tariff that exempts from real-time Revenue Sufficiency Guarantee charges units that are exempt from Excessive/Deficient Energy Deployment Charges. DC Energy reiterates that real-time Excessive/Deficient Energy Deployment Charges are penalties designed to provide incentives for generators to produce energy within a predictable range, while real-time Revenue Sufficiency Guarantee charges serve to ensure that resources committed through the Reliability Assessment Commitment process receive adequate compensation.
DC Energy adds that the existing tariff does not provide for the proposed real-time

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[40] Midwest ISO, January 21, 2009 Answer at 9.

[41] *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,009, at P 80, 82, *order on reh'g*, 119 FERC ¶ 61,327 (2007)).

Revenue Sufficiency Guarantee charge exemptions for deviations due to under- and over-generation volumes, de-rate volumes, and must-run volumes.

d. March 11, 2009 Filing

50. In its March 11, 2009 response to the Commission's data request, the Midwest ISO again argues that the real-time Revenue Sufficiency Guarantee charge exemptions in the proposed revision to section 40.3.3.a.ii(d) already apply under section 40.3.4.d. It states that the existing tariff does not allocate real-time Revenue Sufficiency Guarantee charges to the following deviations: (1) excessive/deficient energy volumes; (2) must-run volumes;[42] and (3) de-rate volumes.[43] The Midwest ISO maintains that excessive/deficient energy volumes and de-rate volumes may result in committing additional units during the Reliability Assessment Commitment process, which may increase real-time Revenue Sufficiency Guarantee costs. The Midwest ISO also explains that excessive/deficient energy volumes and must-run volumes may reduce real-time prices, causing additional unit commitment costs that are not recovered by real-time prices.

e. Comments on March 11, 2009 Filing

51. DC Energy argues that the Midwest ISO fails to show a basis in the tariff for exempting certain resources that are exempt from Excessive/Deficient Energy Deployment Charges from real-time Revenue Sufficiency Guarantee charges. DC Energy reiterates that Excessive/Deficient Energy Deployment Charges and Revenue Sufficiency Guarantee charges serve different purposes, are subject to different rules, and are located in different sections of the tariff.[44]

52. Financial Marketers disagree with the Midwest ISO's claim that the November 7, 2008 order[45] already addressed the proposed exemptions. Financial Marketers state that

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[42] The Midwest ISO states that must-run volumes would include any negative difference between energy scheduled in the day-ahead energy and operating reserve markets and real-time hourly economic minimum dispatch amounts.

[43] The Midwest ISO states that de-rate volumes would include any negative difference between real-time hourly economic maximum dispatch amounts and energy scheduled in the day-ahead energy market.

[44] DC Energy April 1, 2009 Comments at 6-8.

[45] *Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,132 (2007) (November 5 Order), *order on reh'g*, 125 FERC ¶ 61,156 (2008) (November 7 Order), *reh'g dismissed*, 127 FERC ¶ 61,241 (2009), *reh'g pending*.

the November 7 Order directed the Midwest ISO to remove from the Revenue Sufficiency Guarantee denominator the virtual supply offers of market participants that did not withdraw energy on a given day. The Midwest ISO's proposed exemptions were not at issue in that proceeding, according to Financial Marketers.[46]

f. December 7, 2009 Compliance Filing

53. The Midwest ISO did not address whether its existing tariff already provides for the proposed exemptions in its December 7, 2009 Compliance Filing.

g. Comments on December 7, 2009 Compliance Filing

54. Financial Marketers argue that the proposed exemptions are not provided for under the Midwest ISO's existing tariff. They claim that the proposal is not a mere clarification because the existing tariff is unambiguous as to the physical deviations that are subject to real-time Revenue Sufficiency Guarantee charges and does not imply that the charges are exempted elsewhere in the tariff. Financial Marketers also contend that the Midwest ISO's proposal to simply shift to non-exempt deviations the costs associated with the proposed exempted deviations is a substantive tariff change. They assert that this cost shift was not directed by the November 7 Order, which addressed only a narrow issue with regard to virtual supply offers.[47]

55. MidAmerican argues that the Midwest ISO's December 12, 2008 Filing does not propose any new exemptions and merely clarifies exemptions that were already long established at the time of filing. It contends that neither the November 5 Order nor the November 7 Order altered the then-existing exemptions from real-time Revenue Sufficiency Guarantee charges; they merely established how the Revenue Sufficiency Guarantee rate was to be calculated in light of exemptions that already existed. MidAmerican adds that the exemptions have been reflected in the Midwest ISO's business practices manuals for many years, and market participants have been making decisions based on the existence of the seven proposed exemptions for as long as the Midwest ISO markets have existed.[48]

h. Commission Determination

56. We find that the effect of the Midwest ISO's proposed language designating certain resources, including intermittent resources, as exempt from real-time Revenue

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[46] Financial Marketers, April 1, 2009 Comments at 6-8.

[47] Financial Marketers, January 11, 2010 Comments at 12-14.

[48] MidAmerican, January 11, 2010 Comments at 7-8.

Sufficiency Guarantee charges represents a rate change for purposes of section 205 of the FPA. While tariff section 40.3.4.d exempts certain resources, including intermittent resources, from excessive energy calculations and Excessive/Deficient Energy Deployment Charges, the Midwest ISO has not shown that any existing tariff language explicitly or implicitly provides that those resources are also exempt from the unrelated real-time Revenue Sufficiency Guarantee charges provided under section 40.3.3.a.ii(d).

57. While the existing tariff properly exempts certain resources from Excessive/Deficient Energy Deployment Charges, the position that such resources should similarly be exempt from an allocation of real-time Revenue Sufficiency Guarantee costs is not justified. Excessive/Deficient Energy Deployment Charges are "a penalty system" that helps the Midwest ISO to maintain system reliability in real time by "dissuading generators from excessively deviating from their dispatch instructions."[49] Customer liability for payment of a penalty rate is not a criterion for the cost allocation of a general settlement charge, such as the Revenue Sufficiency Guarantee charge. The sole purpose of a penalty charge is to provide an incentive for market participants to perform in a certain manner. In contrast, the purpose of a settlement charge such as the Revenue Sufficiency Guarantee charge is to charge market participants for the full cost of energy. Accordingly, it is appropriate to base the cost allocation of the Revenue Sufficiency Guarantee charge on whether the market participant contributed to the incurrence of these costs.

58. The Midwest ISO first disclosed these exemptions to the Commission in December 2008, after the issuance of the November 5 and the November 7 Orders.[50] So while the Commission approved the calculation for the Revenue Sufficiency Guarantee rate in those orders, it did not make (and could not have made) a reasoned decision to approve the exemptions. MidAmerican's argument that the Commission has previously approved these exemptions therefore is unavailing.

59. We discuss the impact of our determinations on the Midwest ISO tariff and refunds below in P 132.

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[49] *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 533, *order on reh'g*, 109 FERC ¶ 61,157 (2004), *order on reh'g*, 111 FERC ¶ 61,043, *reh'g denied*, 112 FERC ¶ 61,086 (2005), *aff'd sub nom. Wisconsin Public Power, Inc. v. FERC*, 493 F.3d 239 (D.C. Cir. 2007). We note that the Midwest ISO formerly referred to "Excessive/Deficient Energy Deployment Charges" as "Uninstructed Deviation Penalties."

[50] Midwest ISO, December 8, 2008 Filing, Docket No. ER04-691-091, at 7-8.

2. Exemption for Intermittent Resources

a. December 12, 2008 Filing

60. In the December 12, 2008 Filing, the Midwest ISO proposed to amend section 40.3.3.a.ii(d) of its tariff to clarify that the resource deviations subject to real-time Revenue Sufficiency Guarantee charges are only those deviations not otherwise exempt from hourly excessive energy calculations and Excessive/Deficient Energy Deployment Charges pursuant to section 40.3.4.d. Section 40.3.4.d.i of the existing Midwest ISO tariff provides that resources designated as intermittent resources "shall not be subject to Excessive/Deficient Energy Deployment Charges or the calculation of [e]xcessive [e]nergy caused solely by the intermittent nature or characteristics of such [r]esources, provided, that there be no fault or negligence of the [m]arket [p]articipants or [g]eneration [o]wners that own or operate them."[51]

b. Comments on December 12, 2008 Filing

61. DC Energy argues that all generator deviations can necessitate additional Revenue Sufficiency Guarantee credits. According to DC Energy, it is arbitrary to exempt intermittent resources from Revenue Sufficiency Guarantee charges because their output is not known until moments before real time and may result in an inefficient and extremely narrow dispatch solution set.[52] DC Energy states that virtual supply offers are not exempt from Revenue Sufficiency Guarantee charges and they are not even capable of under- or over-delivering.[53]

c. March 11, 2009 Filing

62. In its March 11, 2009 response to the Commission's data request, the Midwest ISO reiterates that the policy factors that justify the existing exemption of intermittent resources from Excessive/Deficient Energy Deployment Charges also justify the proposed exemption of intermittent resources from Revenue Sufficiency Guarantee charges. Given the uncontrollable nature of their fuel source, intermittent resources are not dispatchable and do not receive dispatch instructions. The Midwest ISO maintains that these resources do not involve any deviations from dispatch instructions on which

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[51] Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 1140, Second Revised Sheet No. 1141.

[52] DC Energy January 2, 2009 Comments at 10.

[53] *Id.* at 6.

charges can be imposed. It contends that its proposal more closely aligns the treatment of intermittent resources with cost causation.

63. The Midwest ISO asserts that the proposed exemption from Revenue Sufficiency Guarantee charges for intermittent resources is consistent with the Commission's policy of promoting intermittent resources in the Midwest ISO's markets. The Midwest ISO argues that the Commission has stated that intermittent resources should be exempt from Excessive/Deficient Energy Deployment Charges;[54] it has accepted tariff revisions relating to that exemption for intermittent resources;[55] it has explained that the exemption for intermittent resources arises from their "special circumstances" and "intermittent nature or characteristics;"[56] it has required intermittent resources to be defined as "a resource that is not capable of being committed or de-committed, or is not capable of following set-point instructions in the real-time market;"[57] and it has declared that all resources are exempt from Excessive/Deficient Energy Deployment Charges if events beyond their control prevent the resource from following instructions.[58] The Midwest ISO adds that in a previous Notice of Proposed Rulemaking regarding intermittent resources, the Commission recognized that those resources have a limited ability to predict and control their output and that since deviations by wind generators are more driven by weather than by controllable factors, generator imbalance provisions may impede access to transmission by intermittent resources in a way that is unduly discriminatory.[59] In addition, the Midwest ISO states that the Commission recognized in

[54] Midwest ISO, March 11, 2009 Filing at 8 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 535 (2004) (TEMT II Order)).

[55] *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,053, at P 220, 222 (2005)).

[56] *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,154, at P 32 (2008)).

[57] *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,318, at P 185 (2008) (December 18 Order)).

[58] *Id.* at 8-9 (citing December 18 Order, 125 FERC ¶ 61,318 at P 258).

[59] *Id.* at 9 (citing *Imbalance Provisions for Intermittent Resources Assessing the State of Wind Energy in Wholesale Electricity Markets,* Notice of Proposed Rulemaking, 70 FR 21349 (Apr. 26, 2005), FERC Stats. & Regs. ¶ 32,581, at P 9-10 (2005)).

Order No. 890 that intermittent resources are not dispatchable because their energy source cannot be controlled or stored.[60]

64. The Midwest ISO contends that it is proper to exempt intermittent resources from Revenue Sufficiency Guarantee charges on excessive/deficient energy volumes because they do not control their fuel sources, and their deviations therefore are normally unintentional and not comparable to the deviations of resources that have controllable fuel sources. The Midwest ISO also argues that intermittent resources are not given setpoint instructions that they are expected to comply with. Instead, the Midwest ISO sends them setpoint instructions that typically comprise an "echo back" of the previous state estimator-calculated output amount from the previous dispatch interval. These instructions simply describe after-the-fact observed output without any expectation that the output during the current dispatch interval would match the output amount "echoed back" from the prior dispatch interval.

65. The Midwest ISO recognizes that the excessive/deficient energy volumes of intermittent resources can result in Revenue Sufficiency Guarantee costs to the extent that the Reliability Assessment Commitment process must commit capacity to provide sufficient headroom to account for the variability and uncertainty of the output of intermittent resources. But providing headroom for intermittent resources is based on the estimated change of their current output within a specific hour, while Reliability Assessment Commitments for non-intermittent resources are based on the actual change in their current output within an hour. The Midwest ISO states that the Revenue Sufficiency Guarantee costs associated with these headroom commitments are allocated based on load ratio share, rather than being allocated directly to intermittent resources.

66. The Midwest ISO states that intermittent resources cannot have real-time must-run volumes that are comparable to other resources because neither the Midwest ISO nor the market participant can commit intermittent resources in the real-time market, and thus no economic minimum limits constrain the unit commitment and dispatch processes for those resources. The Midwest ISO adds that the definition of economic minimum dispatch logically excludes intermittent resources because they are not dispatched but instead merely have their previous output echoed. The Midwest ISO also states that the Reliability Assessment Commitment process considers forecasted values of intermittent resources, but an increase in their real-time output can cause some Revenue Sufficiency Guarantee costs. To the extent that the Reliability Assessment Commitment process commits resources for economic reasons and intermittent resource output exceeds

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[60] *Id.* (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009)).

forecasts, the real-time prices and associated revenue may be reduced, which increases Revenue Sufficiency Guarantee credits. The Midwest ISO notes that any Revenue Sufficiency Guarantee costs associated with such must-run volumes for intermittent resources relate to headroom and are therefore uplifted to market participants instead of allocated directly to intermittent resources.

67. The Midwest ISO states that intermittent resources cannot have de-rate volumes comparable to other resources because they cannot submit real-time offers with associated hourly economic maximum limits. As a result, intermittent resources that choose to clear in the day-ahead market cannot update those limits in real time. Reduced real-time output of intermittent resources may cause Revenue Sufficiency Guarantee costs to a limited extent. To the degree that day-ahead committed intermittent resources displace the commitment of generation resources in the day-ahead market, the Reliability Assessment Commitment process may commit resources for the reduced forecast, reduced levels, or unavailability of intermittent resources. The Midwest ISO concludes that any unrecovered production costs associated with such additional resource commitments may result in Revenue Sufficiency Guarantee credits.

d. Comments on March 11, 2009 Filing

68. DC Energy and Financial Marketers argue that the Commission's policy of encouraging the participation by certain resources in the market does not justify the proposed exemptions because nothing in FPA section 205 allows granting an undue preference to certain market participants. DC Energy and Financial Marketers also again contend that the Midwest ISO has not justified shifting Revenue Sufficiency Guarantee costs caused by certain market participants to non-exempt deviations.

e. June 8, 2009 Filing

69. In its June 8, 2009 response to the Commission's second data request, the Midwest ISO provided information on how it forecasts, schedules, commits, and dispatches all intermittent and other resources that it exempts from real-time Revenue Sufficiency Guarantee charges.

70. The Midwest ISO explains that the Reliability Assessment Commitment process ensures that sufficient headroom is available. It states that incremental capacity requirements or deficiencies that may occur because of differences between intermittent resource forecasts and actual output are considered part of the headroom and operating reserve requirements, as are unexpected deviations that are otherwise exempt due to other grounds for excessive energy exemptions for resources. There is no specific and separate input for which commitments are made in the Reliability Assessment Commitment process because of intermittent and other exempt resources.

71. The Midwest ISO clarifies that the intermittent resource forecasting tool forecasts intermittent generation for each hour of the operating day. The Transmission Provider can override the forecast as necessary, and the forecasting mechanism therefore provides ad hoc forecasting capability. The Midwest ISO also explains that the available capacity for intermittent resources is equal to the intermittent forecast. Resources exempt from the Excessive/Deficient Energy Deployment Charges are not considered to be dispatchable in real-time, except when dispatch bands are disabled.

72. The Midwest ISO clarifies that the Peak Hour Real-Time Unit Commitment Performance Rating, a measure of commitment efficiency, compares the actual headroom in the peak hour of the day against target levels. Headroom of less than 1,100 megawatts is viewed as good performance, and headroom less than 750 megawatts is viewed as excellent performance. The Midwest ISO states that these targets have been established over time through operational experience, and they are not based on an empirical analysis of the reasons for headroom. Any headroom amounts associated with those reasons, including intermittent or otherwise Revenue Sufficiency Guarantee charge exempted resources, thus cannot be quantified.

f. <u>Comment on June 8, 2009 Filing</u>

73. Xcel argues that intermittent resources should not be allocated any production costs related to commitment of peaking generators needed for managing headroom associated with changes in wind direction. Xcel contends that the reasons that support the exemption of intermittent resources from Excessive/Deficient Energy Deployment Charges and Revenue Sufficiency Guarantee charges equally support their exemption from the production costs related to peaking generator commitment.

g. <u>December 7, 2009 Compliance Filing</u>

74. The Market Monitor Study finds that three percent ($2.47 million) of total real-time Revenue Sufficiency Guarantee costs were caused by wind resources, with an additional 1 percent ($0.81 million) by other types of intermittent resources.[61]

75. The Midwest ISO states that the RSG Task Force recommends eliminating the proposed exemption for intermittent resources, as it “finds appropriate differentiation, the existence of cost causation, the existence of a material cost shift, and the existence of discriminatory treatment.”[62]

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[61] Midwest ISO, December 7, 2009 Compliance Filing, Tab C, Market Monitor Study at 6-8.

[62] *Id.* Transmittal Letter at 9.

76. The Midwest ISO agrees with the RSG Task Force's recommendation to eliminate the proposed exemption for intermittent resources. It states that it has filed proposed tariff revisions as part of the Indicative Rate proceeding that "treat overscheduled [i]ntermittent [r]esources in the day-ahead market similar to other [r]esources" and would eliminate the proposed exemption prospectively with the Indicative Rate proposal.[63] The Exempted Deviation Discussion attached to the December 7, 2009 Compliance Filing indicates that exempting intermittent resources from RSG cost allocation has the highest impact of all of the proposed exemptions and, given the growth and impact of these resources in recent years, a change in cost allocation is warranted.[64]

h. Comments on December 7, 2009 Compliance Filing

77. Ameren, Detroit Edison, DC Energy, Dynegy, Financial Marketers, FirstEnergy, Northern Indiana, and Wisconsin Electric support eliminating the exemption for intermittent resources. Ameren, Dynegy, FirstEnergy, and Northern Indiana argue that the deviations associated with intermittent resources can result in the incurrence of Revenue Sufficiency Guarantee costs, specifically noting the Market Monitor Study's finding that wind resource exemptions contribute to three percent of real-time Revenue Sufficiency Guarantee costs and that other intermittent resources contribute an additional one percent or less.[65] Detroit Edison adds that this four percent of real-time Revenue Sufficiency Guarantee costs exceeds the combined costs caused by the other six proposed exemptions. Ameren also states that the RSG Task Force analysis shows that the exemption would cause discriminatory treatment and a cost shift.[66] Ameren concludes that, until the Midwest ISO develops a way to charge wind resources separately from other intermittent resources, the contributions of all intermittent resources to the incurrence of real-time Revenue Sufficiency Guarantee costs are significant enough to eliminate the exemption for them. Detroit Edison states that it agrees with the Market Monitor's previous recommendation that the Midwest ISO allocate Revenue Sufficiency

[63] *Id.* Tab C, Market Monitor Study at 17.

[64] *Id.* Tab H, Exempted Deviation Discussion at 17.

[65] *See*, *e.g.*, Ameren December 28, 2009 Comments at 5 (citing Midwest ISO December 7, 2009 Compliance Filing, Tab C, Market Monitor Study at 6-7).

[66] *Id.* (citing Midwest ISO December 7, 2009 Compliance Filing, Transmittal Letter at 9).

Guarantee costs to intermittent resources.[67] Dynegy, FirstEnergy, and Northern Indiana contend that it is no longer appropriate to exempt wind resources because the Midwest ISO is expected to experience a significant increase in the amount of wind generation in its footprint and the amount of associated Revenue Sufficiency Guarantee costs. Dynegy and FirstEnergy add that wind resources are progressing technologically so that they are more able to control and forecast their output. Absent the exemption, FirstEnergy argues that there is no incentive for wind resources to take any directives from the Midwest ISO or respond to price signals. DC Energy argues that the Midwest ISO has never justified the proposed exemption.

78. Financial Marketers argue that the proposal to exempt intermittent resources is based not on cost causation analysis but on arguments that the deviations of intermittent resources are beyond their control. Financial Marketers argue that, if the Commission permits intermittent resources to be exempted due to circumstances beyond their control, the Commission must do so for other resources in a manner that is not unduly discriminatory and preferential. Financial Marketers argue that, in this case, virtual supply offers should be exempted from all Revenue Sufficiency Guarantee costs because they also have no control over the fact that Midwest ISO does not consider cleared virtual supply in determining how much generation to clear in its day-ahead market.

79. E.ON C&R, Intermittent Generators, and Intermittent Organizations disagree, arguing that the proposed exemption for intermittent resources should be retained. E.ON C&R reiterates several of the Midwest ISO's general arguments supporting the proposed exemptions.[68] E.ON C&R claims that intermittent resources are incapable of deviating from Midwest ISO instructions in ways that cause real-time Revenue Sufficiency Guarantee costs because they do not receive dispatch instructions and do not deviate from day-ahead schedules. It maintains that intermittent resources should be exempted from charges because they have unique characteristics, including a limited ability to predict or control their output. It adds that assessing real-time Revenue Sufficiency Guarantee charges on intermittent resources will not cause them to change their behavior because such resources have no means to avoid charges. Intermittent Generators and Intermittent Organizations similarly claim that market rules should be based on incentives to perform. They assert that such incentives are meaningless and unduly discriminatory in the case of intermittent resources, which lack the ability to

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[67] Detroit Edison Comments at 5 (citing Market Monitor, 2008 State of the Market Report for the Midwest ISO at xxi, *available at* http://www.potomaceconomics.com/uploads/midwest_reports/2008_State_of_the_Market_-_Final.pdf).

[68] E.ON C&R, January 11, 2010 Comments at 6-7 (citing Midwest ISO, December 7, 2008 Compliance Filing, Transmittal Letter at 15-16, 23).

change their conduct in order to avoid the incurrence of real-time Revenue Sufficiency Guarantee costs.[69] Intermittent Organizations and E.ON C&R add that, since intermittent resources do not receive dispatch instructions that they are expected to comply with, they do not incur any deviations on which real-time Revenue Sufficiency Guarantee costs could be imposed.

80. E.ON C&R, Intermittent Generators, and Intermittent Organizations note that in multiple orders the Commission has supported exempting intermittent resources from charges based on commitment deviations. E.ON C&R states that intermittent resources are treated differently under the Midwest ISO tariff, including being exempted from Excessive/Deficient Energy Deployment Charges.[70] Intermittent Organizations also contend that the characteristics of intermittent resources have not changed and, thus, there is no justification for suddenly changing their treatment under the Revenue Sufficiency Guarantee provisions. In addition, Intermittent Organizations argue that removing the exemption for intermittent resources does not support state and regional policies to encourage a greater shift in the resource mix toward renewable resources. Intermittent Generators note that, in accepting real-time Revenue Sufficiency Guarantee charges, the Commission made clear that parties had the incentive and means to avoid incurring such charges "by scheduling in the [d]ay-[a]head [m]arket instead of the [r]eal-[t]ime [m]arket and by not deviating from the dispatch instructions."[71] They maintain that obviously incentives are meaningless if the entities being provided the purported incentive do not have the ability to change their conduct. Intermittent Generators also assert that eliminating the exemption is contrary to the Commission's previous recognition that different rules are appropriate for different types of resources.[72]

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[69] Intermittent Generators, January 11, 2010 Comments at 13 (citing Midwest ISO, March 11, 2009 Filing at 9-10).

[70] E.ON C&R, January 11, 2010 Comments at 8-13 (citing, *e.g.*, Order on Paper Hearing, 125 FERC ¶ 61,161 at Appendix; TEMT II Order, 108 FERC ¶ 61,163 at P 535).

[71] Intermittent Generators, January 11, 2010 Comments at 12 (citing TEMT II Order, 108 FERC ¶ 61,163 at P 587).

[72] *Id.* at 14-15 (citing *Imbalance Provisions for Intermittent Resources Assessing the State of Wind Energy in Wholesale Electricity Markets*, Notice of Proposed Rulemaking, 70 Fed. Reg. 21,349 (Apr. 26, 2005), FERC Stats. & Regs. ¶ 32,581, at P 57 (2005); *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008)).

81. E.ON C&R and Intermittent Generators contend that the Midwest ISO's change in position to oppose the exemption is unsupported and does not owe to a reasoned evaluation of whether assessing charges to intermittent resources is consistent with the inherent characteristics and operational limitations of those resources. Intermittent Generators claim that the Midwest ISO's change in position reflects only that the amount of wind on the Midwest ISO system contributes to higher levels of real-time Revenue Sufficiency Guarantee charges.[73]

82. E.ON C&R argues that the proposed exemption for intermittent resources is not unjust, unreasonable, or unduly discriminatory. It contends that the Commission has found that cost shifts associated with Revenue Sufficiency Guarantee costs are just and reasonable.[74] It adds that the Midwest ISO has found that any potential cost shifts as a result of the proposed exemption are *de minimus*.[75] E.ON C&R maintains that, even if the Market Monitor Study's finding that wind resources caused 3 percent of real-time Revenue Sufficiency Guarantee costs is accurate, the Midwest ISO has not demonstrated that 3 percent is sufficient cost causation evidence to support eliminating the proposed exemption. E.ON C&R argues that the proposed exemption is "just and reasonable discrimination" because, unlike other resource types, intermittent resources have an uncontrollable fuel source, which supports dissimilar treatment.[76] E.ON C&R adds that the exemption for intermittent resources will encourage the use of such resources.

83. Intermittent Generators argue that eliminating the exemption for intermittent resources is inappropriate and discriminatory, claiming that the Midwest ISO's market structure does not consider the unique attributes of wind generators or allow wind resources to mitigate inevitable differences between their day-ahead schedules and actual

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[73] Intermittent Generators also claim that the Midwest ISO fails to explain why it would be just and reasonable to remove the proposed exemption for intermittent resources but not for other types of resource deviations. They claim that the Midwest ISO appears to distinguish between the relative quantitative impact of those exemptions on the incurrence of real-time Revenue Sufficiency Guarantee costs rather than a reasoned assessment.

[74] E.ON C&R, January 11, 2010 Comments at 16-17 (citing Midwest ISO December 7, 2009 Compliance Filing, Transmittal Letter at 18).

[75] E.ON C&R asserts that the Midwest ISO has not explained why it treats the one percent of alleged Revenue Sufficiency Guarantee costs attributed to other exemptions as *de minimus* but does not treat the three percent and one percent of alleged costs attributed to wind resources and other intermittent resources, respectively, as *de minimus*.

[76] E.ON C&R, January 11, 2010 Comments at 18.

operations. They add that the Midwest ISO proposes to retain the exemptions for other resources that are similarly affected by other events or conditions beyond their control.[77]

84. Dynegy, Northern Indiana, and Cargill and Westar contend that the Midwest ISO only intends to remove the exemption for intermittent resources prospectively based on their day-ahead schedules. Dynegy and Northern Indiana contend that intermittent resources have no motivation to schedule their resources in the day-ahead market because they are exempted from real-time Revenue Sufficiency Guarantee charges. Dynegy notes that day-ahead Revenue Sufficiency Guarantee costs have historically been minimal compared to real-time costs. Cargill and Westar maintain that the Midwest ISO completely disregards the Market Monitor Study's findings that intermittent resources caused real-time Revenue Sufficiency Guarantee costs and provides no basis to support allocating day-ahead Revenue Sufficiency Guarantee costs, but not real-time Revenue Sufficiency Guarantee costs, to intermittent resources. Cargill and Westar add that it is illogical to attribute day-ahead costs to intermittent resources based on their real-time deviations from their day-ahead schedules.[78]

85. Northern Indiana explains that the Midwest ISO uses a forecasting tool to estimate intermittent resource participation in its real-time markets when making unit commitments and, thus, wind resources that do not schedule in the day-ahead market still affect capacity commitments. Northern Indiana is also concerned that the Midwest ISO intends only to remove the exemption for resources that are over-scheduled rather than under-scheduled in the day-ahead market. It explains that under-scheduled resources can also impact real-time Revenue Sufficiency Guarantee costs. Northern Indiana also asserts that other types of resources that are under-scheduled are assessed charges and that the Midwest ISO has offered no justification for treating intermittent resources differently. Northern Indiana concludes that the Midwest ISO should assess real-time Revenue Sufficiency Guarantee charges to wind resources that do not submit day-ahead schedules in a manner consistent with its treatment of other resources.[79]

i. <u>Answer</u>

86. The Midwest ISO reiterates that it finds no basis in the RSG Task Force's recommendations and supporting documentation for declaring any of the proposed exemptions or their treatment under the Interim Rate to be unjust, unreasonable, unduly

[77] Intermittent Generators maintain that the Midwest ISO should instead continue its efforts to develop market rules to provide for enhanced wind integration.

[78] Cargill and Westar, January 11, 2010 Comments at 9-10.

[79] Northern Indiana, January 11, 2010 Comments at 9-10.

discriminatory or preferential, or otherwise unlawful. The Midwest ISO states that its recommendation to eliminate the intermittent resource exemption is not a sudden, inexplicable development, as the recommendation is consistent with the Midwest ISO's previous filings in the Indicative Rate proceeding. The Midwest ISO states that, given the increasing impact of wind and other intermittent resources, it is just and reasonable for the Midwest ISO to propose that such resources not be exempted from real-time Revenue Sufficiency Guarantee charges in order to provide incentives that reduce real-time Revenue Sufficiency Guarantee costs and increase market efficiency, consistent with the Midwest ISO's treatment of other non-exempt resources.

87. The Midwest ISO offers several clarifications regarding its proposed treatment of intermittent resources under the Indicative Rate. In response to Dynegy, Northern Indiana, and Cargill and Westar, the Midwest ISO clarifies that no tariff modifications have ever been submitted with respect to the allocation of day-ahead Revenue Sufficiency Guarantee charges, and the proposed tariff revisions here concern only real-time Revenue Sufficiency Guarantee charges. In addition, the Midwest ISO explains that day-ahead Revenue Sufficiency Guarantee charges have never been allocated to resources, including intermittent ones.

j. **<u>Commission Determination</u>**

88. We find based on the evidence here that intermittent resources are causing the incurrence of real-time Revenue Sufficiency Guarantee costs. The Midwest ISO indicates that increases and decreases in the real-time output of intermittent resources, as well as the reduced forecasts or unavailability of such resources, may cause real-time Revenue Sufficiency Guarantee costs.[80] The Market Monitor Study examined all direct causes of all real-time commitments that resulted in real-time Revenue Sufficiency Guarantee costs from the start of the Midwest ISO's ancillary services market through September 30, 2009. It found that more than four percent of total real-time Revenue Sufficiency Guarantee costs were caused by intermittent resources during the period studied, noting that most of this amount was caused by wind resources.[81] We note, as described above, that the Midwest ISO agrees with the RSG Task Force's recommendation to eliminate the proposed exemption for intermittent resources. Based on this analysis, we will reject the proposed exemption for intermittent resources because exempting intermittent resources from real-time Revenue Sufficiency Guarantee charges would shift the associated costs to other market participants that did not cause those costs to be incurred. Such a result would be inconsistent with our application of cost causation

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[80] Midwest ISO, March 11, 2009 Filing at 9-11.

[81] Midwest ISO, December 7, 2009 Compliance Filing, Tab C, Market Monitor Study at 7.

principles in this proceeding. Furthermore, this result could reduce the incentive for intermittent resources to continue their technological progress toward improving their ability to control and forecast their output in order to avoid real-time deviations.[82] Consequently, we will direct the Midwest ISO to remove from the tariff the proposed exemption for intermittent resources.[83]

89. While the Commission has granted exemptions from real-time Revenue Sufficiency Guarantee charges in certain circumstances,[84] the factors on which we have granted exemptions are not present here. We recognize, however, that the inherent technical characteristics of intermittent resources, rather than their behavior or discretion, are generally the reason they cause real-time Revenue Sufficiency Guarantee costs. We also recognize that the Midwest ISO and its stakeholders are discussing how to appropriately integrate intermittent resources. Nothing in this order is intended to preclude the continuation of those discussions or to prevent the Midwest ISO from making future proposals to revise its market rules in light of those discussions.

3. <u>Exemptions for Other Resources</u>

a. <u>December 12, 2008 Filing</u>

90. In the December 12, 2008 Filing, the Midwest ISO proposed to amend section 40.3.3.a.ii(d) of its tariff to clarify that the resource deviations subject to real-time Revenue Sufficiency Guarantee charges are only those deviations not otherwise exempt from hourly excessive energy calculations and Excessive/Deficient Energy Deployment Charges pursuant to section 40.3.4.d. Section 40.3.4.d.i of the existing Midwest ISO tariff provides that certain resources:

> shall not be subject to Excessive/Deficient Energy Deployment Charges during events or conditions beyond the control, and without the fault or negligence, of the [m]arket [p]articipant, including but not limited to:

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[82] The Midwest ISO has not proposed any tariff changes regarding its consideration of day-ahead schedules when assessing real-time Revenue Sufficiency Guarantee charges. As such, we find the arguments of Northern Indiana, Dynegy, and Cargill and Westar on this issue to be outside of the scope of this proceeding.

[83] As discussed below, the tariff sheets should reflect that they will be effective on the date of this order.

[84] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,325, at P 53 (2006) (Manual Redispatch Order); *see also Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,029, at P 14-15 (2007) (Emergency Exemptions Order).

> (1) [e]mergencies; (2) [t]est mode of the [r]esource; or (3) [s]tart-up or shut-down mode of the [g]eneration resource or [s]tored [e]nergy [r]esource; or (4) [t]he [h]our when a [g]eneration [r]esource or [s]tored [e]nergy [r]esource trips and goes off-line; or (5) [d]uring a [c]ontingency [r]eserve [d]eployment.[85]

b. Comments on December 12, 2008 Filing

91. Financial Marketers and DC Energy argue that the proposed exemptions for certain deviations are not based on cost causation principles. Financial Marketers argue that the Midwest ISO has not provided any evidence either for exempting certain resource deviations from Revenue Sufficiency Guarantee charges or for shifting the charges otherwise associated with those resource deviations to other market participants. In their supplemental protest and comments, Financial Marketers present a study and econometric analysis that they maintain shows that virtual supply offers cause minimal, if any, Revenue Sufficiency Guarantee costs.

c. Answers

92. The Midwest ISO maintains that the proposed Revenue Sufficiency Guarantee charge exemptions are broadly based on the principle of cost causation and its corollary precept that market participants should not be held responsible for results that are beyond their control and that they therefore did not intentionally or negligently cause. The Midwest ISO contends that it is appropriate to deem a deviation from dispatch instructions that a resource cannot, or cannot be expected to, control as one that does not warrant the imposition of Revenue Sufficiency Guarantee charges.

93. DC Energy reiterates its arguments that cost causation evidence is necessary to change the Revenue Sufficiency Guarantee rate.

d. March 11, 2009 Filing

94. In its March 11, 2009 response to the Commission's data request, the Midwest ISO states that resources that comply with its directions during emergencies and are exempted from Excessive/Deficient Energy Deployment Charges should also be exempted from Revenue Sufficiency Guarantee charges. The Midwest ISO states that the existing tariff exempts those resources from Excessive/Deficient Energy Deployment Charges based on the non-controllable nature of emergencies. It argues that in previous proceedings the Commission required additional detail on resources exempted from

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[85] Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 1142, Original Sheet No. 1142A, Third Revised Sheet No. 1143.

Excessive/Deficient Energy Deployment Charges during emergencies,[86] and the Commission also stated that "all resources are exempt from these charges if events beyond their control cause the resource not to be able to follow instructions, such as emergencies."[87] The Midwest ISO also contends that market participants that comply with its instructions during emergencies typically would not be expected to cause additional unrecovered Reliability Assessment Commitment costs. It makes similar arguments with respect to resources in the test mode, start-up or shut-down mode, resources that trip and go off-line, resources responding to contingency reserve deployments, deactivation of the dispatch band option and any resource operating under conditions beyond its control.

e. Comments on March 11, 2009 Filing

95. DC Energy and Financial Marketers again argue that the Midwest ISO fails to provide cost support for its proposal and thus does not meet the evidentiary requirement for a section 205 filing. They contend that the Midwest ISO does not support its claims that incurring only small amounts of real-time Revenue Sufficiency Guarantee costs justifies an exemption.

f. December 7, 2009 Compliance Filing

96. The Market Monitor Study finds that resources covered by the de-activation of the dispatch bands cause one percent ($1.06 million) of total real-time Revenue Sufficiency Guarantee costs. The study attributes an additional one percent ($0.42 million) of total real-time Revenue Sufficiency Guarantee costs to resources in start-up or shut-down mode. For deviations associated with resources in test mode and resources deployed to provide contingency reserves, the study finds that they each cause less than one percent ($0.01 million and $0.03 million, respectively) of total real-time Revenue Sufficiency Guarantee costs. The study indicates that resources following Midwest ISO directives, resources that trip and go off-line, and resources affected by events or conditions beyond their control jointly cause another one percent ($0.49 million) of total real-time Revenue Sufficiency Guarantee costs.[88]

97. The Midwest ISO states that the RSG Task Force recommends that the Midwest ISO retain the proposed exemptions for resources that are following Midwest ISO

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[86] TEMT II Order, 108 FERC ¶ 61,163 at P 535.

[87] December 18 Order, 125 FERC ¶ 61,318 at P 258.

[88] Midwest ISO, December 7, 2009 Compliance Filing, Tab C, Market Monitor Study at 6-8.

directives, in test mode, start-up or shut-down mode, that trip and go off-line, involved in a contingency reserve deployment, or affected by other events or conditions beyond their control. The RSG Task Force recommends that the Midwest ISO eliminate the exemption for resources covered by the deactivation of the dispatch band, as it "finds appropriate differentiation, the existence of cost causation, a lack of material cost shift, [and] a lack of discriminatory treatment."[89]

98. The Midwest ISO concurs with the RSG Task Force's recommendations. In support of the five exemptions that it wishes to retain, the Midwest ISO argues that the proposed exemptions incentivize resource operators to operate reliably, predictably, and in compliance with established Midwest ISO directives and procedures. The Midwest ISO asserts that the proposed exemptions would not result in excessive or significant real-time Revenue Sufficiency Guarantee rate increases and that any potential cost shifts would be insignificant. The Midwest ISO adds that the proposed exemptions are adequately differentiated from normal conditions and are based on established policy and existing tariff provisions. As for the dispatch band exemption, the Midwest ISO states that it has submitted proposed tariff modifications to remove the dispatch band option from the tariff and that it will eliminate this exemption prospectively in conjunction with the removal of the dispatch band option.

g. Comments on December 7, 2009 Compliance Filing

99. Ameren, Detroit Edison, Dynegy, FirstEnergy, MidAmerican, and Wisconsin Electric support the recommendations made in the December 7, 2009 Compliance Filing to retain the five proposed exemptions for resources that are following Midwest ISO directives, in test mode, start-up or shut-down mode, that trip and go off-line, involved in a contingency reserve deployment, or affected by other events or conditions beyond their control. Dynegy states that all five exemptions should be accepted because they involve actions that are beyond the direct control of operators or actions taken at the direction of the Midwest ISO in order to maintain system reliability.

100. FirstEnergy states that the Market Monitor Study indicates that the five exemptions each contribute to less than one percent of real-time Revenue Sufficiency Guarantee costs. It argues that the exemption for resources following Midwest ISO directives increases the likelihood that market participants will provide more flexibility in the market to allow the Midwest ISO to dispatch units off of their day-ahead schedules and encourages market participants to follow Midwest ISO instructions. It maintains that removing the exemption for resources in test mode, or start-up or shut-down mode, would place an unfair burden on such resources because submitting and following day-ahead schedules in these modes is nearly impossible. FirstEnergy argues that the

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[89] *Id.* Transmittal Letter at 8.

exemption for resources that trip and go off-line should be retained because they are of limited duration and generally do not cause real-time Revenue Sufficiency Guarantee charges. It adds that any costs associated with unit trips, as well as units involved in a contingency reserve deployment, can be accounted for out of the contingency reserve cost allocation. With regard to the proposed exemption for resources affected by other events or conditions beyond their control, FirstEnergy argues that the exemption should be retained because the conditions were not within the control of the market participant.

101. Integrys does not oppose the proposed exemption for resources following Midwest ISO directives, but it does oppose the proposed exemption for resources that trip and go off-line and for other events or conditions beyond their control. For deviations associated with resources that trip and go off-line, Integrys argues that the Market Monitor Study attributed some costs to these deviations, and there is, thus, a cost causation rationale to reject the proposed exemption. According to Integrys, whether such occurrences are infrequent is irrelevant to whether there are costs arising from the activity. Integrys contends that, while the Commission has acknowledged that generators should not be penalized for complying with Midwest ISO dispatch instructions in order to provide proper incentives to comply, no such incentives are relevant when a generator trips and goes off-line because such events are unexpected and outside of the generator's control. Integrys adds that exempting units that trip and go off-line would remove an incentive for market participants to keep units online. In addition, Integrys notes that the RSG Task Force motion to retain the exemption passed by a margin of only one vote.

102. For deviations associated with other events or conditions beyond a resource's control, Integrys argues that the exemption should be rejected as too broad or, at minimum, should be narrowly tailored. Integrys contends that the exemption is worded so broadly that it could include any number of deviations and would thereby give the Midwest ISO too much discretion to determine which deviations should be exempted from real-time Revenue Sufficiency Guarantee charges. Integrys maintains that subjecting resources to real-time Revenue Sufficiency Guarantee charges creates an incentive for them to operate within the system parameters. Integrys asserts that the Midwest ISO fails to show how the exempted deviations would result in unit commitment costs or how the exemption could help to maintain system reliability. Integrys reiterates that whether the exempted deviations would occur infrequently is irrelevant here. Noting that the Midwest ISO has cited to certain abnormal operating procedures to define the proposed exemptions, Integrys contends that these abnormal operating conditions are more comparable to situations in which units trip and go off-line than situations in which resources follow Midwest ISO instructions. Integrys concludes that, unless the exemption is more closely defined and additional cost causation support is provided, the exemption should be rejected.

103. Financial Marketers and DC Energy argue that the Midwest ISO has never justified any of the proposed exemptions and that they should be rejected. They contend

that the Market Monitor Study indicates that the proposed exemptions cause significant real-time Revenue Sufficiency Guarantee costs to be incurred and that real-time Revenue Sufficiency Guarantee costs are misallocated to virtual suppliers, non-exempt suppliers, and load deviations.[90] DC Energy argues that it is the Midwest ISO's burden to support its filing, rather than the burden of protesters to prove it unjust and unreasonable, and the Midwest ISO has not done so. DC Energy states that the Midwest ISO does not explain how the exemptions incentivize appropriate behavior; for example, the exemptions will not allow resources to avoid tripping off-line. DC Energy and Financial Marketers assert that the Midwest ISO provides no justification for shifting the costs associated with the proposed exemptions to other parties. Financial Marketers maintain that the proposal results in a substantial cost shift because the Market Monitor Study suggests that the Interim Rate would allocate costs to the exempt deviations far in excess of the seven percent of costs that they cause.

104. Financial Marketers add that the Midwest ISO does not need additional tools to incentivize operators to comply with Midwest ISO directives. They argue that the Midwest ISO already has the ability to enforce its directives and to seek enforcement by the Commission and/or the North American Electric Reliability Corporation, as needed. They add that, if the Midwest ISO's cost allocation were revised to reflect cost causation principles, then Revenue Sufficiency Guarantee costs caused by Midwest ISO directives and procedures would be allocated to load, the primary beneficiary of such costs. Financial Marketers argue that resources that trip and go off-line introduce uncertainty into the market and should not be exempted from the associated real-time Revenue Sufficiency Guarantee charges merely because they subsequently follow Midwest ISO setpoint instructions. Financial Marketers argue that there is no behavior associated with units that trip off-line that could be incentivized via the exemption because such events are unpredictable deviations that necessarily involve not following setpoint instructions.

105. MidAmerican states that, by supporting that the exemptions relating to intermittent resources and dispatch bands be eliminated prospectively, it appears that the Midwest ISO proposes to retain all seven exemptions in the Interim Rate and is simply noting that the elimination of the two exemptions are already before the Commission in other proceedings. MidAmerican argues that the Commission should leave the exemptions in place because the Midwest ISO appears to be proposing no change in the operation of the current Midwest ISO tariff and no party has shown the current application of the Midwest ISO tariff to be unjust and unreasonable. MidAmerican maintains that the Commission need only affirm that the seven exemptions have already been in existence, not that the resulting real-time Revenue Sufficiency Guarantee cost allocations are the

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[90] Financial Marketers contend that the Market Monitor Study's findings are supported in the record of Docket No. EL07-86-000, *et al.*

only acceptable rate. To the extent that the Midwest ISO proposes to eliminate the two exemptions, MidAmerican requests that the Commission reject the proposal here and instead address the long-term elimination of these exemptions "in the proceedings where the elimination has been proposed."[91]

106. As for the proposed exemption for resources covered by the deactivation of the dispatch bands, Ameren states that the exemption will be moot because the Midwest ISO has proposed to remove dispatch bands from its tariff. Detroit Edison states that it would have preferred that the exemption be retained, but it understands that "improvements in the Midwest ISO modeling capabilities may be required for [d]ispatch [b]ands to operate proper[l]y in the Midwest ISO markets."[92] MidAmerican does not object to the elimination of the dispatch band option, but states that the exemption should be retained so long as the dispatch band option remains in effect. FirstEnergy and RRI Energy oppose the Midwest ISO's proposal to temporarily terminate the dispatch bands and therefore argue that the associated exemptions should be retained so long as there is a dispatch band option in effect.

h. <u>Answer</u>

107. The Midwest ISO reiterates that it finds no basis in the RSG Task Force's recommendations and supporting documentation for declaring any of the proposed exemptions or their treatment under the Interim Rate to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. In response to Integrys, the Midwest ISO explains that when resources trip and go off-line the Midwest ISO may deploy spinning reserve or energy from units that are already online and does not necessarily commit additional resources. The Midwest ISO adds that, to the extent that a resource is unable to meet its day-ahead schedule in subsequent hours, it would be subject to real-time Revenue Sufficiency Guarantee charges. The Midwest ISO disagrees with requests that all of the proposed exemptions be eliminated. The Midwest ISO agrees that the dispatch bands exemption should be retained until such time as the Commission approves the Midwest ISO's proposal to eliminate the dispatch band option in Docket No. ER10-394-000.

i. <u>Commission Determination</u>

108. We find that the proposed exemptions for resources in test mode, start-up, or shut-down mode and for resources that trip and go off-line are inconsistent with cost causation

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[91] MidAmerican, January 1, 2010 Comments at 9-10.

[92] Detroit Edison, Comments at 5 (citing Detroit Edison, December 23, 2009 Comments, Docket No. ER10-394-000).

principles, and we will reject the proposed exemptions. We will require the Midwest ISO to submit proposed tariff revisions, in the compliance filing ordered below, to remove from the tariff the proposed exemptions for resources in test mode, or start-up or shut-down mode, and for resources that trip and go off-line.[93]

109. While testing occurs infrequently and is of short duration, the Midwest ISO states that resources in test mode may cause real-time Revenue Sufficiency Guarantee costs to the extent that any must-run volumes associated with resources in test mode may reduce real-time prices and render some production costs unrecoverable.[94] Similarly, the Midwest ISO states that resources operating in start-up or shut-down mode may cause real-time Revenue Sufficiency Guarantee costs to the extent that their real-time operation prior to their scheduled start time may reduce real-time prices and thereby render some production costs unrecoverable.[95] To the extent that the Midwest ISO must commit additional resources, rather than deploying contingency reserves or energy from online capacity, to compensate for resources that trip and go off-line, real-time Revenue Sufficiency Guarantee costs may be incurred.[96] Furthermore, the Market Monitor Study indicates that resources in test mode, or start-up or shut-down mode, and resources that trip and go off-line caused the incurrence of real-time Revenue Sufficiency Guarantee costs during the period studied.[97] If the resources that cause the costs are not assessed the corresponding charges, then other market participants must pay instead. We find that this result would not be just and reasonable.

110. Notwithstanding the evidence of cost causation in this proceeding, we will conditionally accept the proposed exemptions for resources that are responding to Midwest ISO directives during emergencies or contingency reserve deployments. Exempting resources from real-time Revenue Sufficiency Guarantee charges during such

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[93] As discussed below, the tariff sheets should reflect that they will be effective on the date of this order.

[94] Midwest ISO, March 11, 2009 Filing at 12.

[95] *Id.* at 13.

[96] In particular, the Midwest ISO states that resources that trip and go off-line may cause real-time Revenue Sufficiency Guarantee costs to the extent that they cause the Midwest ISO to commit additional capacity because they are unable to meet the remainder of their day-ahead schedule or are unable to meet their scheduled commitment period. *Id.* at 14-15.

[97] Midwest ISO, December 7, 2009 Compliance Filing, Tab C, Market Monitor Study at 6-8.

circumstances acknowledges that any deviations that occur result from instructions by the Midwest ISO rather than the behavior or discretion of the resources involved. We find that our application of cost causation principles in this instance would fail to recognize that this exemption will help to preserve system reliability by avoiding disincentives to obeying Midwest ISO instructions during emergencies and contingency reserve events. Exempting such deviations from real-time Revenue Sufficiency Guarantee charges is consistent with the Commission's previous real-time Revenue Sufficiency Guarantee charge exemptions for resources during certain declared emergencies to "provide market participants proper incentives to follow the Midwest ISO's directives,"[98] as well as during manual redispatch events to ensure "that generators not be penalized for complying with manual redispatch instructions."[99]

111. Furthermore, in the case of contingency reserve deployments, the sharing of ramp capability between energy and operating reserves may cause resources to receive setpoint instructions that are not achievable. Such resources should not be held financially responsible for deviations caused by dispatch errors due to the limitations of the Midwest ISO's systems and software. Contingency reserves also provide capacity to serve generation resource de-rate deviations during contingencies, in the same way that resources committed during the Reliability Assessment Commitment process provide real-time energy for supply shortfalls caused by deviations. Since resources committed during the Reliability Assessment Commitment process are not subject to real-time Revenue Sufficiency Guarantee costs, per the Midwest ISO tariff, contingency reserves should likewise not be subject to real-time Revenue Sufficiency Guarantee costs.

112. With regard to the proposed exemption for resources "affected by other events or conditions beyond their control," we find that the proposed exemption is so broadly worded that it could be interpreted to encompass a number of deviations that cause real-time Revenue Sufficiency Guarantee costs and that should not be exempted from the corresponding charges.[100] However, we are also concerned that the proposed exemption includes deviations due to certain rare, abnormal operating conditions that should be exempted from real-time Revenue Sufficiency Guarantee charges. For example, we

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[98] Emergency Exemptions Order, 120 FERC ¶ 61,029 at P 14-15.

[99] Manual Redispatch Order, 117 FERC ¶ 61,325 at P 53.

[100] The Midwest ISO indicates that the exemption for resources affected by other events or conditions beyond their control is governed by the abnormal operating procedures for unit dispatch system failure, computer system hardware failure, inter-control center communication protocol data failure, and automatic generation control failure. Midwest ISO, December 7, 2009 Compliance Filing, Tab H, Exempted Deviation Discussion at 3. However, the proposed tariff language does not indicate that the exemption would apply only during these specific, abnormal circumstances.

agree that resources should not be held financially responsible for deviations caused solely by the failure of the Midwest ISO's unit dispatch system or other computer hardware or software systems. We will conditionally accept the proposed exemption, but we will require the Midwest ISO to submit proposed tariff revisions, in the compliance filing due within 30 days from the date of this order, to limit the proposed exemption to include only those deviations that result directly from the failures or malfunctions of the Midwest ISO's software and hardware systems.

113. In addition, we find that the proposed exemption for resources covered by the deactivation of the dispatch band option has been overtaken by events. As the Commission has accepted the Midwest ISO's proposal to remove the dispatch band option from its tariff,[101] this exemption is moot.[102]

4. Prospective Effective Date

a. December 7, 2009 Compliance Filing

114. The RSG Task Force recommends that any Commission action regarding the proposed exemptions that could result in resettlement back to January 6, 2009 instead be implemented on a prospective basis.

115. The Midwest ISO agrees with the RSG Task Force's recommendation that the exemptions be eliminated on a prospective basis only. The Midwest ISO adds that the RSG Task Force does not provide any basis to find the exemptions or their treatment under the Interim Rate to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.[103] In the case of the proposed exemption for intermittent resources, the Midwest ISO states that it does not believe that an adequate basis exists to allocate real-time Revenue Sufficiency Guarantee costs retroactively to such deviations, given the inability of market participants to revisit commercial decisions made based on the expected rate. In the case of the proposed dispatch band exemption, the Midwest ISO states that it "does not believe that an adequate basis exists to allocate [Revenue Sufficiency Guarantee] costs retroactively to such deviations given their non-discretionary nature, incentive to follow operating procedures, magnitude of attributable

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[101] *Midwest Indep. Transmission Sys. Operator, Inc.*, 130 FERC ¶ 61,150 (2010).

[102] We note that further tariff revisions are not needed to reflect our rejection of the dispatch band exemption because the Midwest ISO submitted appropriate tariff revisions in a prior proceeding.

[103] Midwest ISO, December 7, 2009 Compliance Filing, Transmittal Letter at 15-16.

costs, and [the] effectiveness with which these exemptions are administered via automated systems and established operating procedures."[104]

b. Comments on December 7, 2009 Compliance Filing

116. DC Energy and Financial Marketers argue that the Commission should reject the exemptions and direct the Midwest ISO to make refunds retroactive to January 6, 2009.[105] DC Energy contends that the costs associated with the exemptions have been inappropriately shifted to other parties and that refunds would reverse these inflated charges.[106] Financial Marketers argue that it is well-established Commission policy to order full refunds in cases, as here, where a rate increase has been expressly made subject to refund by the Commission.[107] Financial Marketers contend that, given that the amount of real-time Revenue Sufficiency Guarantee costs imposed on non-exempt deviations already far exceeds the maximum amount of costs that could possibly be attributed to them, refunds should be required. Financial Marketers also assert that the Midwest ISO ignored the Commission's directive that it provide further support for its proposal based on the findings and recommendations of the RSG Task Force or, as appropriate, amend its proposal.

117. Dynegy, FirstEnergy, MidAmerican, Northern Indiana, and Xcel contend that, if the Commission accepts any proposed changes to the Interim Rate, the changes should be implemented on a prospective basis only. RRI Energy agrees that, if the Commission eliminates the dispatch band exemption, it should do so on a prospective basis only, as eliminating the proposed exemption will not improve the Interim Rate, overall market efficiency, or system reliability.[108] FirstEnergy argues that implementing the changes retrospectively would require market resettlement and would unrealistically assume that participants' actions would have been identical if the changes had been in effect. It notes that the Commission has exercised its discretion to limit refunds requiring resettlement in

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[104] *Id.* Transmittal Letter at 17.

[105] Financial Marketers request that any refunds include interest.

[106] DC Energy, January 11, 2010 Filing at 13-14.

[107] Financial Marketers, January 11, 2010 Filing at 41 (citing, *e.g.*, *Towns of Concord, Norwood & Wellesley v. FERC*, 955 F.3d 67, 76 (D.C. Cir. 1992) (*Towns of Concord)*; *Consolidated Edison Co. of New York, Inc. v. FERC*, 347 F.3d 964, 972 (D.C. Cir. 2003); *Louisiana Public Service Commission v. Entergy Corp.*, 129 FERC ¶ 61,237 (2009)).

[108] RRI Energy, January 11, 2010 Comments at 10.

prior proceedings.[109] Northern Indiana argues that the Midwest ISO failed to support the proposed exemption, which means that it must be rejected as unjust, unreasonable, or unduly discriminatory from the outset.

118. MidAmerican contends that the exemptions have been in place for years, and market participants have been aware that certain deviations have not been subject to real-time Revenue Sufficiency Guarantee charges. It claims that, despite the potential for refunds, market participants have had "no choice" but to operate under the assumption that the exemptions would ultimately remain in place.[110] MidAmerican asserts that refunds would be particularly harmful in this case because retroactive changes would upset the economic decisions made by market participants using the best information available at the time and would not result in retroactive improvements in market efficiency. It maintains that whether some parties would benefit from a resettlement is not a criterion for the Commission to consider when mandating refunds. MidAmerican adds that refunds would necessitate an extensive resettlement process that would consume Midwest ISO resources.

119. Xcel maintains that a prospective remedy is supported by Commission precedent and would prevent inequitable charges due to retroactive assessment of real-time Revenue Sufficiency Guarantee charges. Xcel notes that the Commission has declined to order refunds in similar proceedings when, as here, "market participants relied upon statements made by the Midwest ISO in its Business Practices Manuals," when refunds "would create substantial uncertainty and undermine faith in the Midwest ISO's markets," or when "market participants cannot revisit economic decisions."[111] Xcel adds that the avoidance of $3.28 million of real-time Revenue Sufficiency Guarantee costs by intermittent resources does not result in an inequitable windfall because such resources are unable to follow dispatch instructions. Furthermore, Xcel argues that real-time Revenue Sufficiency Guarantee charges are inequitable for intermittent resources because the Market Monitor Study found that, while non-wind intermittent resources and wind resources may cause real-time Revenue Sufficiency Guarantee charges as rates of $0.47 and $0.37 per megawatt, respectively, intermittent resources would be assessed real-time Revenue Sufficiency Guarantee charges at a rate of $1.57 per megawatt under the Interim

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[109] FirstEnergy, January 11, 2010 Comments at 11-12 (citing, *e.g.*, First Rehearing Order, 117 FERC ¶ 61,113 at P 92-95).

[110] *Id.* at 10.

[111] Xcel, January 11, 2010 Comments at 12-13 (citing, *e.g.*, First Rehearing Order, 117 FERC ¶ 61,113 at P 94-95).

Rate. Xcel adds that the NSP Companies[112] have determined that resettlement would cause wind resources to pay $2.6 million in charges when the Market Monitor Study estimates that they only cause $2.47 million in costs, which would be inequitable, unjust, and unreasonable.[113] In addition, Xcel adds that deviations that alleviate Revenue Sufficiency Guarantee costs are not netted against deviations that cause additional costs under the Interim Rate, which would further inflate the inequity.

120. Xcel argues that the exemption for intermittent resources should remain in effect for the duration of the Interim Rate and requests that the Commission comprehensively address all Revenue Sufficiency Guarantee charge exemptions as part of the Indicative Rate proceeding. According to Xcel, the Indicative Rate proposal may provide for the elimination of the intermittent resource exemption.[114] Xcel contends that the Commission should consider the administrative practicality of altering the Interim Rate prior to final Commission action in the Indicative Rate proceeding. Xcel maintains that, if the Commission eliminates the exemption under the Interim Rate, the Midwest ISO would need to submit additional tariff revisions to assign costs to intermittent resources, such as a tolerance band for intermittent resources, and the Commission would need to review any additional proposed revisions. Xcel argues that, if the Commission finds that the exemption is unlawful, prior real-time Revenue Sufficiency Guarantee cost allocations since the commencement of the Midwest ISO energy market in 2005 would be reopened.[115]

121. Xcel asserts that altering the Interim Rate could result in detrimental market participant behavior and disrupt the development of wind generation. Xcel argues that market participants have reasonably relied on Midwest ISO statements regarding the application of real-time Revenue Sufficiency Guarantee charges under the Interim Rate, noting that the Midwest ISO business practices manuals have included the exemptions since 2005.[116] Xcel contends that altering the Interim Rate would decrease market confidence and reliability and could cause market participants to disrupt the market by attempting to protect themselves from the retroactive reallocation of Revenue Sufficiency

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[112] Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation (collectively, NSP Companies).

[113] Xcel, January 11, 2010 Comments at 14.

[114] Xcel argues that the intermittent resource exemption would remain in place under the Midwest ISO's Indicative Rate proposal.

[115] Xcel, January 11, 2010 Comments at 6-8.

[116] *Id.* at 9, 12 (citing Midwest ISO March 11, 2009 Filing at 3).

Guarantee charges.[117] Xcel maintains that, if wind resources are allocated real-time Revenue Sufficiency Guarantee charges, their overall costs would increase, but they would be unable to recoup the additional costs unless locational marginal prices happen to exceed their total costs because wind resources cannot set the prices. Xcel claims that it would be unjust and unreasonable to require wind resources to operate in the market without a mechanism to recover their costs of operation.

122. Xcel argues that eliminating the exemption for intermittent resources would not cure the Interim Rate's failure to address cost causation or issues related to cost shifts. Xcel notes that the Market Monitor Study found that 18 percent of total Revenue Sufficiency Guarantee costs are caused by "commitments whose need is not apparent."[118] Xcel argues that eliminating the intermittent resource exemption will not solely address cost causation because 18 percent of real-time Revenue Sufficiency Guarantee costs will continue to be assigned to deviations that did not cause those costs to be incurred. As a result, Xcel concludes that the exemptions should remain in place under the Interim Rate, and cost causation should be comprehensively reviewed as part of the Indicative Rate proceeding.

123. Intermittent Generators and Intermittent Organizations request that the exemption for intermittent resources remain in place until the Midwest ISO adopts market design rules that properly reflect the operational characteristics of wind generators. They claim that the Midwest ISO's current market rules are designed for dispatchable generators, making the application of real-time Revenue Sufficiency Guarantee charges to intermittent resources unjust and unreasonable. Intermittent Generators maintain that the exemption should remain in place until future rule changes allow operators to better control facility output, thereby enabling wind generators to potentially avoid real-time Revenue Sufficiency Guarantee charges.[119] Intermittent Organizations argue that moving commitments closer to real time would reduce perceived costs that have been inappropriately attributed to wind generation.[120]

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[117] *Id.* at 9 (citing Xcel, September 8, 2009 Rehearing Request ("[a]n example of the potential loss of reliable operations regards whether [m]arket [p]articipants will now follow [the Midwest ISO]'s manual redispatch directives in light of the uncertainty stemming from the [Initial] Order")).

[118] *Id.* at 10.

[119] Intermittent Generators, January 11, 2010 Comments at 16-17.

[120] *Id.* at 14.

124. Midwest TDUs state that it is unclear how real-time Revenue Sufficiency Guarantee charges could apply to intermittent resources under the Interim Rate and that there has been no stakeholder process to discuss this issue. They contend that, if the Commission eliminates the exemption for intermittent resources from the Interim Rate rather than waiting to implement this change through the Indicative Rate, the Commission should require the Midwest ISO to work through the stakeholder process to develop the appropriate mechanisms for applying real-time Revenue Sufficiency Guarantee charges to intermittent resources under the Interim Rate.[121]

125. Ameren and FirstEnergy contend that, rather than focusing on the Interim Rate, attention should be devoted to refining the Indicative Rate that will supersede the Interim Rate. They request that the Commission act on the Midwest ISO's proposal regarding the Indicative Rate in Docket No. EL07-86-000, *et al.,* so that issues regarding the Interim Rate become moot.[122] Dynegy argues that the Commission consider the RSG Task Force's recommendations when evaluating the Indicative Rate proposal pending before the Commission.[123] RRI Energy contends that the Commission should defer ruling on these issues in the Indicative Rate proceeding until after it rules in this proceeding so that the Commission can consider the information and results in this proceeding in its deliberations on the Indicative Rate proposal. It adds that, if the Commission accepts any of the proposed exemptions, it should require that the Midwest ISO retain the exemptions in the Indicative Rate proceeding.[124]

126. Northern Indiana contends that the Commission should direct the Midwest ISO to file tariff sheets in a further compliance filing. Northern Indiana notes that in the Initial Order the Commission required the Midwest ISO to file any amendments necessary in this proceeding to reflect the RSG Task Force's recommendations, but the Midwest ISO did not comply. Contrary to the Midwest ISO's argument that it already filed the necessary tariff revisions in the Indicative Rate proceeding, Northern Indiana argues the Indicative Rate proposal does not include tariff sheets that properly address the exemption. It adds that, in the event that the Commission implements the intermittent resource exemption on a retroactive basis, those changes must be implemented in this proceeding rather than the Indicative Rate proceeding. In addition, Northern Indiana

[121] Midwest TDUs, January 11, 2010 Comments at 2-4.

[122] Ameren, December 28, 2009 Comments at 9-10; FirstEnergy January 11, 2010 Comments at 13.

[123] Dynegy, January 11, 2010 Comments at 9-10.

[124] RRI Energy, January 11, 2010 Comments at 9.

maintains that the Midwest ISO has not filed proposed tariff revisions to eliminate the dispatch band exemption.

c. Answer

127. The Midwest ISO argues that it is appropriate to continue the Interim Rate with all seven exemptions in effect until it is superseded by the Indicative Rate. The Midwest ISO reiterates that the RSG Task Force and Market Monitor Study do not provide any basis to eliminate the exemptions under the Interim Rate or to require refunds. However, the Midwest ISO states that, to the extent that the Commission expects the resolution of the Indicative Rate proceeding to take an extended period of time, it is amenable to filing modified tariff sheets eliminating the intermittent resource exemption under the Interim Rate at a future effective date or one established by the Commission in this proceeding. In addition, the Midwest ISO clarifies that it has already submitted a proposal that eliminates the intermittent resource exemption as part of the Indicative Rate proceeding and a proposal to eliminate the dispatch band exemption in a separate proceeding.

d. Commission Determination

128. We will apply our rejection of the proposed exemptions on a prospective basis only, effective on the date of this order. We will exercise our discretion and will not require the Midwest ISO to apply our rejection of the proposed exemptions retroactively or to provide refunds to customers. The Commission enjoys broad remedial discretion, "even in the face of an undoubted statutory violation, unless the statute itself mandates a particular remedy."[125] As courts have noted many times, "the breadth of agency discretion is…at [its] zenith when the action assailed relates primarily not to the issue of ascertaining whether conduct violates the statute, or regulations, but rather to the fashioning of…remedies."[126] Moreover, the Commission has declined refunds in instances when refunds "would create substantial uncertainty in the…markets and would undermine confidence in them," and when "customers cannot effectively revisit their economic decisions."[127]

129. We find that ordering refunds would create substantial uncertainty and undermine

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[125] *Connecticut Valley Electric Co. v. FERC*, 208 F.3d 1037, 1043 (D.C. Cir. 2000) (citing *Towns of Concord*, 955 F.2d 67 at 72-73, 76 n.8).

[126] *Id.* at 1043 (citing *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 159 (D.C. Cir. 1967)); *Louisiana Public Service Commission v. FERC*, 174 F.3d 225 (1999).

[127] *New York Indep. Sys. Operator, Inc.*, 92 FERC ¶ 61,073, at 61,307 (2000), *reh'g denied*, 97 FERC ¶ 61,154 (2001).

faith in the Midwest ISO's markets. As market participants cannot revisit commercial decisions made based on the expected rate, resettling real-time Revenue Sufficiency Guarantee charges to require refunds since January 6, 2009, would potentially render previous transactions uneconomic and would be an unfair and inequitable remedy. While we take seriously concerns that some market participants may have paid more than a fair share of Revenue Sufficiency Guarantee charges, we find that it is nevertheless appropriate to decline refunds. "Customer refunds are a form of equitable relief, akin to restitution, and the general rule is that agencies should order restitution only when money was obtained in such circumstances that the possessor will give offense to equity and good conscience if permitted to retain it."[128] We do not find such a basis for ordering refunds here. The Midwest ISO states that its operating procedure has been to exempt all of the deviations discussed in the proposal since market start, and market participants reasonably structured their transactions based on Midwest ISO operating procedures to exempt them. Accordingly, we will make our rejection of the Midwest ISO's proposed exemptions effective on the date of this order.

130. We will require the Midwest ISO to submit proposed tariff revisions, in the compliance filing ordered below, to detail the exemptions that we are accepting in this order and to remove those exemptions that we are rejecting in this order, with an effective date the day following the date of this order. We are not making our rulings effective the date of the order to avoid market uncertainty regarding the hour of effectiveness on the day the order issues. We will not require any tariff revisions for the period prior to the effective date of this order. The Initial Order accepted the proposed exemptions, subject to refund. We are waiving refunds, as discussed, and therefore no further action is required.

5. <u>Cost Allocation</u>

a. <u>December 12, 2008 Filing</u>

131. In the December 12, 2008 Filing, the Midwest ISO did not address whether the proposed revisions would ensure the consistency between the numerator and denominator of the Interim Rate.

b. <u>Comments on December 12, 2008 Filing</u>

132. DC Energy argues that the proposed exemptions' effect of allocating Revenue Sufficiency Guarantee costs to other resources that did not cause them is discriminatory.[129] It states that, if the proposed exemptions are accepted, the

[128] *Towns of Concord*, 955 F.2d 67 at 75.

[129] DC Energy, January 2, 2009 Comments at 6.

Commission should require any associated shortfall in Revenue Sufficiency Guarantee costs to be recovered on a load ratio share basis by retaining all generator deviations in the denominator used to calculate the Revenue Sufficiency Guarantee rate.[130]

c. Answers

133. The Midwest ISO maintains that requests to socialize real-time Revenue Sufficiency Guarantee costs and to require it to present cost causation evidence constitute collateral attacks on the November 5 and November 7 Orders. According to the Midwest ISO, DC Energy's proposal that even if the disputed deviations were exempted from Revenue Sufficiency Guarantee charges, they should be retained in the rate calculation denominator and allowed to cause a shortfall in the recovery of Revenue Sufficiency Guarantee costs would involve a mismatch and a shortfall. The Midwest ISO also states that it is unreasonable to require it to supply cost causation and other supporting evidence relating to the rate mismatch issue. It maintains that the Commission's previous orders found it just and reasonable to construe the Revenue Sufficiency Guarantee rate as not entailing any mismatch or shortfall, and it is therefore appropriate and even necessary to propose the revision to section 40.3.3.a.ii(d).

134. With respect to mismatch and shortfall, DC Energy contends that the Commission never directed the Midwest ISO to remove certain deviations from the denominator of the Revenue Sufficiency Guarantee rate calculation.[131] It states that while the Order on Paper Hearing required the Midwest ISO to remove the "actually withdraws energy" clause from section 40.3.3.a.ii, the tariff indicates that beginning August 10, 2007, the Revenue Sufficiency Guarantee charge applies to some of the deviations that the Midwest ISO now proposes to exempt.[132] DC Energy notes that the Midwest ISO previously included deviations due to under- and over-generation volumes, de-rate volumes, and must-run volumes in the denominator of the Revenue Sufficiency Guarantee rate calculation.[133]

d. March 11, 2009 Filing

135. In its March 11, 2009 response to the Commission's data request, the Midwest ISO states that, under the Redesign Proposal, any unit commitments to provide the

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[130] *Id.* at 11.

[131] DC Energy, February 5, 2009 Answer at 12-13.

[132] *Id.* at 13.

[133] *Id.* at 8-10.

headroom required for intermittent resources would be allocated "under the [h]eadroom provisions, as opposed to allocating any costs to other deviations."[134] The Redesign Proposal excludes the ability for market participants to net the real-time output of intermittent resources against other deviations because these resources were not available for commitment and dispatch by the Midwest ISO in real time. Finally, the Midwest ISO claims that the Redesign Proposal would allocate real-time Revenue Sufficiency Guarantee costs to any intermittent resource that chooses to clear supply in the day-ahead market and performs below its day-ahead schedule.

e. Comments on March 11, 2009 Filing

136. Financial Marketers contend that the Midwest ISO has failed to identify where its proposed tariff provides for allocating headroom associated with intermittent resources under the headroom provisions or the basis for performing the allocation. They state that formula rates "must contain enough specificity to operate without discretion in their implementation."[135] The Midwest ISO thus must at minimum provide tariff language that is specific enough to show how the Revenue Sufficiency Guarantee costs caused by intermittent resources will be calculated and allocated before exempting those resources. Financial Marketers maintain that the Midwest ISO is proposing to increase rates retroactively in violation of the filed rate doctrine and the requirements of section 205 of the FPA.[136]

137. Financial Marketers contend that the Midwest ISO's proposal creates a new rate mismatch. The Revenue Sufficiency Guarantee rate formula would include in the numerator all of the Revenue Sufficiency Guarantee costs that are incurred, including those caused by the proposed exemptions, but it would exclude all of the proposed exemptions from the denominator. Financial Marketers claim that the resulting rate would improperly increase the Revenue Sufficiency Guarantee charge borne by the remaining deviations without regard to cost causation principles. Financial Marketers maintain that the costs associated with any exemptions should be socialized to load.

[134] Midwest ISO, March 11, 2009 Filing at 11.

[135] Financial Marketers, April 1, 2009 Comments at 15 (citing *Potomac Appalachian Transmission Highline, LLC*, 122 FERC ¶ 61,288, at P 146 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,235, at P 68 (2004); *American Electric Power Service Corp.*, 120 FERC ¶ 61,205, at P 33 (2007)).

[136] *Id.* at 7-8 (citing *City of Anaheim, California v. FERC*, No. 07-1222, at 3 (D.C. Cir. 2009).

f. **Answers**

138. The Midwest ISO contends that the November 7 Order's no mismatch ruling is not limited to virtual supply offers that do not involve actual energy withdrawal. It maintains that the order's major premise is that all market participants covered by the denominator of the Revenue Sufficiency Guarantee charge rate are subject to Revenue Sufficiency Guarantee charges.[137] The Midwest ISO contends that the conclusion that there is no mismatch applies to both virtual supply offers and "the other load and deviation components" of the Revenue Sufficiency Guarantee numerator, which should be aggregated in the denominator.[138] It also argues that the November 7 Order required billing of Revenue Sufficiency Guarantee charges to conform to the no-mismatch interpretation both prospectively and retrospectively. The Midwest ISO contends that the November 7 Order clarified that the Commission's prior position on the existence of a mismatch was erroneous and that it was appropriate to correct the operational calculation of the Revenue Sufficiency Guarantee rate to remove any rate mismatch.

139. The Midwest ISO rejects the claim that its proposal violates the filed rate doctrine. It argues that the November 7 Order construed rather than changed the filed rate,[139] and its actions are consistent with that construction. The change does not entail the submission of any revised tariff sheets because the filed rate already requires the exclusion of exempt transactions from the Revenue Sufficiency Guarantee denominator.

140. The Midwest ISO argues that *City of Anaheim* does not shield Financial Marketers from the resettlement resulting from the Midwest ISO's compliance with the November 7 Order's conclusion that there is no mismatch in the existing Revenue Sufficiency Guarantee rate. The Midwest ISO contends that the disputed resettlement does not retroactively increase the filed rate within the meaning of *City of Anaheim* because the resettlement arises from an operational correction that applies, rather than amends, the filed rate, as construed in the November 7 Order.

141. DC Energy repeats its assertion that the Midwest ISO is using the rate mismatch issue as a *post-hoc* attempt to justify an exemption from Revenue Sufficiency Guarantee charges that is not in the tariff. Westar asserts that the Midwest ISO has misinterpreted the November 7 Order since its proposed revisions include virtually all Revenue Sufficiency Guarantee costs in the numerator, regardless of causation, but exclude certain exempt deviations from the denominator. If the Commission accepts the proposed

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[137] Midwest ISO, April 20, 2009 Answer at 5-6.

[138] *Id.* at 6-7 (citing November 7 Order, 125 FERC ¶ 61,156 at P 30).

[139] *Id.* at 8.

revisions, Westar recommends that it require the Midwest ISO demonstrate that it has complied with cost causation principles and the no-mismatch directive in the November 7 Order.

g. December 7, 2009 Compliance Filing

142. The RSG Task Force recommended that the real-time Revenue Sufficiency Guarantee costs associated with the proposed exemptions be allocated through the second pass Revenue Sufficiency Guarantee process. This would result in the costs being allocated on a load ratio share basis rather than to those resources deemed non-exempt from Revenue Sufficiency Guarantee charges in the first pass.

143. In response to the RSG Task Force's recommendations, the Midwest ISO states that the current Interim Rate design results in a proper cost allocation and rate, and it would be inappropriate to allocate such costs via the Revenue Sufficiency Guarantee second pass mechanism. The Midwest ISO notes that the Commission has "accepted the exclusion of '[r]esources committed in any [Reliability Assessment Commitment] processes conducted for the operating day from both the allocation of [Revenue Sufficiency Guarantee] charges and their inclusion in the denominator of the real time [Revenue Sufficiency Guarantee] formula rate'" with no cost causation analysis, either numerical or empirical, nor further justification of such exclusion from the Revenue Sufficiency Guarantee allocation and rate.[140]

144. The Midwest ISO also notes that the Commission previously found that the existence of a cost shift resulting from various other exemptions from real-time Revenue Sufficiency Guarantee charges, including those relating to manual redispatch and to market participants following Midwest ISO dispatch instructions during emergencies, does not result in the rate being unjust, unreasonable, or unduly discriminatory. Finally, the Midwest ISO states that there is ample Commission precedent for accepting exemptions that result in cost shifts, such as the exemption for carved-out grandfathered transmission agreements.

145. The Midwest ISO also disagrees with the RSG Task Force's recommendation to expand the uplift of costs attributed to resources in test, start-up, or shut-down mode, if any, to all market participants. It states that the recommendation inappropriately modifies portions of the rate that were not contemplated in the original section 205 filing

[140] Midwest ISO, December 7, 2009 Compliance Filing, Transmittal Letter at 17 (citing Revenue Sufficiency Guarantee Order, 115 FERC ¶ 61,108 at P 84).

in this proceeding and that such expansion would unnecessarily complicate the rate formula and administration.[141]

h. Comments on December 7, 2009 Compliance Filing

146. Detroit Edison agrees with the Midwest ISO that allocating via the second pass any exempted real-time Revenue Sufficiency Guarantee costs is inappropriate. Detroit Edison reiterates the Midwest ISO's statement that the RSG Task Force's recommendation inappropriately modifies portions of the real-time Revenue Sufficiency Guarantee rate in a manner that was not proposed in the original section 205 filing in this proceeding.[142]

147. FirstEnergy argues that the evaluation of how real-time Revenue Sufficiency Guarantee costs associated with the proposed exemptions should be allocated is outside of the scope of this proceeding. It maintains that because the Commission asked the Midwest ISO only to provide further support for its proposed exemptions, any discussion beyond that is inappropriate.[143] However, FirstEnergy states that if the Commission considers this issue, FirstEnergy takes the position that these costs should be allocated through the Revenue Sufficiency Guarantee second pass on a pro rata basis for all market participants, not just load. Because these costs are incurred in order to benefit the market in general, FirstEnergy believes that load should not be the only market participant to bear the costs.[144]

148. Integrys recommends that the Commission reject any attempt to expand the scope of this proceeding, stating that the tasks of the RSG Task Force were explicitly directed by the Commission and did not include analyzing how exempted costs should be allocated.[145] MidAmerican does not address the allocation of exempt Revenue Sufficiency Guarantee charges associated with the proposed exemptions explicitly and makes clear that it believes that the Commission should view the instant filing narrowly. MidAmerican states that these issues should be addressed in other on-going proceedings before the Commission in Docket Nos. ER04-691 and EL07-86.[146]

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[141] *Id.* Transmittal Letter at 19.

[142] Detroit Edison, January 6, 2010 Comments at 5-6.

[143] FirstEnergy, January 11, 2010 Comments at 10.

[144] *Id.* at 11.

[145] Integrys, January 11, 2010 Comments at 9-10.

[146] MidAmerican, January 11, 2010 Comments at 8.

149. Wisconsin Electric also agrees with the Midwest ISO that the Revenue Sufficiency Guarantee costs associated with exempted resources should not be uplifted in the second pass allocation. One reason for this, according to Wisconsin Electric, is that this would result in a rate mismatch that the Commission has already found to be unjust and unreasonable.[147] Second, Wisconsin Electric states that such a cost allocation would result in load-serving entities incurring more than their appropriate share of Revenue Sufficiency Guarantee costs.[148] Finally, Wisconsin Electric states that, if the Commission deems it appropriate to uplift exempt Revenue Sufficiency Guarantee costs to the second pass allocation, such allocation should then be expanded to include all market participants on a *pro rata* basis.[149]

150. Midwest TDUs state that they take no position on the difference of opinion between the RSG Task Force and the Midwest ISO as to whether exempted Revenue Sufficiency Guarantee costs should be uplifted in the Revenue Sufficiency Guarantee second pass. However, like FirstEnergy and Wisconsin Electric, they state that, if these costs are included in uplift, that uplift should apply broadly, including load, generators, non-load-serving entity virtual suppliers and buyers, importers, and exporters. Midwest TDUs state that all of these groups benefit from the existence of a reliable real-time market and thus should bear some cost.[150]

151. Xcel opposes allocating exempt Revenue Sufficiency Guarantee charges via the second pass allocation because it believes that this would delay the implementation of a new rate design.[151]

152. DC Energy takes the opposite viewpoint of the Midwest ISO, arguing that it is unjust, unreasonable, and unduly discriminatory to allocate any remaining exempted Revenue Sufficiency Guarantee costs to non-exempt generator deviations, virtual supply, and load deviations, resources that DC Energy states have nothing to do with the deviations caused by the exempted resources. By allocating such costs through the second pass, the Midwest ISO would avoid a Revenue Sufficiency Guarantee unit rate

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[147] Wisconsin Electric, January 11, 2010 Comments at 8 (citing *Midwest Indep. Sys. Operator, Inc.*, 117 FERC ¶61,113 (2006)).

[148] *Id.* at 8-9.

[149] *Id.* at 9.

[150] Midwest TDUs, January 11, 2010 Comments at 4.

[151] To the degree that it does not delay a new design, it has no objections. Xcel, January 11, 2010 Comments at 15.

increase on the order of 30 percent, according to DC Energy.[152] DC Energy notes that this is also the recommendation of the RSG Task Force.

153. Dynegy disagrees with the Midwest ISO and states that it is appropriate to allocate these costs via the Revenue Sufficiency Guarantee second pass. Dynegy notes that these costs are incurred as a result of the Midwest ISO's on-going effort to maintain system reliability and are not incurred to provide general market benefits. Further, any allocation of these costs to generators would be inappropriate because generators do not derive any direct benefit from the dispatch of additional resources required to maintain system reliability.[153]

154. Cargill and Westar argue that exempted Revenue Sufficiency Guarantee costs should be included in the second pass Revenue Sufficiency Guarantee allocation. They argue that the "need unknown" category is likely caused by the Midwest ISO's operational requirements for headroom. This means, according to Cargill and Westar, that costs associated with operating the system are being shifted to market participants with non-exempt deviations. They contend that these costs should be allocated on a load ratio share as part of the second pass, instead. Such an allocation is appropriate, Cargill and Westar state, because the commitment of resources that cause Revenue Sufficiency Guarantee costs benefits the reliability of the system and therefore all market participants.[154] Second, Cargill and Westar state that these charges are not *de minimus*, amounting to millions of dollars in the nine-month study period alone.[155] Further, they state that, according to the Market Monitor Study, non-exempt market participants cause less than 55 percent of total Revenue Sufficiency Guarantee charges yet are allocated 100 percent of the costs.[156]

155. Cargill and Westar also state that the Commission has not approved an allocation method that charges market participants with non-exempt deviations for all Revenue Sufficiency Guarantee charges no matter the cause of those charges. Cargill and Westar argue that the Commission approved only the exemption, not the allocation method.[157] Any changes that need to be made to the tariff to ensure just and reasonable rates is an

[152] DC Energy, January 11, 2010 Comments at 14-15.

[153] Dynegy, January 11, 2010 Comments at 5.

[154] Cargill and Westar, January 11, 2010 Comments at 12, 14.

[155] *Id.* at 11.

[156] *Id.* at 12-13.

[157] *Id.* at 13.

appropriate change, argue Cargill and Westar, and therefore the Midwest ISO's argument that changing the allocation would change the original section 205 filing, is irrelevant.[158]

156. Financial Marketers state that the Commission never considered shifting exempt Revenue Sufficiency Guarantee costs to non-exempt resources in the first pass, quoting the Commission's November 7 Order in which the Midwest ISO was ordered to recover Revenue Sufficiency Guarantee costs not allocated in the first pass through a *pro rata* sharing of costs by all market participants.[159] Financial Marketers also argue that the Midwest ISO has failed to make an evidentiary showing that the rate change it proposes is just and reasonable. To the contrary, Financial Marketers state, the evidence before the Commission shows just the opposite.[160] According to Financial Marketers, the Market Monitor Study shows that, conservatively, virtual suppliers contribute only 13 percent of total Revenue Sufficiency Guarantee costs, yet they are overcharged by 86 percent.[161] On the other hand, intermittent resources in the market and the need for generators to respond to Midwest ISO instructions during emergencies are factors that benefit load, not just those to whom Revenue Sufficiency Guarantee charges are allocated, Financial Marketers state. Load is the beneficiary of the generating resources that cause Revenue Sufficiency Guarantee costs to be incurred. Because of this, exempt Revenue Sufficiency Guarantee costs should be allocated to load in the second pass allocation.[162] Financial Marketers also reject the argument that market participants wishing to avoid Revenue Sufficiency Guarantee charges can leave the market, because it does not apply to virtual supply offers. Virtual supply offers do not cause higher-cost, fast-start up generation to be brought online because, by the end of the day-ahead market, the Midwest ISO knows which offers are virtual and at which locations these offers exist.[163] Finally, Financial Marketers state that the "safety net" that the Midwest ISO claims limits the maximum of

[158] *Id.* at 13-14.

[159] Financial Marketers, January 11, 2010 Comments at 14 (citing November 7 Order, 125 FERC ¶ 61,156 at 54).

[160] *Id.* at 15, 17.

[161] *Id.* at 17 (citing Midwest ISO, December 7, 2009 Compliance Filing, Tab B, Market Monitor Study at 14).

[162] *Id.* at 32, 34.

[163] *Id.* at 36.

cost per megawatt of deviation to the average Revenue Sufficiency Guarantee charge does not ensure that the rate charged to non-exempt deviations is just and reasonable.[164]

157. Intermittent Organizations state that they believe that the charges that would be allocated to intermittent resources if their exemption is removed would not be commensurate with the actual impact that these resources have on Revenue Sufficiency Guarantee costs. Therefore, they request that, if the Commission chooses to lift the exemption, it also ensure that Revenue Sufficiency Guarantee charges be based on cost causation principles.[165]

158. Midwest TDUs offer a possible alternative method for allocating Revenue Sufficiency Guarantee costs, one proposed by We Energies during the RSG Task Force's proceedings. In this proposal day-ahead Revenue Sufficiency Guarantee costs would be allocated based on the volume of a market participant's activity and its deviations between its real-time activities and its day-ahead cleared schedules.[166]

159. Northern Indiana addresses the allocation of cost due to headroom commitments. It states that headroom costs should be eliminated from total Revenue Sufficiency Guarantee costs; but, if the Commission chooses to not do this, it recommends that the Commission direct the Midwest ISO to allocate these costs to the resources that cause them.

i. <u>Answer</u>

160. The Midwest ISO reiterates its argument that the Revenue Sufficiency Guarantee cost allocation provisions should not be addressed in this proceeding, where it has not submitted any proposed changes to these provisions. It states that the December 12, 2008 Filing proposes changes only to certain Revenue Sufficiency Guarantee exemptions, so the Commission may not consider the justness and reasonableness of other currently-effective provisions. Therefore cost allocation provisions are beyond the scope of this proceeding.[167]

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[164] *Id.* at 41. *See also* Midwest ISO, December 7, 2009 Compliance Filing at 23 ("as a '[s]afety [n]et,' the denominator of the real-time [Revenue Sufficiency Guarantee] rate is the maximum of [Reliability Assessment Commitment] committed [c]apacity or aggregate deviations").

[165] Intermittent Organizations, January 11, 2010 Comments at 16.

[166] *See* Midwest TDUs, January 11, 2010 Comments at 5-6.

[167] Midwest ISO, January 29, 2010 Answer at 16-17.

j. **Commission Determination**

161. The Midwest ISO does not propose any revisions to its real-time Revenue Sufficiency Guarantee cost allocation tariff provisions. Accordingly, we agree with the Midwest ISO that any discussion of the allocation of real-time Revenue Sufficiency Guarantee costs is beyond the scope of this proceeding. The Commission's direction in the Initial Order was limited to directing the Midwest ISO to "provid[e] further support for its proposed exemptions from real-time Revenue Sufficiency Guarantee charges,"[168] and therefore it did not encompass other cost allocation issues. While the Commission allowed the RSG Task Force to consider "other things that the RSG Task Force deems relevant,"[169] we have clarified above that those other things should relate only to the cost causation analysis of the proposed exemptions, not to other issues of interest to the RSG Task Force.[170] We have also granted rehearing so that the RSG Task Force is not required to consider "other issues pertinent to cost allocation."[171]

162. This proceeding is limited to considering whether a proposed modification to the Midwest ISO's existing Interim Rate is just and reasonable; we will not consider whether the Commission-approved Interim Rate is just and reasonable or whether additional modifications to that rate are needed. Therefore, we reject protesters' arguments that exempted real-time Revenue Sufficiency Guarantee costs should be allocated in any manner other than by the currently-approved rate under the Midwest ISO tariff. To the extent that this order rejects the proposed exemptions from charges under the Interim Rate, the Midwest ISO should allocate real-time Revenue Sufficiency Guarantee costs to deviations that are no longer exempt from the associated charges in accordance with the existing tariff provisions regarding the Interim Rate. In the event that the Midwest ISO determines that the existing rate should be modified, the Midwest ISO may choose to submit the associated tariff revisions to the Commission in a subsequent filing under section 205 of the FPA.

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[168] Initial Order, 128 FERC ¶ 61,142 at P 51.

[169] *Id.*

[170] *See supra* P 42.

[171] Initial Order, 128 FERC ¶ 61,142 at P 51.

D. Plan and Timeline for RSG Task Force Analysis and Tariff Revisions in Docket No. ER09-411-003

1. Initial Order

163. In the Initial Order, the Commission required the Midwest ISO to submit a proposed plan and timeline for the RSG Task Force to perform an analysis that considers and addresses how various factors contribute to the incurrence of real-time Revenue Sufficiency Guarantee costs. To the extent that the analysis is expected to result in future revisions to the allocation of real-time Revenue Sufficiency Guarantee charges, the Commission directed the Midwest ISO to specify milestones for software development and expected implementation dates in its compliance filing.[172] The Commission also required the Midwest ISO to submit revised tariff sheets in order to designate certain sheets under the Third Revised Vol. No. 1 of its tariff effective December 31, 2008 and under the Fourth Revised Vol. No. 1 of its tariff effective January 6, 2009.[173]

2. September 8, 2009 Compliance Filing

164. In its September 8, 2009 Compliance Filing, the Midwest ISO submitted a plan and timeline for conducting the RSG Task Force analysis, including milestones for software development and implementation dates. The Midwest ISO states that the Market Monitor would conduct the analysis on behalf of the RSG Task Force, and the RSG Task Force would be responsible for resolving requests for underlying data, reviewing the analysis, and making resultant recommendations to the Midwest ISO. The Midwest ISO adds that it would be responsible for providing underlying data, determining the timeline for developing software to implement any resultant tariff revisions, and evaluating the RSG Task Force’s resultant recommendations. In addition, the Midwest ISO submitted revised tariff sheets under the Third Revised Vol. No. 1 of its tariff effective December 31, 2008. The Midwest ISO did not submit tariff sheets under the Fourth Revised Vol. No. 1 of its tariff because it maintains that it previously filed those sheets in a different proceeding.[174]

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[172] *Id.*

[173] *Id.* P 59.

[174] The Midwest ISO states that those sheets were submitted in compliance with orders issued by the Commission in Docket Nos. ER09-15-000, ER09-97-000, and ER07-1372-002, *et al.* Midwest ISO, September 8, 2009 Compliance Filing at 3.

3. Comments on September 8, 2009 Compliance Filing

165. Xcel generally supports the September 8, 2009 Compliance Filing. Xcel states that the ability of the RSG Task Force to perform or direct the required analysis is limited, and the RSG Task Force thus recommended that the Midwest ISO hire the Market Monitor to perform the analysis. Xcel also discusses the methodology to be used in the analysis and potential problems with the scope, methodology, and results of the analysis, stating that it believes that the broad scope of the analysis should be properly limited to provide data regarding the proposed exemptions.[175]

166. Financial Marketers request that the Commission remind the Midwest ISO that it must meet its burden of proof and facilitate the RSG Task Force's analysis. They claim that the Midwest ISO "seeks to avoid any real analysis or consideration of the subsidy and rate increase issues" by determining what data is appropriate for use in the RSG Task Force's analysis, providing that data on its own timetable, and evaluating RSG Task Force data requests based on whatever considerations it deems relevant.[176]

4. Commission Determination

167. We find that the September 8, 2009 Compliance Filing satisfies the requirements of the Initial Order, and we will conditionally accept the proposed tariff sheets effective December 31, 2008. The plan and timeline for conducting the RSG Task Force analysis provides reasonable milestones for completing the Market Monitor Study and appropriately delineates the responsibilities shared among the Market Monitor, the RSG Task Force, and the Midwest ISO. We note that the RSG Task Force, rather than the Midwest ISO, was responsible for "making, justifying, reviewing and/or resolving requests for additional data relevant to the analysis."[177] Further, with the exception of Second Revised Sheet No. 530.278, we find that the submitted tariff sheets are appropriately designated under the Third Revised Vol. No. 1 of the Midwest ISO tariff.[178] Sheet No. 530.278 incorrectly indicates that it was filed to comply with a Commission order issued in "Docket Nos. ER08-411-000," rather than Docket No. ER09-411-000.

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[175] Xcel, September 29, 2009 Comments at 5-10.

[176] Financial Marketers, September 18, 2009 Comments at 23.

[177] Midwest ISO, September 8, 2009 Compliance Filing at 4.

[178] We note that the Commission previously accepted corresponding tariff sheets designated under the Fourth Revised Vol. No. 1 of the Midwest ISO tariff effective January 6, 2009. *See Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER07-1372-016, *et al.* (January 29, 2010) (unpublished letter order).

We will require the Midwest ISO to submit, in the compliance filing ordered below, revisions to Sheet No. 530.278, in accordance with 18 C.F.R. § 35.9(b)(5).

E. Market Monitor Study and RSG Task Force Recommendations in Docket No. ER09-411-004

1. Initial Order

168. The Initial Order required the Midwest ISO to submit a proposed plan for the completion of an analysis by the RSG Task Force that:

> "considers and addresses, among other things that the RSG Task Force deems relevant: (1) the types of and characteristics of all resources that contribute to real-time Revenue Sufficiency Guarantee costs, as well as how such resources cause real-time Revenue Sufficiency Guarantee costs to be incurred; (2) the operation of the regulation and contingency reserve markets when accounting for real-time resource deviations and the interplay between such markets and the incurrence of real-time [Revenue Sufficiency Guarantee] costs; and (3) the operational, dispatch, and reliability rules and parameters that may be impacting the level of real-time Revenue Sufficiency Guarantee costs, including forecasting methods and headroom commitments."

The Commission directed the Midwest ISO to submit a compliance filing providing further support for the proposed exemptions based on the findings and recommendations of the RSG Task Force or, as appropriate, amending its proposal.[179]

2. December 7, 2009 Compliance Filing

169. On December 7, 2009, the Midwest ISO submitted the Market Monitor Study, which quantifies the extent to which certain generation and load deviations cause real-time Revenue Sufficiency Guarantee costs in the Midwest ISO. The study estimates the real-time Revenue Sufficiency Guarantee costs that were directly caused by the seven categories of deviations that would be exempted under the proposal as well as other generation and load deviations, certain factors other than deviations, and commitments made for system needs that could not be identified. The Market Monitor Study finds that deviations cause 62 percent of real-time Revenue Sufficiency Guarantee costs during the time period analyzed and that deviations that would be exempted from charges under the proposal cause 7 percent of total real-time Revenue Sufficiency Guarantee costs. The Market Monitor Study does not quantify indirect causes of real-time Revenue Sufficiency

[179] Initial Order, 128 FERC ¶ 61,142 at P 51.

Guarantee costs and states that data regarding transmission de-rates, topology changes, loop flow changes, and carved-out grandfathered transmission agreements were not available on a disaggregated basis, which likely increases the attribution of real-time Revenue Sufficiency Guarantee costs to the factors that were considered in the study.[180]

170. In addition, the Market Monitor Study includes a sensitivity analysis to estimate the magnitude of real-time Revenue Sufficiency Guarantee costs that may be attributable to headroom targets (Alternate Headroom Case), which concludes that there is a modest cost associated with incremental changes in headroom targets. The Market Monitor Study also discusses the interaction of real-time Revenue Sufficiency Guarantee costs with operating reserves markets in the Midwest ISO, concluding that increasing reserve requirements would likely not offset headroom requirements or substantially lower real-time Revenue Sufficiency Guarantee costs.[181]

171. The Midwest ISO reports that the RSG Task Force recommended changes on topics other than the proposed exemptions. Aside from the issue of the allocation of exempt Revenue Sufficiency Guarantee costs, discussed above, twelve additional motions were included in the RSG Task Force's ballot. Based on the result of the balloting, the RSG Task Force recommended that the Commission require the Midwest ISO to study other Revenue Sufficiency Guarantee cost causes and charge exemptions that were not studied by the Task Force.[182]

172. The Midwest ISO requests that the Commission deny this motion as being outside of the scope of the instant proceeding. The Midwest ISO requests that the Commission deny the RSG Task Force's recommendation that additional Revenue Sufficiency Guarantee exemptions be studied. The Midwest ISO maintains that the data associated with what the RSG Task Force calls unstudied exemptions were represented as a subset of data already studied.[183]

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[180] Midwest ISO, December 7, 2009 Compliance Filing, Tab C, Market Monitor Study at 1-3.

[181] *Id.* Transmittal Letter at 9-10.

[182] The RSG Task Force's recommendations regarding the provision and auditing of operator logs and the implementation of a look-ahead tool are outside of the scope of this proceeding and will not be addressed in this order. *See supra* P 15, n.20.

[183] Midwest ISO, December 7, 2008 Compliance Filing, Transmittal Letter at 19-21.

3. Comments on December 7, 2009 Compliance Filing

a. RSG Task Force

173. Ameren, Detroit Edison, Duke, FirstEnergy, Integrys, and MidAmerican argue that the RSG Task Force's recommendations that go beyond the retention or elimination of the proposed exemptions are outside of the scope of this proceeding. Ameren contends that it was inappropriate for the RSG Task Force to bypass the Midwest ISO's procedures for recommending changes to the tariff. Ameren requests that the Commission deny those RSG Task Force recommendations that do not involve the proposed exemptions or, if the Commission supports the recommendations, that the Commission refer these matters back to the Midwest ISO for vetting through the committee process. FirstEnergy states that, while it agrees with the spirit of the RSG Task Force's recommendations, they should instead be vetted through the Midwest ISO stakeholder process.

174. Intermittent Generators argue that the RSG Task Force is not a neutral panel of objective experts and that the vote of the RSG Task Force was a reflection of Midwest ISO stakeholders aligned against wind resources that aim to simply increase the pool of stakeholders that pay real-time Revenue Sufficiency Guarantee costs. Intermittent Generators state that the Commission should conclude that the stakeholder process has failed and that directing the RSG Task Force to conduct any further analysis would be a waste of resources.[184] Similarly, E.ON C&R contends that the RSG Task Force lacks consistency and objectivity when evaluating the proposed exemptions and cannot be relied on to demonstrate that the proposed exemption for intermittent resources is unjust, unreasonable, or unduly discriminatory.[185]

175. Dynegy states that the RSG Task Force conducted an adequate analysis, given the time and data constraints, that gave stakeholders a sufficient basis to make informed decisions on the appropriateness of the proposed exemptions. Dynegy contends that the RSG Task Force engaged in a robust debate via a transparent and open process and provided sufficient data and documentation for its recommendations.[186]

176. Financial Marketers assert that the Midwest ISO disregarded the recommendations of the RSG Task Force by instead proposing to retain the exemption for intermittent resources until the time that its Redesign Proposal becomes effective, to retain the

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[184] Intermittent Generators, January 11, 2010 Comments at 10-12.

[185] E.ON C&R, January 11, 2010 Comments at 14-16.

[186] Dynegy, January 11, 2010 Comments at 3-4.

dispatch bands exemption until at least March 1, 2010, and to shift real-time Revenue Sufficiency Guarantee costs associated with the proposed exemptions to non-exempt deviations.[187]

b. Market Monitor Study

177. Intermittent Generators assert that the Market Monitor Study is restrictive and not responsive to the Commission's directives in the Initial Order.[188] Intermittent Generators state that the Commission ordered the RSG Task Force to conduct a broad assessment of the interplay of existing market rules and real-time Revenue Sufficiency Guarantee charges, rather than just the analysis of the proposed exemptions contained in the Market Monitor Study. Intermittent Generators state that the study only examined direct causes of real-time Revenue Sufficiency Guarantee costs and did not examine other deviations that have exemptions, such as carved-out grandfathered transmission agreements, whether Midwest ISO market rules are skewed against wind, and how these rules might be adjusted to reduce real-time Revenue Sufficiency Guarantee charges, especially for intermittent resources that cannot change their operation to avoid these charges. Intermittent Generators argue that the study's limited scope is inconsistent with the Market Monitor's previous conclusions on the need to link real-time Revenue Sufficiency Guarantee charges with incentives to change conduct.[189]

178. Cargill and Westar, Financial Marketers, and Intermittent Organizations state that the Midwest ISO has failed comply with the Commission's directive to consider in the Market Monitor Study things that the RSG Task Force deems relevant.[190] They argue that the RSG Task Force determined that it was relevant to quantify the amount of real-time Revenue Sufficiency Guarantee costs attributable to carved-out grandfathered transmission agreements, transmission de-rates, loop flow changes, and topology changes, but the Midwest ISO incorrectly claimed that the requested information was beyond the scope of the proceeding and refused to provide the associated data to the Market Monitor.[191]

[187] Financial Marketers, January 11, 2010 Comments at 23.

[188] Intermittent Generators, January 11, 2010 Comments at 10, RSG Task Force Request for Proposals, Ex. A.

[189] *Id.* at 9-10.

[190] *See*, *e.g.*, Financial Marketers, January 11, 2010 Comments at 21 (citing Initial Order, 128 FERC ¶ 61,142 at P 51).

[191] *Id*. at 22-23.

179. Cargill and Westar, Intermittent Organizations, and RRI Energy assert that the December 7, 2009 Compliance Filing is deficient because it does not take into account the operation of the operating reserve markets when accounting for real-time deviations, the interaction between these markets and the incurrence of Revenue Sufficiency Guarantee costs, or the operational, dispatch, and reliability rules and parameters that may impact real-time Revenue Sufficiency Guarantee costs, including forecast methods and headroom adjustments, as required by the Initial Order.[192] Intermittent Organizations state that, aside from the Alternate Headroom Case, the Market Monitor Study fails to address how the operation of the operating reserve markets or other operational, dispatch, or reliability rules affect the incurrence of real-time Revenue Sufficiency Guarantee costs. They conclude that the RSG Task Force votes and resultant recommendations were not fully informed since a more complete analysis was not performed.[193] Cargill and Westar conclude that the Commission should require the Midwest ISO to conduct a comprehensive study of all factors causing Revenue Sufficiency Guarantee costs and that the Midwest ISO will likely need to make tariff changes based on the result of such a study.

180. RRI Energy contends that the compliance filing does not adequately address the Market Monitor Study's findings that less than seven percent of real-time Revenue Sufficiency Guarantee costs are attributable to deviations from exempt resources, non-exempt resources are allocated costs above their actual contributions, and 38 percent of real-time Revenue Sufficiency Guarantee costs are attributed to be for needs unknown or not related to deviations. RRI Energy requests that the Commission direct the Midwest ISO to continue to use tools such as the Market Monitor Study to determine the need for unit commitment that leads to Revenue Sufficiency Guarantee costs and an appropriate cost allocation on a going-forward basis.

181. Northern Indiana argues that the Commission's previous acceptance of the exemptions for carved-out grandfathered transmission agreements is beside the point because the Commission recognized in the Initial Order that it might be appropriate to revisit real-time Revenue Sufficiency Guarantee cost allocations based on the evidence presented in the RSG Task Force analysis.[194] Northern Indiana contends that the Commission should direct the Midwest ISO to provide grandfathered transmission agreement data, as requested by the RSG Task Force, so that the Market Monitor can

[192] *See*, *e.g.*, RRI Energy, January 11, 2010 Comments at 11 (citing Initial Order, 128 FERC ¶ 61,142 at P 51).

[193] Intermittent Organizations, January 11, 2010 Comments at 6-8.

[194] Northern Indiana, January 11, 2010 Comments at 7 (citing Initial Order, 128 FERC ¶ 61,142 at P 51).

complete its analysis. Northern Indiana states that, based on this further analysis, the Midwest ISO, its stakeholders, and the Commission can then evaluate whether further revisions to the allocation of real-time Revenue Sufficiency Guarantee costs are appropriate.[195]

182. Northern Indiana also argues that the December 7, 2009 Compliance Filing fails to adequately consider headroom commitments, as required in the Initial Order.[196] Northern Indiana claims that there are several problems with the Midwest ISO's treatment of headroom commitments, including that the associated real-time Revenue Sufficiency Guarantee costs are inappropriately allocated. Northern Indiana maintains that the Commission should direct the Midwest ISO to eliminate the cost of headroom commitments from Revenue Sufficiency Guarantee charges, or at a minimum, allocate the costs of headroom commitments to those who cause the costs. Northern Indiana adds that the Commission should direct the Midwest ISO to submit the missing analysis of headroom commitments in a further compliance filing.[197]

183. Detroit Edison opposes the RSG Task Force's motion that the Commission require further Revenue Sufficiency Guarantee studies. Detroit Edison states that the proceeding has already been unnecessarily prolonged by unproductive work.[198] MidAmerican argues that any further analysis of Revenue Sufficiency Guarantee charge exemptions lies outside of the scope of this proceeding.[199]

4. <u>Answer</u>

184. The Midwest ISO responds by reiterating its argument that the Commission's review and authority in this proceeding under section 205 of the FPA is limited to the tariff revisions proposed in the December 12, 2008 Filing. It also states that the Commission's focus should be on whether the Midwest ISO's filing adequately complies with the Initial Order, which directed an analysis and recommendations limited to the seven proposed real-time Revenue Sufficiency Guarantee exemptions. The Midwest ISO

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[195] *Id.* at 7-8

[196] Northern Indiana, January 11, 2010 Comments at 11-12 (citing Initial Order, 128 FERC ¶ 61,142 at P 51).

[197] *Id.* at 11-14.

[198] Detroit Edison, January 6, 2010 Comments at 6.

[199] MidAmerican, January 11, 2010 Comments at 13.

claims that the RSG Task Force's recommendations go beyond the scope of the Initial Order, and the Commission is prohibited from addressing these additional requests.[200]

185. In response to arguments that the Market Monitor Study is deficient, the Midwest ISO states that this view is clearly not shared by the majority of stakeholders and that no claims of a deficient study were brought up during the four-month RSG Task Force analysis and evaluation process.[201] The Midwest ISO states that the compliance filing contained a detailed overview of the Midwest ISO ancillary services market and summarized relevant tariff language, reliability standards, business practices manual content, reports, and market results during the study period. The Midwest ISO asserts that, given the data and time constraints and the assumptions used in the analysis by the Market Monitor, stakeholders had a sufficient basis for making informed decisions on the proposed exemptions. The Midwest ISO also states that it responded in a timely manner to all requests for data within the scope of the Initial Order and provided the RSG Task Force with ample data, references, resources, and presentations to support their analysis.[202]

186. In response to requests to broaden the scope of the Market Monitor Study, the Midwest ISO contends that the Initial Order's directives only pertained to the seven exemptions proposed in the December 12, 2008 Filing. The Midwest ISO also states that the type of operational data that it retains would not have allowed the Market Monitor to separately quantify the impact of each additional factor identified in the protests, but these factors were included in the deviation data associated with the proposed exemptions analyzed on an aggregated basis. The Midwest ISO adds that the Initial Order required the RSG Task Force to analyze resources that contribute to real-time Revenue Sufficiency Guarantee costs, but many of the additional factors identified by protesters do not meet the definition of resources in the Midwest ISO tariff and are therefore outside of the scope of the proceeding. The Midwest ISO maintains that, under its tariff, transmission is not considered a resource, and transmission owners are not allocated Revenue Sufficiency Guarantee costs associated with configurations or topology changes.[203]

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[200] Midwest ISO, January 29, 2010 Answer at 20-21.

[201] The Midwest ISO states that the RSG Task Force had the ability to review the relevant materials and drafts of portions of the December 7, 2009 Compliance Filing.

[202] Midwest ISO, January 29, 2010 Answer at 22-23.

[203] *Id.* at 26.

187. The Midwest ISO states that the exemption of deviations and allocation of real-time Revenue Sufficiency Guarantee costs associated with carved-out grandfathered transmission agreements is not at issue in this proceeding and has previously been settled by the Commission.[204] The Midwest ISO states that arguments challenging the existing exemption for carved-out grandfathered transmission agreements are outside of the scope of the proceeding and collateral attacks on earlier Commission orders. Furthermore, the Midwest ISO asserts that the Market Monitor Study did take these agreements into account on an aggregated basis.[205] The Midwest ISO further states that transaction-specific deviation volumes for grandfathered transmission agreements are not archived by the Midwest ISO and cannot be derived from archived data without significant resources and expense.[206]

188. In response to Northern Indiana's argument that headroom commitments were not adequately considered and therefore should be eliminated from total Revenue Sufficiency Guarantee costs, the Midwest ISO argues that this is beyond the scope of the proceeding. The Midwest ISO adds that procedurally the Commission cannot order it to make such a change to the Interim Rate here since the consideration of headroom is part of the Redesign Proposal.[207]

5. Commission Determination

189. We find that the Midwest ISO's December 7, 2009 Compliance Filing has satisfied the requirements of the Initial Order, and we will accept the compliance filing. The compliance filing, and particularly the information presented in the Market Monitor Study, is sufficient to allow us to determine whether the proposed exemptions are just and reasonable.

190. With respect to claims by E.ON C&R, Intermittent Generators, and Intermittent Organizations that the RSG Task Force stakeholder process was flawed or not fully informed, we do not find evidence that the stakeholder process itself was deficient. We agree with the Midwest ISO that concerns regarding the stakeholder process should have

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[204] *Id.* at 23, n.89-90 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,234, at P 29, 32 (2006)).

[205] The Midwest ISO explains that the Market Monitor had access to the data needed to determine aggregated and nodal deviation volumes that included, as a subset, the deviations associated with service under grandfathered transmission agreements.

[206] *Id.* at 23-24.

[207] *Id.* at 24.

been brought up during the stakeholder process itself. We also disagree with the assertion that the RSG Task Force vote represents the views of stakeholders aligned against wind resources. The Initial Order specifically tasked the RSG Task Force with completing the analysis because it had already been addressing issues associated with Revenue Sufficiency Guarantee costs and intermittent resources at the time that the order was issued and represented a diverse group of stakeholders that was familiar with the details of these issues. We also disagree with the argument that the directives of the Initial Order required the analysis to address whether Midwest ISO market rules themselves are skewed against wind resources or how these market can be adjusted to reduce the incurrence of Revenue Sufficiency Guarantee charges. The Initial Order analysis directives were within the context of the proposed exemptions from Revenue Sufficiency Guarantee charges, and the Initial Order did not require the analysis to examine these issues.

191. We agree with E.ON C&R that the stakeholder vote in the RSG Task Force cannot be relied upon to demonstrate that the proposed exemptions are unjust, unreasonable, or unduly discriminatory. We note here that the Midwest ISO cannot be required to accept the recommendations of the RSG Task Force. The Midwest ISO must ultimately make its filings based upon its own analysis, as it did here. Therefore, we find that the Midwest ISO's compliance filing is not deficient because some of the Midwest ISO's recommendations differed from those of the RSG Task Force.

192. We find that the scope of the Market Monitor Study is sufficiency broad to comply with the requirements of the Initial Order, and we will not require further study for the purpose of this proceeding. In response to Cargill and Westar's argument that a broader study is needed, we find that the Market Monitor Study is sufficiently broad to comply with the directives of the Initial Order. While the RSG Task Force made recommendations regarding the allocation of costs associated with the proposed exemptions, the Midwest ISO made no specific proposals regarding the allocation of Revenue Sufficiency Guarantee costs in its December 7, 2009 Compliance Filing, and we agree with the Midwest ISO that any discussion of the allocation of Revenue Sufficiency Guarantee costs associated with the proposed exemptions is beyond the scope of this proceeding.[208] In response to arguments that the study was deficient because it did not take into account headroom requirements, we disagree. The Market Monitor Study did include a sensitivity analysis showing that there are modest Revenue Sufficiency Guarantee cost impacts associated with incremental changes headroom targets. In addition, the Midwest ISO did not propose any changes regarding its treatment of headroom commitments, and as such we find Northern Indiana's request that the

[208] We note that we have granted rehearing of the Initial Order's requirement that the Market Monitor Study consider issues pertinent to cost allocation.

Commission direct the Midwest ISO to eliminate or reallocate real-time Revenue Sufficiency Guarantee costs associated with headroom commitments to be outside of the scope of this proceeding. The December 7, 2009 Compliance Filing discusses commitments associated with headroom targets.[209]

193. Contrary to protesters' arguments, the Market Monitor Study also included a discussion of the interaction of Revenue Sufficiency Guarantee costs with operating reserves markets, explaining that increasing requirements in these markets would likely not be effective in reducing headroom requirements or substantially reducing Revenue Sufficiency Guarantee costs.[210] The December 7, 2009 Compliance Filing contained detailed descriptions of Midwest ISO markets and processes, including regulation and contingency reserves markets, and discussed the impact of operating reserve requirements on real-time Revenue Sufficiency Guarantee costs.[211]

194. With respect to arguments that the study was deficient because it did not separately quantify the impacts on real time Revenue Sufficiency Guarantee costs from carved-out grandfathered transmission agreements, loop flow changes, topology changes, or transmission de-rates, we agree with the Midwest ISO that the data which was provided to the Market Monitor included deviations associated with such factors on an aggregate basis. Further, we note that the Market Monitor specifically indicated that its study was limited in that it could not separately quantify these impacts. As such, we will not direct the Midwest ISO to give grandfathered transmission agreement transaction data to the RSG Task Force as requested by Northern Indiana.

195. In addition, while the Initial Order did require the analysis to address "the types of and characteristics of all resources that contribute to real-time Revenue Sufficiency Guarantee costs,"[212] we find that the real-time Revenue Sufficiency Guarantee cost impacts associated with additional factors such as carved-out grandfathered transmission agreements, transmission de-rates, loop flow changes, topology changes, and forecasting methods are outside of the scope of the Initial Order's directives.[213] As explained above regarding the requests for rehearing, the scope of the Market Monitor Study is limited to

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[209] Midwest ISO, December 7, 2009 Compliance Filing at Tab G.

[210] *Id.* Tab C, Market Monitor Study at 9-10.

[211] *Id.* Tab G at 3-4.

[212] Initial Order, 128 FERC ¶ 61,142 at P 51.

[213] We note that we have granted rehearing of the requirement that the RSG Task Force consider forecasting methods.

considering the Revenue Sufficiency Guarantee cost impacts of the proposed exemptions. Requiring the Market Monitor Study to consider every potential contributor to Revenue Sufficiency Guarantee costs will not change the study's ultimate cost causation findings regarding the proposed exemptions and, therefore, will not aid our consideration of the proposed exemptions.

The Commission orders:

(A) The requests for rehearing are hereby granted in part and denied in part, as discussed in the body of this order.

(B) The Midwest ISO's proposed tariff sheet in Docket No. ER09-411-000 is hereby conditionally accepted, as discussed in the body of this order.

(C) The Midwest ISO's compliance filing in Docket No. ER09-411-003 is hereby conditionally accepted, as discussed in the body of this order.

(D) The Midwest ISO's compliance filing in Docket No. ER09-411-004 is hereby accepted, as discussed in the body of this order.

(E) The Midwest ISO is hereby required to submit a compliance filing within 30 days from the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.