132 FERC ¶ 61,186
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.

Ameren Services Company
Northern Indiana Public Service Company

v. Docket No. EL07-86-008

Midwest Independent Transmission System Operator, Inc.

Great Lakes Utilities
Indiana Municipal Power Agency
Missouri Joint Municipal Electric Utility Commission
Missouri River Energy Services
Prairie Power, Inc.
Southern Minnesota Municipal Power Agency
Wisconsin Public Power Inc.

v. Docket No. EL07-88-008

Midwest Independent Transmission System Operator, Inc.

Wabash Valley Power Association, Inc.

v. Docket No. EL07-92-008

Midwest Independent Transmission System Operator, Inc.

ORDER ON COMPLIANCE FILING

(Issued August 30, 2010)

1. In August 2007, three groups of utilities filed complaints under section 206(b) of the Federal Power Act (FPA),[1] alleging that the real-time Revenue Sufficiency Guarantee charge contained in the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Transmission and Energy Markets Tariff (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.[2] In order to develop a more complete record, the Commission set the complaints for paper hearing and investigation.[3]

2. 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 and reasonable.[4] 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. With regard to a second alternative (the indicative allocation or

[1] 16 U.S.C. § 824e (2006). The Complainants are Ameren Services Company and Northern Indiana Public Service Company (Ameren/Northern Indiana); Great Lakes Utilities, Indiana Municipal Power Agency, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Prairie Power, Inc., Southern Minnesota Municipal Power Agency, and Wisconsin Public Power Inc.; and Wabash Valley Power Association, Inc.

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

[3] *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. *See* P 9 *infra*.

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

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 Markets. The Commission therefore allowed the Midwest ISO to file its Indicative Rate when it had a complete and final proposal.

3. The Midwest ISO made that filing on February 23, 2009 (Redesign Proposal). In this order we accept in part and reject in part the filing, subject to a further compliance filing, as discussed below. We also deny the requests that this matter be set for hearing.

I. Background

4. On April 25, 2006, in Docket No. ER04-691, the Commission issued an order rejecting the Midwest ISO's proposal to, among other things, remove references to virtual supply 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]

5. The Complainants each filed a complaint against the Midwest ISO under section 206 of the FPA and Rule 206 of the Commission's Rules of Practice and Procedure.[8] These complaints concern the allocation of real-time Revenue Sufficiency Guarantee charges to market participants under the Midwest ISO's tariff.[9] The Complainants alleged that the Revenue Sufficiency Guarantee rate, which is based in part on virtual supply offers, is unjustly and unreasonably assessed on only the subset of market participants who make physical withdrawals of energy. The Complainants argued that differentiating among virtual supply offers in allocating the Revenue Sufficiency

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[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 (Second Rehearing Order), *order on reh'g*, 121 FERC ¶ 61,131 (2007) (Third Rehearing Order).

[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] 18 C.F.R. § 385.206 (2010).

[9] For additional background to this proceeding, *see* the Order on Revenue Sufficiency Guarantee Complaints, 121 FERC ¶ 61,205 at P 5-9.

Guarantee charge is unjustified and that the Commission found in prior orders that there is no basis for the differentiation. They asked that the Commission set for hearing the issue of the tariff revisions necessary to remedy this alleged discrimination.

6. In the Order on Revenue Sufficiency Guarantee Complaints, the Commission granted in part and denied in part the relief requested in the complaints. The Commission found that the Midwest ISO's existing Revenue Sufficiency Guarantee cost allocation methodology may not be just and reasonable, but the Revenue Sufficiency Guarantee cost allocation methodologies Complainants proposed also had not been shown to be just and reasonable. The Commission thus established a refund effective date of August 10, 2007, and set the complaints for paper hearing and investigation to review evidence and to establish a just and reasonable Revenue Sufficiency Guarantee cost allocation methodology. The Commission held the paper hearing in abeyance pending the conclusion of a then-ongoing stakeholder proceeding that was seeking to identify possible improvements to the Revenue Sufficiency Guarantee cost allocation methodology, or February 1, 2008, whichever is earlier.

7. On February 1, 2008, the Midwest ISO made an informational filing stating that it was not able to meet the February 1, 2008 deadline because the Revenue Sufficiency Guarantee Task Force was still in negotiations. The Midwest ISO proposed to file specific tariff provisions and supporting documentation on or about March 3, 2008.

8. On March 3, 2008, the Midwest ISO filed what it refers to as "indicative" tariff revisions that reflect an alternative mechanism for allocating Revenue Sufficiency Guarantee charges and costs. The Midwest ISO explained that these provisions represent a new real-time Revenue Sufficiency Guarantee cost allocation methodology that was developed based on the principles agreed upon in stakeholder discussions, but that has not yet been conformed to incorporate the Midwest ISO's new Ancillary Services Markets market design elements. The Midwest ISO asked the Commission to determine whether the language in the indicative revisions represents a just and reasonable basis for a subsequent FPA section 205 filing that would replace the Revenue Sufficiency Guarantee cost allocation methodology for the Ancillary Services Markets. The Midwest ISO stated that if the Commission determined that the proposed indicative tariff language is a just and reasonable basis for further developing provisions that would adapt the new Revenue Sufficiency Guarantee cost allocation methodology to the Ancillary Services Markets context, it would agree to file Ancillary Services Markets-specific tariff provisions reflecting this suggested new allocation methodology.

9. On August 21, 2008, the Commission issued an order commencing a paper hearing.[10] The Commission noted that under section 206(b) of the FPA, Complainants

[10] *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,173 (2008), *reh'g denied*, 131 FERC ¶ 61,214 (2010).

carry the burden of proof and therefore must demonstrate, on the basis of substantial evidence, both that the rate in effect is unjust and unreasonable and that their proposed alternative rate is just and reasonable.[11] The Commission explained that it is not the Midwest ISO's responsibility to propose and justify a new cost allocation because the Midwest ISO is not the complainant but rather the party to which the complaints are directed.[12]

10. On November 10, 2008, the Commission issued the Order on Paper Hearing, in which it found that the Midwest ISO's indicative tariff sheets provide a just and reasonable basis for future Revenue Sufficiency Guarantee cost allocations. The Commission recognized that the Midwest ISO could not implement the Indicative Rate before the start of the Ancillary Services Markets, and that further adjustments would be necessary to conform the indicative allocation to the Ancillary Services Markets. The Commission therefore allowed the Midwest ISO to file its indicative allocation when it had a complete and final proposal. Midwest ISO filed its Redesign Proposal on February 23, 2009.

II. <u>Procedural Matters</u>

11. Notice of the Redesign Proposal was published in the *Federal Register*, 74 Fed. Reg. 10,567 (2010), with interventions and protests due on or before March 16, 2009. Illinois Municipal Electric Agency and Tenaska Power Services Co. filed timely motions to intervene. Reliant Energy, Inc. filed a timely motion to intervene and comments. Ameren Services Company (Ameren), DC Energy Midwest, LLC (DC Energy), Detroit Edison Company (Detroit Edison), Duke Energy Corporation (Duke), E.ON U.S. LLC (E.ON), Edison Mission Energy (Edison Mission), FirstEnergy Service Company (FirstEnergy), Integrys Energy Services, Inc. (Integrys), the Midwest TDUs,[13] and Wisconsin Electric Power Company, filed timely comments or protests. EPIC Merchant Energy, LP, SESCO Enterprises LLC, The AI Funds, Inc., Argo Navis Fundamental Power Fund, L.P., Solios Power, LLC, JJR Power, LLC, Olde Towne Energy Associates, LLC, Energy Endeavors LP, and Jump Power, LLC (collectively EPIC/SESCO Group)

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[11] *Id.* P 9.

[12] *Id.*

[13] The Midwest TDUs consist of Great Lakes Utilities, Indiana Municipal Power Agency, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Prairie Power, Inc., Southern Minnesota Municipal Power Agency, and WPPI Energy.

filed a timely intervention and two timely protests.[14] Basin Electric Power Cooperative (Basin) filed a motion to intervene and protest 8 days out of time. Xcel Energy Services Inc. (Xcel) and Westar Energy, Inc. (Westar) filed motions to protest 1 and 11 days, respectively, out of time.

12. The Midwest ISO filed an answer, and Basin, DC Energy, E.ON, and Otter Tail filed answers to this answer. The Midwest TDUs filed an answer to certain protests and comments. On April 8, 2009, the Midwest ISO submitted a filing in which it corrects some of the information contained in its answer, and DC Energy submitted an answer to this filing.

13. On July 15, 2009, EPIC/SESCO Group filed supplemental comments. Ameren/Northern Indiana filed an answer to those supplemental comments.

14. Motions to intervene out of time were filed by E.ON Climate & Renewables North America, LLC on April 30, 2010, by Iberdrola Renewables, Inc. on May 5, 2010, by NextEra Energy Resources, LLC on May 7, 2010, and by the American Wind Energy Association and Wind on the Wires on May 12, 2010 (collectively, Late Intervenors). All of the Late Intervenors state that they are concerned about an exemption from Revenue Sufficiency Guarantee charges for intermittent resources. They state that at the time the Midwest ISO filed the Redesign Proposal, they did not believe that the filing would affect that exemption. However, more recent developments, including developments in Docket No. ER09-411, suggest to them that intermittent resources will not be exempt from Revenue Sufficiency Guarantee charges. The Late Intervenors maintain that these subsequent developments justify granting their requests for late intervention.

15. Northern Indiana filed a motion in opposition to the Late Intervenors' motions to intervene. It argues, first, that the Late Intervenors have not shown good cause to intervene long after the intervention date, as the notices, filings, and orders in this matter have made clear that the Revenue Sufficiency Guarantee allocation methodology is at issue here. Second, Northern Indiana states that the Late Intervenors have not shown that their interests are not adequately represented by similarly situated parties. Finally, Northern Indiana states that permitting the Late Intervenors to participate at this late stage creates additional costs and burdens for the parties, who would have to respond to new arguments. Northern Indiana also states that the Commission disfavors motions to intervene after it has issued an order on the merits.

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[14] EPIC Merchant Energy, LP and SESCO Enterprises LLC previously have been admitted as parties to these proceedings, having filed a timely motion to intervene in them on September 4, 2007.

III. Discussion

A. Procedural Matters

1. Interventions and Protests

16. Pursuant to 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.

17. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R § 385.214(d) (2010), the Commission will grant the late-filed motions to intervene of Basin, Westar, and Xcel given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. We will also accept Xcel’s late-filed protest.

18. 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 and/or answer unless otherwise ordered by the decisional authority. We will accept the answers of the Midwest ISO, Basin, DC Energy, E.ON, the Midwest TDUs, and Otter Tail because they have provided information that assisted us in our decision-making process. We will not accept the July 15, 2009 supplemental comments submitted by the EPIC/SESCO Group. That filing seeks to introduce new evidence at the compliance stage of this proceeding and is outside the scope of the matters to be addressed here. We are not persuaded to accept the answer of Ameren/Northern Indiana and therefore we will reject it.

19. We will deny the motions to intervene filed by the Late Intervenors. Rule 214(d) allows us to consider a number of factors when evaluating whether to grant a late motion to intervene.[15] Given that the Late Intervenors sought to intervene over a year after the

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[15] These factors are whether:

> (i) The movant had good cause for failing to file the motion within the time prescribed;
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> (ii) Any disruption of the proceeding might result from permitting intervention;
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> (iii) The movant’s interest is not adequately represented by other parties in the proceeding;

(continued…)

deadline for motions to intervene, the most important of these factors in the present context is whether the movant had good cause for failing to file the motion within the time prescribed. The Late Intervenors' claim that they concluded that the Redesign Proposal could adversely affect their interests based on events that occurred long after the intervention deadline does not demonstrate that they had good cause for failing to intervene by the deadline. We note that the Redesign Proposal includes tariff revisions that contain new references to intermittent resources.[16] The Late Intervenors' claim that they had no notice that the Redesign Proposal pertained to their interests simply because at the time of the notice they did not consider the proposal to be adverse to those interests does not justify their failure to file, especially when the relevance of the proposal to their interests was otherwise clear.

2. <u>Request for Hearing and Comments and Protests on Procedural Matters</u>

a. <u>Protests and Answers</u>

20. EPIC/SESCO Group and Westar contend that treating the Redesign Proposal as a compliance filing improperly mixes the requirements of FPA sections 205 and 206. They recommend that the Commission reject the Midwest ISO's effort to adopt a new Revenue Sufficiency Guarantee rate formula by characterizing it as a compliance filing. Alternatively, EPIC/SESCO Group and Westar request that the filing be set for hearing and investigation.

21. In its protest, FirstEnergy asserts that the Redesign Proposal needs greater data transparency and that the Midwest ISO should supply additional data to allow market participants to make more efficient transaction decisions. E.ON recommends that the Midwest ISO resubmit a fully supported proposal complete with examples and revised tariff language that will enable market participants to understand and replicate the Revenue Sufficiency Guarantee charges they are assessed. Duke requests that the Midwest ISO provide stakeholders with indicative non-binding rates and charges prior to

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> (iv) Any prejudice to, or additional burdens upon, the existing parties might result from permitting the intervention; and
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> (v) The motion conforms to the requirements of a motion to intervene specified in Rule 214(b).

See 18 C.F.R. § 385.214(d) (2010).

[16] We refer here to the definitions of Economic Maximum Dispatch and Economic Minimum Dispatch found in sections 1.168a and 1.168b, respectively.

the effective date of the tariff provisions and provide market participants with information, including constraint factor impact data, that will help them predict Revenue Sufficiency Guarantee costs before they are incurred.

22. Xcel asserts that the Midwest ISO should publish which units are committed to deal with constraints, the constraints for which they are committed, and the relevant constraint contribution factors for deviations being assessed Revenue Sufficiency Guarantee charges in the constraint management bucket. Xcel maintains that this information is essential for market participants in calculating their charges and evaluating potential scheduling and operation improvements.

23. The Midwest ISO responds that the issue of transparency is beyond the scope of this compliance proceeding. It states that its proposal provides specific mathematical formulations that show how deviations, rates, and summations are determined, and that this level of detail exceeds the specificity of the Excessive/Deficient Energy Deployment Charges that the Commission found just and reasonable. The Midwest ISO also notes that it has provided illustrative calculations of headroom allocations. With regard to the data used in the calculations, the Midwest ISO states that it is impossible to provide market participants contemporaneously with a complete set of data to pre-calculate Revenue Sufficiency Guarantee costs because the operational variables involved in Reliability Assessment Commitment are in flux at the time of commitment and some of the data is confidential.

24. Wisconsin Electric recommends that to avoid unforeseen outcomes the Commission order a technical conference to allow stakeholders to examine the Redesign Proposal's complex details. E.ON recommends a trial-type hearing to determine whether the Redesign Proposal is just and reasonable.

25. The Midwest ISO maintains in its answer that the Order on Paper Hearing did not deem a technical conference to be necessary for the Indicative Proposal. The Midwest ISO argues that a hearing likewise is unnecessary for those limited aspects of the Redesign Proposal that differ from the Indicative Proposal.

b. Commission Determination

26. The paper hearing process was held in abeyance for some time to permit stakeholders to attempt to identify potential improvements to the Revenue Sufficiency Guarantee cost allocation methodology – a process that culminated in the filing of an indicative cost allocation.[17] The Midwest ISO stated that if the Commission found the proposed indicative language to be a just and reasonable basis for developing provisions

[17] Order on Paper Hearing, 125 FERC ¶ 61,161 at P 6-8.

that would adapt the new Revenue Sufficiency Guarantee cost allocation methodology to the nascent Ancillary Services Markets, it would file Ancillary Services Market-specific tariff provisions reflecting this new methodology within 60 days thereafter. However, the burden of proving that an alternative cost allocation was just and reasonable fell upon the Complainants, not the Midwest ISO.[18] The Complainants elected to support the indicative cost allocation, and established that it was just and reasonable.[19]

27. The Order on Paper Hearing did not require the Midwest ISO to present the instant filing at a specific time for two reasons. First, that order had fixed a just and reasonable rate to be thereafter observed, as FPA section 206 requires. Therefore, a just and reasonable rate was in place.[20] Second, the Commission acknowledged that the Midwest ISO could not implement the Indicative Rate before the start of the Ancillary Services Markets, and that the Midwest ISO needed at least sixty days to conform the proposal to the Ancillary Services Markets.[21] The Commission referred to this future filing as a compliance filing,[22] and disagreed on rehearing that a new FPA section 205 filing would be required to implement the Indicative Rate.[23] Although the Commission's instructions may not have been clear, and while the Order on Paper Hearing could be read to support a filing in a new FPA section 205 proceeding, we do not take issue with the Midwest ISO's choice to present the Redesign Proposal as a compliance filing.

28. At the same time, we agree with EPIC/SESCO Group and Westar that portions of the Midwest ISO's filing exceed the scope of compliance and include material that should have been filed under section 205 of the FPA.[24] As further detailed below, we will reject the elements of the Redesign Proposal that were not at issue in the paper hearing, without prejudice to the Midwest ISO re-filing them in a later proceeding. We will therefore deny EPIC/SESCO Group's and Westar's requests for hearing. We also

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[18] Order Commencing Paper Hearing, 124 FERC ¶ 61,173 at P 9.

[19] Order on Paper Hearing, 125 FERC ¶ 61,161 at P 50-58, 109.

[20] *Id*. P 120-21.

[21] *Id.* P 118.

[22] *Id.*

[23] *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,121 at P 158.

[24] The Midwest ISO itself acknowledges this in its transmittal letter, which requests that the Commission approve the filing under section 205 of the Federal Power Act. February Filing Transmittal Letter at 6.

agree with the Midwest ISO that the limited issues presented do not provide a basis for requiring a technical conference.

B. Issues Implicating the Scope of this Proceeding

29. As further detailed below, the Redesign Proposal contains a number of provisions that include tariff changes that go beyond the scope of this compliance proceeding. We note that these proposals generally elicited substantial comment. Since we are dismissing them as beyond the scope of this compliance proceeding, we need not deal with the comments and protests in any detail and will only characterize them in general terms.

1. Midwest ISO Revisions to Indicative Cost Allocation: Combine Second and Third Allocation Buckets

a. Midwest ISO Filing

30. The Midwest ISO proposes tariff revisions in response to the Commission's finding in the Order on Paper Hearing that the indicative allocation provided a just and reasonable basis for future cost allocations. Consistent with the indicative cost allocation analyzed in the Order on Paper Hearing, the Redesign Proposal allocates real-time Revenue Sufficiency Guarantee costs based on the three major reasons for the commitment of units in the Reliability Assessment Commitment:[25] (1) managing transmission constraints or addressing local reliability concerns; (2) addressing the need for headroom;[26] and (3) adjusting for deviations from day-ahead schedules.

31. The indicative allocation allocated costs to four Revenue Sufficiency Guarantee charge types, i.e.; (1) the Revenue Sufficiency Guarantee constraint management charge based on the impact of each market participant's deviations, exports, imports, virtual offers, and bids on transmission constraints; (2) the Revenue Sufficiency Guarantee intra-

[25] The Reliability Assessment Commitment is a process conducted following the posting of results for the day-ahead energy and operating reserve market but prior to the operating day, and during the real-time energy and operating reserve market, by which the transmission provider ensures that sufficient resources will be available and on-line to meet load, operating reserve, and other demand requirements in the operating day.

[26] Headroom is defined as the sum of the differences between the real-time economic maximum dispatch and dispatch targets for energy of resources committed by the transmission provider in any Reliability Assessment Commitment processes conducted for the operating day, resulting from various factors including, but not limited to, intra-hour changes in demand. Midwest ISO FERC Electric Tariff, Fourth Revised Volume No. 1, Second Revised Sheet No. 167.

hour demand change charge based on load-ratio share; (3) the Revenue Sufficiency Guarantee day-ahead schedule deviation charge based on each market participant's deviations, exports, imports, virtual offers and bids market-wide; and (4) an allocation to all market participants based on load-ratio share, referred to as the second-pass charge.

32. The Midwest ISO's proposed tariff revisions in the Redesign Proposal allocate these costs to three charge types, or buckets, in sequential order: (1) Revenue Sufficiency Guarantee constraint management charge based on the impact of each market participant's deviations, exports, imports, virtual offers and bids on transmission constraints; (2) Revenue Sufficiency Guarantee day-ahead schedule deviation and headroom charges based on each market participant's deviations, exports, imports, virtual offers, and bids market-wide for the deviation portion of the charge and based on market-load ratio share for the headroom portion of the charge; and (3) allocation to all market participants based on load-ratio share. The proposal would combine the headroom charge[27] with the day-ahead schedule deviation charge into a single allocation bucket for purposes of rate calculation. The Midwest ISO agrees with stakeholders[28] that it is proper to merge these charges because, at the time of the Reliability Assessment Commitment, the Midwest ISO cannot and does not distinguish between resources committed to meet capacity requirements for deviations from Day-Ahead Schedules and those committed to meet capacity requirements for headroom. Consequently there is no clear basis for placing either allocation category ahead of the other. The Midwest ISO explains that the resulting headroom portion of the charge will continue to be collected as part of the allocation based on market load ratio share.

b. Protests and Answer

33. A number of parties protest that the Midwest ISO has not provided evidence supporting this proposal and that it will lead to improper cost allocations that are inconsistent with cost causation principles. The Midwest ISO responds that it is appropriate to refine the Redesign Proposal because at the time the Order on Paper Hearing was issued, neither it nor stakeholders had considered the problem of distinguishing, at the time of the Reliability Assessment Commitment, between resources committed in response to deviations from day-ahead schedules and those committed for headroom. The Midwest ISO asserts that the findings in the Order on Paper Hearing on

[27] In the indicative cost allocation, this was called the intra-hour demand change charge. The Midwest ISO renames this charge the headroom charge in its Redesign Proposal.

[28] The Midwest ISO notes that its Markets Subcommittee passed a motion (22 votes in favor, 10 against and one abstention) to either interchange or combine the Indicative Proposal's second and third allocation buckets.

the indicative allocation's second and third allocation buckets are not dispositive for the issue of whether the combination of buckets is warranted. It maintains that the evidence that the Commission found sufficient to establish that the indicative allocation is just and reasonable is simply being supplemented by a consideration of the difficulties involved in distinguishing between resources at issue at the time of Reliability Assessment Commitment. Finally, the Midwest ISO maintains that cost causation considerations support combining the buckets.

c. Commission Determination

34. The Redesign Proposal revises the indicative cost allocation accepted by the Commission in the Order on Paper Hearing. The Midwest ISO's proposal to combine the second and third cost allocation buckets into a single bucket change both the sequence of cost allocation and the calculations in the rate formulas from the indicative cost allocation.[29] These proposed changes, which significantly impact the portion of Revenue Sufficiency Guarantee charges paid by market participants, have not been previously litigated and therefore represent new rate changes that are beyond the scope of this compliance proceeding. We will therefore reject this portion of the Midwest ISO's filing, without prejudice. The Midwest ISO may file its revised proposal under FPA section 205 in the event that it decides to seek Commission acceptance for a revised headroom and deviation charge.

35. We direct the Midwest ISO to file tariff sheets within 30 days of the date of this order that replace the proposed combined headroom and deviations charge with the indicative cost allocation's proposal for separate intra-hour demand change and deviations charges. We also require that the Midwest ISO replace any tariff references to headroom charges[30] with references to intra-hour demand change charges, and that the indicative cost allocation's second pass charge be included in the compliance filing.

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[29] As an example, the amount of Revenue Sufficiency Guarantee costs attributed to headroom that are allocated to market load differs between the indicative cost allocation and the Redesign Proposal. In the indicative allocation, costs are multiplied by the minimum of the value of 1 or the quotient of headroom and the summation of economic maximum dispatch for resources not used for transmission constraint management. In contrast, the Redesign Proposal costs are multiplied by the quotient of headroom and the greater of deviations and headroom or the summation of economic maximum dispatch for units committed in the Reliability Assessment Commitment process.

[30] As examples, the definition of Real-Time Revenue Sufficiency Guarantee headroom charge in section 1.538b and reference in the constraint management charge on

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2. Exempted Deviations

a. Midwest ISO Filing

36. The Midwest ISO proposes a new section 40.3.3.a.x in the tariff that would exempt the following deviations from Revenue Sufficiency Guarantee charges under its proposed first and second buckets (the constraint management charge and deviation and headroom charges): (1) deviations exempted through settlement agreements on file with the Commission; (2) deviations associated with carved-out grandfathered agreements; (3) deviations associated with market conditions or system limitations, such as emergency conditions, software maintenance, testing or outages of the unit dispatch system, or the inter-control center communications protocol that are exempted pursuant to other provisions of the tariff; (4) deviations resulting from compliance with Midwest ISO directives in the case of schedules supported by firm transmission service; (5) deviations resulting from compliance with the Midwest ISO's directives for schedules supported by non-firm transmission service, but only when such directives are issued during a declared emergency, including shortage conditions; and (6) deviations exempt from hourly Excessive Energy Calculations and Excessive/Deficient Energy Deployment Charges.

37. The Midwest ISO clarifies that the Revenue Sufficiency Guarantee charges under the first and second allocation buckets would not apply to deviations that are within the Excessive/Deficient Energy Deployment Charge tolerance band and therefore not subject to Excessive/Deficient Energy Deployment Charges.

38. The Midwest ISO also proposes to revise the definition of economic maximum dispatch to indicate that when a resource is not committed, the economic maximum dispatch shall be equal to zero, and for intermittent resources it shall be equal to the dispatch target for energy.

b. Protests and Answer

39. A number of parties object to the Midwest ISO's proposal. They state that Revenue Sufficiency Guarantee costs are incurred in many instances for the benefit of the entire market, including those participants that are not required to pay Revenue Sufficiency Guarantee charges. They claim that the Midwest ISO has not provided any cost justification for the exemptions and that the proposal will result in improper cost shifting. The Midwest ISO responds that the Revenue Sufficiency Guarantee exemptions were already part of the indicative allocation, which the Order on Paper Hearing found to

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Proposed Original Sheet No. 1100A to the deviation and headroom charge would need to be revised.

be just and reasonable, and that no party raised the Revenue Sufficiency Guarantee exemption issue in requests for rehearing of the Order on Paper Hearing.[31] The Midwest ISO also states that the Order on Paper Hearing found the exemption of intermittent resources from Revenue Sufficiency Guarantee charges under section 40.3.3.a.viii.c of the indicative tariff was just and reasonable.

c. Commission Determination

40. This is the first instance in this proceeding in which parties are reviewing and raising concerns with respect to exemptions from the Revenue Sufficiency Guarantee charge.[32] None of the previous orders in this proceeding addressed exemptions, nor did parties indicate any concerns. Furthermore, the exemption discussion in the indicative allocation, upon which the Redesign Proposal is based, was limited only to a definition of Interchange Schedules,[33] and provided no further explanation or description of the exemptions. Therefore, the exemption proposal is outside the scope of the Commission's rulings in the Order on Paper Hearing. We agree with parties' various arguments that we cannot accept the exemption proposal in this proceeding. The merits of the exemptions have not been litigated in this proceeding, and there is insufficient evidence in the record to support them. For these reasons, we reject the proposed exemption provisions and direct the Midwest ISO to delete section 40.3.3.a.x in a compliance filing to be submitted within 30 days of the date of this order.

41. The Midwest ISO may re-file its exemption proposals under FPA section 205 filing in the event that it decides to seek Commission acceptance for exemptions from Revenue Sufficiency Guarantee charges. We note that the Commission has addressed exemptions to Revenue Sufficiency Guarantee charges for deviations that are exempt from the Exessive/Deficient Energy Deployment charges.[34] We expect that the Midwest ISO will conform its filing to the Commission's determinations in that order.

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[31] The Midwest ISO also notes that its approach is consistent with the "no-mismatch" rulings of the November 7, 2008 order in Docket No. ER04-691. Midwest ISO Answer at 25 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,156 (2008) (Fourth Rehearing Order), *reh'g dismissed*, 127 FERC ¶ 61,241 (2009), *reh'g pending*).

[32] The merits of similar exemptions, applied to a time period beginning on November 8, 2008, are also pending in Docket No. ER04-691-091.

[33] *See* September 22, 2008 Brief of Ameren Services Company and Northern Indiana Public Service Company, Attachment C at 21.

[34] *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,184 (2010).

42. The revisions proposed by the Midwest ISO to the economic maximum dispatch definition were not part of the indicative cost allocation, and for this reason we reject them as beyond the scope of this compliance proceeding. We require the Midwest ISO to submit revised tariff sheets in its compliance filing that delete the revised definition.

3. Headroom

a. Midwest ISO Filing

43. The Midwest ISO proposes to revise the definition of headroom from the indicative cost allocation definition. The Indicative Rate defined headroom as the sum of the differences between the real-time economic maximum dispatch and actual injections of resources committed in any Reliability Assessment Commitment processes for the operating day.[35] The Redesign Proposal defines headroom as the sum of the differences between the real-time economic maximum dispatch and dispatch targets for energy of resources committed in any Reliability Assessment Commitment process for the operating day, resulting from various factors including intra-hour demand.[36]

b. Comments and Protests

44. A number of parties argue that the term "headroom" needs to be redefined to avoid cost allocation issues. They also argue that more evidence is necessary to justify the Midwest ISO's proposal. The Midwest ISO states that it is prepared to modify the proposed definition of headroom and offers an approach for accomplishing this.

c. Commission Determination

45. The Midwest ISO's proposal to revise the definition of headroom to base it on Midwest ISO instructions, rather than retaining the indicative cost allocation definition based on actual injections of resources, represents a substantive change that is beyond the scope of this compliance proceeding. Moreover, the Midwest ISO states that its proposal will not work without the combination of the first and second cost allocation buckets, and we have rejected its proposal to combine them. For this reason, we reject the proposed new definition and we require the Midwest ISO to submit tariff sheets in the compliance filing with the indicative cost allocation definition for headroom. As well, DC Energy's request for further revisions is outside the scope of this compliance proceeding. If it so

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[35] Midwest ISO March 3, 2008 Indicative Rate Filing, Transmittal Letter at 14 n.27.

[36] Midwest ISO February 23, 2009 Redesign Proposal Filing at Tariff section 1.280a, proposed First Revised Sheet No. 167.

chooses, the Midwest ISO can evaluate further refinements to the cost allocation, including changes to definitions, with stakeholders and submit proposed tariff revisions in an FPA section 205 filing.

4. Allocation of Revenue Sufficiency Guarantee Charges Based on Self-Schedules

a. Midwest ISO Filing

46. The Redesign Proposal allocates Revenue Sufficiency Guarantee costs in the constraint management charge to generators, Demand Response Resources – Type II and external asynchronous resources based, in part, on deviation calculations that are based on self-scheduled quantities.

b. Comment

47. One party requests clarification that schedule changes by self-scheduled generators are included in the Revenue Sufficiency Guarantee cost allocation and are not exempt from the Revenue Sufficiency Guarantee charge. The Midwest ISO states that it considers this issue to be beyond the scope of this proceeding.

c. Commission Determination

48. The Midwest ISO Redesign Proposal revises the indicative cost allocation's calculation of the constraint management charge by adding self-schedule quantities to the charge calculation. As a new proposal that revises the indicative cost allocation accepted by the Commission in the Order on Paper Hearing, this revision is outside the scope of this compliance proceeding. Accordingly, we reject this provision and direct the Midwest ISO to delete in a compliance filing to be submitted within 30 days of the date of this order the references to self-schedules in the constraint management charge. The DC Energy proposals for tariff modifications are also beyond the scope of this compliance proceeding. The Midwest ISO can file its revised proposal in an FPA section 205 filing in the event that it decides to seek Commission acceptance for a revised allocation method for the constraint management charge.

C. Netting of Deviations and Virtual Transactions

1. Midwest ISO Filing

49. The Redesign Proposal would net positive and negative deviations from day-ahead schedules, as well as virtual offers and virtual bids, in the calculation of the constraint management charge and the day-ahead deviation charge, based on the deviations of market participants, consistent with the netting provisions of the indicative cost allocation.

2. **Comments and Protests**

50. EPIC/SESCO Group argues that the Redesign Proposal fails to account for the offsetting effect of virtual supply offers and virtual demand bids. It asserts that section 40.3.3.a.ii.4 allocates costs based on virtual demand bids, as opposed to virtual supply offers, and this is contrary to the Indicative Proposal. EPIC/SESCO Group contends that the Midwest ISO has not justified this change.

51. DC Energy and Edison Mission assert that approval of the Redesign Proposal should be conditioned on modifying it to allow for a form of market-wide netting of virtual offers and virtual bids that is done prior to the allocation of Revenue Sufficiency Guarantee charges to virtual offers. DC Energy agrees with the Independent Market Monitor's recommendation on market-wide netting and recommends that the Commission direct the Midwest ISO to employ netting under both the constraint management charge and day-ahead schedule deviation buckets. According to DC Energy, this would mitigate the harm to the marketplace that results from the over-allocation of Revenue Sufficiency Guarantee costs to deviations, including virtual supplies. FirstEnergy would support an amendment to implement system-wide netting if additional investigation indicates that netting deviations would reduce overall Revenue Sufficiency Guarantee costs.

52. Edison Mission recommends that the constraint management charge be modified to include the netting of all deviations that affect the constraint. Edison Mission maintains that the majority of Revenue Sufficiency Guarantee costs are paid to peaking resources, which do not have multi-hour commitments. On this basis, it disputes the Midwest ISO's argument that aggregate netting fails to consider multi-hour commitments. Duke supports netting at the market participant level, rather than the asset owner level. Duke considers this approach to be reasonable since a utility's generation will tend to be located in relative proximity to its load zone, and the netting effect of the charge therefore will reflect the physical reality of offsetting impacts of the deviations in withdrawals and injections on the system.

53. Ameren requests the Midwest ISO to clarify its proposal to allow for netting of real-time financial schedules for deviations of different market participants, thereby allowing market participants to trade such deviations in order to reduce Revenue Sufficiency Guarantee charges. Ameren specifically requests that the Midwest ISO clarify scheduling requirements, trading at different sources and sinks, and the definition of "positive adjustment" in section 1.656a.

3. **Answers**

54. On the issue of netting virtual offers and bids, the Midwest ISO notes that it filed an answer to the Independent Market Monitor's February 23, 2009 filing regarding the Interim Rate. The Midwest ISO states that its answer indicated a need for additional

details regarding the Independent Market Monitor's netting proposal, which alluded to a general netting recommendation that the Independent Market Monitor outlined in response to the Indicative Rate. The Midwest ISO contends that to date the Independent Market Monitor has not provided details regarding market-wide netting or information on whether the calculation should include or exclude headroom.

55. The Midwest ISO disagrees with the Independent Market Monitor's proposed approach, which would calculate the net deviation position of the entire market at the notification time by netting all prior positive and negative deviations. The Midwest ISO states that this proposal incorrectly assumes that all Revenue Sufficiency Guarantee costs allocated within an hour are caused only by deviations in that hour, when in fact such costs often result from multi-hour commitments due to minimum run times and minimizing of commitment costs.

56. Further, the Midwest ISO contends that the Order on Paper Hearing considered, but did not adopt, the Independent Market Monitor's previous netting recommendation.[37] The Midwest ISO does not know whether the netting recommendation mentioned in the Independent Market Monitor's February 23, 2009 filing differs from the method adopted in the Order on Paper Hearing.

57. With regard to netting on a basis other than a market-wide basis, the Midwest ISO states that Edison Mission's approach would result in a higher Revenue Sufficiency Guarantee rate because of its application of a smaller denominator. In response to Duke's proposal to net costs on a market participant basis, rather than on an asset owner basis, the Midwest ISO states that while settlement is at the individual asset owner level, financial schedules can be aggregated to the market participant level. A market participant can redefine several asset owners that it represents as a single asset owner, eliminating the need to submit financial schedules to net deviations among them.

58. In response to Ameren's questions on the netting of deviations, the Midwest ISO states that it is amenable to supplementing the proposed tariff language to clarify that netting requires the submission of real-time financial schedules before the notification deadline. It also clarifies that the delivery point is determinative of the applicable Constraint Contribution Factor,[38] and it states that the financial schedule for deviations

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[37] Midwest ISO April 1, 2009 Answer at 22 (citing Order on Paper Hearing, 125 FERC ¶ 61,161 at P 153).

[38] The Constraint Contribution Factor is defined to be the factor that represents the impact that an incremental actual energy injection or actual energy withdrawal of one megawatt has on a given active transmission constraint. Midwest ISO Tariff, First Revised Sheet No. 103.

has a single delivery point. Therefore the deviations associated with a given financial schedule are evaluated based on the same Constraint Contribution Factor for both the buyer at the sink and the seller at the source.[39]

59. In response to EPIC/SESCO Group's comments on allocating costs based on virtual demand bids, the Midwest ISO notes that the Order on Paper Hearing accepted the indicative allocation of Revenue Sufficiency Guarantee charges for constraint management to virtual demand bids that impact constraints being managed through units committed in the Reliability Assessment Commitment process. The Midwest ISO also asserts that it is necessary to include virtual demand bids as deviations in the calculation of net virtual offers for the constraint management charge.

60. The Midwest TDUs note that an expanded netting mechanism could result in a reduction in the number of market participants among whom Revenue Sufficiency Guarantee costs would be allocated, and that these market participants are no more responsible for the incurrence of Revenue Sufficiency Guarantee costs than market participants taking advantage of netting.

61. DC Energy maintains that there is no basis for the Midwest ISO's argument that it cannot assess the validity of the market-wide netting because the Independent Market Monitor's proposal is clear on this point. It also claims that netting has no bearing on how best to allocate costs associated with multi-hour commitment, and therefore there is no valid basis for the Midwest ISO's statement that the Independent Market Monitor's proposal is inaccurate because it does not account for multi-hour commitments.

62. Edison Mission asserts that the Midwest ISO's answer ignores cost causation because commitment decisions are made based on the total amount of deviations in the market, not individual market participant deviations. It notes that the proposal does not account for, and the correlation analysis did not address the effect of, multi-hour commitments.

4. <u>Commission Determination</u>

63. The Redesign Proposal adopts the indicative allocation's method for netting deviations and virtual transactions, which the Commission approved in the Order on

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[39] The Midwest ISO clarifies that the word "change" in the Topology Adjustment definition (Tariff section 1.656a) includes increases or decreases in loop flow between day-ahead and real-time markets. The Midwest ISO also explains that Transmission Derate is separately defined as a reduction in transfer capability.

Paper Hearing.[40] We will therefore accept the netting provisions of the Redesign Proposal.

64. A number of parties raise arguments regarding the overall formulation of the netting provisions and the merits of various other netting methods. Such arguments do not address the issue of whether the Midwest ISO's filing complies with the requirements of the Order on Paper Hearing, and they are beyond the scope of this proceeding. We therefore need not address their merits.

65. We find the Midwest ISO's clarification of the netting process, Constraint Contribution Factor and the definition of Topology Adjustment to be responsive to the questions raised by Ameren and consistent with the findings of the Order on Paper Hearing. We require the Midwest ISO to submit in its compliance filing proposed tariff provisions to clarify that real-time financial schedules must be submitted before the notification deadline in order to be eligible for netting.

66. We agree with EPIC/SESCO Group that the proposed formulation of virtual offers and bids in section 40.3.3.a.ii(4) incorrectly treats virtual bids as positive factors and virtual offers as negative factors in the calculation of the constraint management charge. To be consistent with the indicative allocation – as well as cost causation – this provision should treat virtual offers as a positive factor and virtual bids as a negative factor.[41] We require the Midwest ISO to correct this in a revised tariff provision to be included in its compliance filing.

D. Notification Deadline

1. Midwest ISO Filing

67. Consistent with the indicative allocation, the Redesign Proposal includes a notification deadline, i.e., a time before which market participants must notify the Midwest ISO of a schedule change in order for the Midwest ISO to have an opportunity to consider and reflect the change in the Reliability Assessment Commitment process. Market participants that notify the Midwest ISO of schedule changes before the deadline may net such schedule deviations (including virtual transactions), with other eligible transactions, involving an offsetting schedule change, in the calculation of the constraint management charge and the Day-Ahead Schedule Deviations and headroom charge. Netting is not allowed after the notification deadline. The Midwest ISO proposes that the notification deadline be four hours prior to the operating day.

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[40] Order on Paper Hearing, 125 FERC ¶ 61,161 at P 52, 116.

[41] We note that section 40.3.3.a.vi(5) has the correct positive and negative signs.

2. **Comments and Protests**

68. FirstEnergy recommends shortening the notification deadline, since the Midwest ISO may be able to accommodate deviations from day-ahead schedules with less than four hours' notice. E.ON requests shortening the notification deadline to the shortest possible period, but no longer than one hour prior to the operating hour, to make the deadline consistent with trading practices between the Balancing Authority areas.

69. EPIC/SESCO Group maintains that the Midwest ISO has not justified its single notification deadline. It argues that the proposal unduly discriminates against market participants with cleared virtual supply offers, because virtual offers do not contribute to Revenue Sufficiency Guarantee costs incurred in the intra-day reliability commitment process.

70. Xcel considers a notification deadline for all deviations to be unnecessary and counter-productive. It maintains that notification of negative deviations does not help the Midwest ISO avoid the commitment of additional resources, in part because if the increase in load is real, then the Midwest ISO's own load forecast should predict it. Xcel also claims that the notification deadline eliminates any incentive for market participants to mitigate negative deviations that occur after the deadline has passed. Xcel makes recommendations on when notification should not be required.

3. **Answer**

71. In response to requests to shorten the notification deadline, the Midwest ISO explains that the proposed deadline of four hours before the operating day represents the minimum that Midwest ISO operators need to reflect schedule changes properly in the Reliability Assessment Commitment process. The Midwest ISO does not expect that a shorter period will be possible in the foreseeable future. The Midwest ISO also notes that the Order on Paper Hearing already found a notification deadline of four hours before the operating day to be just and reasonable.

4. **Commission Determination**

72. The Midwest ISO explained the purpose of the notification deadline in the indicative cost allocation,[42] and no party argued in the paper hearing that four hours was an unjust or unreasonable minimum advance time for the Midwest ISO to incorporate market participants' schedule changes into its Reliability Assessment Commitment. To the extent that EPIC/SESCO and Xcel consider the notification deadline to be inadequate,

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[42] *See* September 22, 2008 Brief of Ameren Services Company and Northern Indiana Public Service Company, Attachment C at 7, 16, 17, 19 and 20.

those concerns should have been raised on rehearing of the Order on Paper Hearing. For these reasons, EPIC/SESCO and Xcel's challenges to the design, necessity and usefulness of the notification provisions are no longer timely. With regard to the four-hour deadline, we find that the Midwest ISO's proposal is just, reasonable, and consistent with the indicative cost allocation. It therefore complies with the Order on Paper Hearing.

E. Constraint Management Charge

1. Midwest ISO Filing

73. The first cost allocation bucket described in the Redesign Proposal allocates Revenue Sufficiency Guarantee costs first to the constraint management charge, which calculates the costs that are attributable to the commitment of resources to manage transmission constraints. The Midwest ISO proposes to include this charge in new subsections 40.3.3.a.ii through 40.3.3.a.iv of the Tariff. Under the proposal, market participants pay constraint management costs based on the product of their deviations at transmission constraints and the constraint management charge rate. The latter is the quotient of Revenue Sufficiency Guarantee credits and the greater of the aggregate of deviations and topology adjustments or transmission de-rates adjusted for the Constraint Contribution Factor. The charges are different for deviations that occur prior to the notification deadline, and deviations that occur thereafter. Positive deviations that occur prior to the notification deadline will be netted against negative deviations.

2. Comments and Protests

74. Reliant notes that the Redesign Proposal allocates Revenue Sufficiency Guarantee costs to market participants pro rata, based on market load ratio share, to the extent that such costs are not directly attributable to one of the cost buckets on a cost-causation basis. It faults the Midwest ISO for not explaining why topology adjustments and transmission de-rates are included in the constraint management charge rate, even though the Midwest ISO acknowledges that those costs are not directly attributable on a cost-causation basis. Reliant states that the Commission should require the Midwest ISO either to remove topology adjustments and transmission de-rates from the constraint management charge, and charge them to market load ratio share, or to demonstrate why the charges associated with these events can be attributed to both Revenue Sufficiency Guarantee charge mechanisms.

75. Similarly, Westar faults the Redesign Proposal for lack of clarity on the treatment of topology adjustments and transmission de-rates in the constraint management charge, noting that the Midwest ISO may include these items in the constraint management

charge rate denominator.[43] Like Reliant, Westar maintains that Revenue Sufficiency Guarantee charges caused by topology adjustments and transmission de-rates should not be recovered through the constraint management charge because these costs are not attributable to the deviations that are subject to the charge.

76. EPIC/SESCO Group objects to the alteration of the categories of deviations upon which the constraint management charge would be based, and to the lack of explanation of these alterations.

3. Answer

77. The Midwest ISO clarifies for Reliant that the constraint management charge is based on constraint management costs, net of topology adjustments and transmission de-rates.

4. Commission Determination

78. The Midwest ISO explains that the constraint management charge is based on constraint management costs, net of topology adjustments and transmission de-rates, and this is consistent with the indicative cost allocation. Contrary to Westar's claim, the fact that topology adjustments are in the denominator of the constraint management charge does not mean that the costs of topology adjustments have been allocated to market participants paying the constraint management charge. The topology adjustment amounts in the denominator of the constraint management charge Rate are volumes, not costs, and their inclusion in the denominator of the rate will actually reduce the rate applicable to market participants that pay the constraint management charge. As such, we do not share Reliant's concern that topology adjustments and transmission de-rates should be removed from the constraint management charge rate.

79. In response to EPIC/SESCO Group, we find that the Midwest ISO has adequately explained the basis for its revisions to the designations and definitions of the components of the constraint management charge. Certain of these revisions, such as the constraint contribution factor, are discussed elsewhere in this order and have been found to be consistent with the indicative cost allocation.

80. We note that there are two other revisions to the constraint management charge. First, references to day-ahead demand bids in the indicative cost allocation are now references to differences between the day-ahead schedule and the real-time load zone demand forecast and, second, a provision has been added for the deviations of Demand

[43] Westar also objects to the lack of a formula for determining what Revenue Sufficiency Guarantee costs are caused by topology adjustments or transmission de-rates.

Response Resources – Type 1. These revisions reflect energy and operating reserves market terminology, and are consistent with the requirements of the Order on Paper Hearing;[44] they do not represent substantive changes to the rate. Second, references to internal bilateral transactions in the indicative cost allocation now appear as references to real-time financial schedules for deviations. We will accept this revision since the definition of internal bilateral transactions and financial schedules are the same.

81. We note that the constraint management charge multiplies topology adjustments and transmission de-rates by the Constraint Contribution Factor whereas the indicative cost allocation has no such calculation. Since both the Redesign Proposal and the indicative allocation reduce the constraint management charge to reflect topology adjustments and de-rates, we consider the Redesign Proposal to be consistent with the indicative allocation. We also recognize that the indicative allocation description is a general statement, that only states that topology adjustments and de-rates will be reduced, without further detail, whereas the Redesign Proposal provides the calculation detail. Nonetheless, to ensure we understand the calculation in the Redesign Proposal, we require clarification. In the compliance filing, we require the Midwest ISO to explain how it determines an applicable Constraint Contribution Factor for topology adjustments and transmission de-rates and how such a calculation will impact market participants.[45]

F. Deviation and Headroom Charges

1. Midwest ISO Filing

82. The deviation and headroom charges allocate those costs that exceed the charges attributable to the commitment of resources to manage transmission constraints. The deviation and headroom charges allocate these costs to market participants based on generation resource, Demand Response Resources, external asynchronous resource, load, import and export deviations compared to day-ahead schedules, and virtual supply offers.

2. Protests

83. EPIC/SESCO Group and Westar consider the per-unit rate for the deviation and headroom charges to be vague. EPIC/SESCO Group contends that the Midwest ISO does not explain how it will ensure that deviations occurring before the notification deadline are not subjected to Revenue Sufficiency Guarantee charges from which they should be

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[44] We note that the Order on Paper Hearing anticipated revisions to conform the indicative cost allocation to the Ancillary Services Market. *See* Order on Paper Hearing, 125 FERC ¶61,161 at P 118.

[45] Proposed Original Sheet No. 1100A.

exempt. Westar maintains that market participants have no way of ensuring either that the allocation of Revenue Sufficiency Guarantee costs to the day-ahead deviation and headroom charges reflects lower Reliability Assessment Commitment costs based on the timing of notification, or that that the numerator does not include costs caused by factors that are excluded from the denominator.

84. Reliant asks the Commission to require the Midwest ISO to justify why a generator is assessed a day-ahead schedule deviation and headroom charge in addition to a constraint management charge.

3. Commission Determination

85. Since we are rejecting the proposed Day-Ahead Schedule deviation and headroom charges in the Redesign Proposal, it is premature to evaluate the per-unit rate, as discussed by EPIC/SESCO, the calculation of the charges, as discussed by Westar, or the sufficiency of the Midwest ISO's explanation for its proposal. These issues can be raised when and if the Midwest ISO submits its revised deviation and headroom charges.

G. Market Load Ratio Share ("Second Pass") Allocation

1. Midwest ISO Filing

86. The Redesign Proposal provides that any Revenue Sufficiency Guarantee costs that are not funded through the constraint management charge or otherwise attributable to topology adjustment and transmission de-rates, and that are in excess of the Day-Ahead Schedule deviation and headroom charges, will be allocated *pro rata* to market participants based on their market load ratio share.

2. Comments and Protests

87. Wisconsin Electric objects to allocating residual Revenue Sufficiency Guarantee costs (after allocation in the first and proposed second buckets) based on market load ratio share. It contends that this results in load-serving entities bearing an inequitable portion of Revenue Sufficiency Guarantee charges, and suggests that the allocation be based instead on market ratio share. Wisconsin Electric recommends that the market ratio share be based upon the market participant's combined activity in the day-ahead and real-time markets in a manner similar to ratios used in Tariff Schedule 17. Wisconsin Electric notes that the costs in the third bucket were incurred on behalf of all market participants for the benefit of the market, and it therefore would be inequitable to allocate this bucket solely on actual energy withdrawals, such as real-time load and exports. Wisconsin Electric maintains that since all market participants benefit from a stable bulk electric system and market, it is inequitable to force load-serving entities to bear the majority of the cost of maintaining reliability for the benefit of all.

88. DC Energy argues that the Commission should direct the Midwest ISO to revise its proposal to allocate costs associated with reliability based on load ratio share.

89. Westar maintains that it is improper to allocate all the costs of topology adjustments to non-exempt deviations. It notes that the Independent Market Monitor has stated that such an allocation is unjust and unreasonable compared to any reasonable standard of cost causation. For this reason, Westar submits that these costs should be allocated based on market load ratio share.

3. Answers

90. The Midwest ISO states in response to Wisconsin Electric that the Redesign Proposal adopts market load ratio share for its last allocation bucket, This is consistent with the allocation of the last bucket in the indicative allocation, which includes topology adjustments and transmission de-rates. The Midwest ISO notes that this uplift method dates back to earlier Revenue Sufficiency Guarantee charge tariff provisions, and Wisconsin Electric did not raise this issue on rehearing.

91. In response to DC Energy, the Midwest ISO states that the Redesign Proposal would model local reliability requirements and associated Reliability Assessment Commitments as constraints. To the extent that any deviations impact those constraints, thereby causing the need for Reliability Assessment Commitments, it would be consistent with cost causation to allocate the resulting Revenue Sufficiency Guarantee costs to those deviations.

92. DC Energy faults the Midwest ISO for not addressing its concern that local reliability requirements should not be allocated to the constraint bucket, which is allocated to deviations and virtual offers that have nothing to do with these costs. DC Energy asserts that these costs should instead be allocated through the second-pass charge on a load ratio share basis.

4. Commission Determination

93. We find that this element of the Redesign Proposal incorporates the same market load ratio share allocation for residual costs as that found in the indicative allocation, and it therefore complies with the requirements of the Order on Paper Hearing. Any concerns that the allocation is unreasonable, or should be changed, should have been raised on rehearing of the Order on Paper Hearing.

94. We find that the allocation of local reliability requirements to deviations is reasonable, since deviations at constraint points are a cause of unit commitment to manage local reliability. We understand DC Energy's concern to be that there is some amount of unit commitment for local reliability that is done for reasons not related to deviations, and therefore this amount should not be allocated to deviations or virtual

supply. We do not see the need for this further refinement since the proposed cost allocation correctly allocates the costs to activities that can cause the commitment of units for local reliability. Accordingly, the Redesign Proposal is consistent with the indicative allocation with respect to the market load ratio share allocation. Further revisions to the allocation therefore are not necessary in this proceeding.

95. Regarding the allocation of topology adjustment costs, we note that the Redesign Proposal allocation is consistent with the indicative allocation and therefore complies with the Order on Paper Hearing. To the extent that Westar considers that allocation to be unreasonable, those concerns should have been raised on rehearing of the Order on Paper Hearing. We do not consider it reasonable to require load to pay for all topology adjustments, as Westar recommends. No market participant caused these costs, and we therefore consider it reasonable that all customers share a portion of them.

H. Constraint Contribution Factor

1. Midwest ISO Filing

96. The Midwest ISO proposes to replace the Generation Shift Factor[46] in the indicative cost allocation with the Constraint Contribution Factor in the Redesign Proposal. The Constraint Contribution Factor is defined to be a factor that represents the impact on a transmission constraint of an incremental actual energy injection or actual energy withdrawal of one megawatt. The Constraint Contribution Factor is multiplied by schedule changes to derive the constraint management charge for market participants. The Midwest ISO explains that it is proposing a revised term to clarify the applicability of the Constraint Contribution Factor to all commercial pricing nodes and to avoid confusion with Module D references to Generation Shift Factor.

2. Comments and Protests

97. The Midwest TDUs assert that the Constraint Contribution Factor is imprecise because it only captures impacts that exceed a cut-off level of ± 1.75 percent. They maintain that the result is to arbitrarily limit the application of congestion-related Revenue Sufficiency Guarantee charges to those that exceed the cutoff level. This will allocate these costs to the few market participants whose deviations are above the cut-off level, and not to other market participants with deviations that are below it.

[46] Generation Shift Factor is the ratio equal to the incremental increase or decrease in flow on a flowgate divided by the incremental increase or decrease in a generation resource's output. Midwest ISO FERC Electric Tariff, Fourth Revised Volume No. 1, First Revised Sheet No. 163.

98. EPIC/SESCO Group maintains that the Midwest ISO has neither explained how the Constraint Contribution Factor is determined, nor justified any methodology for determining it.

3. Answer

99. In response to the Midwest TDUs, the Midwest ISO states that the Order on Paper Hearing found the Constraint Contribution Factor to be just and reasonable, and it maintains that the proposed cut-off level is reasonably low. The Midwest ISO responds to EPIC/SESCO Group by stating that specifying the inputs for determining the Constraint Contribution Factor involves implementation details that are appropriately left to the Business Practices Manuals.

4. Commission Determination

100. We will accept the proposed new definition of Constraint Contribution Factor, since there is no substantive difference between its definition and the definition of Generation Shift Factor in the indicative cost allocation. Both definitions describe an increased or decreased flow at a flowgate, relative to generation activity.

101. We agree with the Midwest TDUs that the Midwest ISO Tariff does not specify that the Constraint Contribution Factor only applies above a cutoff level, as the Midwest ISO acknowledges. Also, the proposed tariff sheets do not appear to limit the applicability of the Constraint Contribution Factor. We disagree with the Midwest ISO that such matters are best left to the Business Practices Manuals. The Constraint Contribution Factor is an element of the constraint management charge, and therefore it directly affects rates. As such, it must be specified in the tariff. We will therefore require the Midwest ISO to explain in its compliance filing how it determines the Constraint Contribution Factor, and to propose tariff language that will specify cut-off levels and any limits to the application of this rate element. The Midwest ISO is correct, however, that further details of the Constraint Contribution Factor, and the details of its methodology, may be dealt with in the Business Practices Manuals.

I. Loop Flow

1. Midwest ISO Filing

102. The Midwest ISO explains that the Redesign Proposal replaces the indicative allocation’s references to incremental loop flows, topology changes, and/or Real-Time Transmission De-rates with the new defined terms “Topology Adjustment” and “Transmission De-rate.” A topology adjustment, as described above, is any positive adjustment that is due to the combined effect of incremental loop flow and topology changes occurring during the real-time energy and operating reserve market. “Transmission de-rate” is defined as a reduction in the transfer capability on a constraint

limit in the real-time energy and operating reserve market relative to the limit enforced in the day-ahead energy and operating reserve market.

2. Comments and Protests

103. EPIC/SESCO Group considers the deletion of the term "incremental loop flows" from the costs to be allocated in section 40.3.3.a.ix based on market load ratio share to be a substantive change that will shift costs to virtual offers and other deviations in the first allocation bucket. It recommends that the Commission reject this change or, at a minimum, require the Midwest ISO to explain the basis for the change, how it will affect the allocation of Revenue Sufficiency Guarantee costs, and why it is consistent with cost causation.

104. DC Energy maintains that loop flow is objectively measurable as the difference between scheduled interchange and actual interchange, and it should not be sensitive to other topology adjustments. For this reason, DC Energy requests that the Commission direct the Midwest ISO to define loop flow clearly.

105. Ameren seeks clarification on whether the term "positive adjustment" in the proposed definition of Topology Adjustment encompasses items such as decrease in loop flow realized in real time or a possible transmission de-rate due to congestion.

3. Answers

106. The Midwest ISO states that DC Energy is confusing the definition of Inadvertent Energy with loop flow and that it will propose an appropriate definition of loop flow if so ordered by the Commission. In its answer, DC Energy repeats its request for a definition of loop flow.

107. The Midwest ISO clarifies for Ameren that the word "change" in the proposed definition of Topology Adjustment includes increases or decreases in loop flow between the day-ahead and real-time markets. The Midwest ISO also clarifies that Transmission De-rate is separately defined with reference to any decrease in transfer capability.

4. Commission Determination

108. We do not consider deletion of the term "incremental loop flow" to be a substantive change from the indicative allocation since the new Topology Adjustment definition specifically incorporates incremental loop flow. We therefore accept the new definition.

109. We agree with the Midwest ISO that DC Energy has confused Inadvertent Energy with loop flow. To ensure there is no further confusion, we require the Midwest ISO to add a definition of loop flow in its compliance filing. We consider the Midwest ISO's clarification of the use of the word "change" in the proposed definition of Topology

Adjustment to be responsive to Ameren's request for clarification of the phrase "positive adjustment."

J. Import and Export Deviations

110. E.ON asserts that positive import deviations and negative export deviations should not be subject to Revenue Sufficiency Guarantee charges for headroom or deviations. While the Midwest ISO says that these deviations were not allocated costs in the Redesign Proposal, E.ON claims the proposed tariff language does not clearly provide that these charges will not be assessed on these deviations. If the Midwest ISO intends to include these deviations in the headroom and deviation charges, E.ON considers such a cost assignment to be unjust and unreasonable because positive import deviations and negative export deviations do not cause unit commitment.

111. The Midwest ISO clarifies in its answer that positive import deviations are not subject to Revenue Sufficiency Guarantee charges.

112. We find no provisions in the Redesign Proposal that allocate Revenue Sufficiency Guarantee costs based on positive import deviations or negative export deviations. Based on our review of the proposal, and the statements in Midwest ISO's answer, we consider E.ON's concerns to be resolved.

K. Treatment of Resources Committed in Reliability Assessment Commitment Processes

1. Comment

113. DC Energy argues that the Redesign Proposal does not properly exclude resources committed in the Reliability Assessment Commitment process from the allocation of the constraint management charge in the same way that these resources are excluded from the deviation and headroom charges, even though treatment of these resources would be equally applicable for both charges. DC Energy states that the constraint management charge does not exclude Reliability Assessment Commitment-committed resources from the calculation of the economic minimum limit calculation of the constraint management charge in all the scenarios that are addressed for economic maximum limit changes. It also states that there is no section specifying how deviations should be measured for resources committed in the Reliability Assessment Commitment process.

2. Answers

114. The Midwest ISO states that the Redesign Proposal provisions sufficiently account for resources that are committed in Reliability Assessment Commitment processes with respect to derate volumes, and that the tariff language applicable to these resources in the

constraint management charge is mathematically correct. The Midwest ISO also notes that this aspect of the Redesign Proposal is unchanged from the indicative allocation.

115. DC Energy faults the Midwest ISO for not addressing its argument that the constraint management charge is not consistent with the deviation and headroom charge with respect to the treatment of resources committed in Reliability Assessment Commitment processes.

3. Commission Determination

116. In its discussion of the constraint management charge in the indicative cost allocation, the Midwest ISO indicates that the billing determinant for increases in the real-time generator hourly economic minimum level would exclude increases for Reliability Assessment Commitment-committed resources and that the billing determinant for the real-time generator hourly economic maximum level would exclude decreases for Reliability Assessment Commitment-committed resources.[47] The indicative tariff language in sections 40.3.3.a.iii.b and -c follow this formulation, except that section 40.3.3.a.iii.b indicates that the exclusion only applies to increases for resources committed in any Reliability Assessment Commitment processes. We understand the Midwest ISO's intent to be that both increases and decreases of Reliability Assessment Commitment-committed resources should be excluded from the constraint management charge. We come to this conclusion based on the Midwest ISO's explanation and the fact that Reliability Assessment Commitment-committed resources do not have a day-ahead schedule upon which to make the calculation required for these deviations.

117. The Redesign Proposal reflects our interpretation of the indicative cost allocation. However, to make clear that the Reliability Assessment Commitment-committed resources are excluded from hourly economic maximum limit deviation calculations, we require that the phrase "excluding Resources committed in any RAC processes conducted for the Operating Day" be added to the end of proposed sections 40.3.3.a.ii(2) and 40.3.3.a.iii(2) and removed from section 40.3.3.a.ii(8). The Midwest ISO must make this revision in the compliance filing to be submitted within 30 days of the date of this order.

118. The Redesign Proposal is consistent with the indicative cost allocation, which did not include a deviation in the constraint management charge for Reliability Assessment Commitment-committed resources based on the difference between their dispatch maximum and their maximum limit, and therefore it complies with the requirements of the Order on Paper Hearing. We find reasonable the specification in the indicative cost allocation and the Redesign Proposal of one charge for such deviations that is applicable

[47] Midwest ISO March 3, 2008 Filing at 16-17.

to all resources committed in any Reliability Assessment Commitment process conducted for the operating day. We do not see the need for an additional charge that serves the same purpose, and therefore will not require a tariff revision.

119. With regard to DC Energy's recommendation of an additional deviation charge applicable to Reliability Assessment Commitment-committed resources that raise their economic minimum dispatch amounts (on the theory that such units may cause Revenue Sufficiency Guarantee costs), we do not have any information to assess whether such an outcome occurs. DC Energy's arguments request a change to the rate, which is beyond the scope of this proceeding, and so we will not make any further requirements on this issue here. We encourage the Midwest ISO and stakeholders to discuss this issue as they further refine the Revenue Sufficiency Guarantee charges.

L. General Rate Design Issues

1. Protests and Comments

120. The Midwest TDUs maintain that the Redesign Proposal oversimplifies the reasons for unit commitment. They state that the Midwest ISO methodology is based on assigning a single primary reason for the commitment of a unit, even though the commitment of a unit can seldom be attributed to resolving a single constraint in a single hour. The Midwest TDUs recommend an allocation based on all deviations within a transmission owner zone in which the constraint is located.[48]

121. E.ON contends that congestion management should be priced exclusively through locational marginal prices (LMP), and that there should only be two Revenue Sufficiency Guarantee charges: one charge for deviations, including negative import deviations and positive export deviations, and another charge for general uplift based on load-ratio share. Spreading the costs of grid operation and congestion management between the LMP and Revenue Sufficiency Guarantee charge is inefficient and results in unjust and unreasonable prices. Dynegy considers the Midwest ISO's approach to headroom to be overly conservative and to result in unnecessary Revenue Sufficiency Guarantee costs. It recommends that the Midwest ISO revise the objective function of the Reliability Assessment Commitment process to focus on achieving the least cost rather than the lowest cost capacity.

122. Reliant objects to the assessment of Revenue Sufficiency Guarantee charges for excessive and deficient energy, since generators are already charged an Excessive/Deficient Energy Deployment Charge. According to Reliant, the Revenue

[48] The Midwest TDUs note that market participants split 13-13 with 7 abstentions on this recommendation.

Sufficiency Guarantee charge therefore represents a double charge. Reliant recommends that either one of the charges be eliminated or that the Midwest ISO explain why generators should be charged twice. Dynegy requests that the Midwest ISO clarify that generators will not be charged twice for the same deviation.

123. DC Energy also recommends that the Commission direct modification of the proposal to ensure that the revised allocation methodology is used only to allocate Revenue Sufficiency Guarantee costs incurred in the first Reliability Assessment Commitment to virtual supply offers, and not the intra-day commitments. This is in recognition of the fact that virtual supplies are fixed at the close of the day-ahead market.

2. **Answers**

124. The Midwest ISO asserts that the Midwest TDUs' proposal for a cost allocation based on transmission owner zones would reduce the granularity of the Redesign Proposal. It notes that, consistent with cost causation principles, the allocation methodology in the Redesign Proposal provides increased granularity.

125. In response to E.ON, the Midwest ISO states that improvement of LMPs is beyond the scope of the compliance filing. Likewise, the Midwest ISO states in response to Dynegy's concern with the Reliability Assessment Commitment that reducing Revenue Sufficiency Guarantee costs through Reliability Assessment Commitment redesign is beyond the scope of this proceeding.

126. Regarding Reliant's concern about double-charging for the same deviations, the Midwest ISO states that the Commission has ruled that imposing both uninstructed deviation penalties and Revenue Sufficiency Guarantee charges on the same deviation does not constitute double-charging because uninstructed deviation penalties are penalties that serve to discourage deviations while Revenue Sufficiency Guarantee charges are a means of recovering Reliability Assessment Commitment costs that result from deviations.[49] The Midwest ISO states that the same principle applies to Excessive/Deficient Energy Deployment Charges since they are the new Tariff term for uninstructed deviation penalties. The Midwest ISO adds that when generation resources deviate from dispatch instructions, they are choosing to ignore economic dispatch and to transact at the real-time LMP. The Midwest ISO concludes that market participants should be assessed Revenue Sufficiency Guarantee charges to reflect the total costs of such transactions.

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[49] *Midwest Indep. Transmission Sys. Operator, Inc.*, 115 FERC ¶ 61,108 at P 86, *order on reh'g*, 117 FERC ¶ 61,113 (2006), *order on reh'g*, 118 FERC ¶ 61,212, *order on reh'g*, 121 FERC ¶ 61,131 (2007).

127. E.ON faults the Midwest ISO for not acting expeditiously to ensure that the market has the most accurate LMP price possible. It argues that the Commission should require Midwest ISO to commit to an implementation date and to file quarterly progress reports until the LMP calculation properly reflects the resources being used to maintain reliability.

128. DC Energy also faults the Midwest ISO for not addressing its arguments that the Redesign Proposal would inappropriately assess forward Reliability Assessment Commitment and intra-day Reliability Assessment Commitment Revenue Sufficiency Guarantee costs to cleared virtual offers.

129. Integrys contends that costs that change after the day-ahead market closes should not be allocable to virtual supply. EPIC/SESCO Group asserts that virtual supply offers should not be responsible for resources committed in the intra-day Reliability Assessment Commitment process because all resource commitments required as a result of virtual supply offers are made in the forward commitment process.

3. Commission Determination

130. We reiterate that the Midwest ISO filing is a compliance filing, and not a new rate proposal under FPA section 205. We therefore are not evaluating here whether the components of the Revenue Sufficiency Guarantee charge formula or the design of the charge is just and reasonable; those determinations were made in the Order on Paper Hearing. Several of the arguments presented here are repeated from rehearing requests, such as the issue of double-charging for commitment costs and the allocation of Reliability Assessment Commitment costs to virtual offers. The Commission has addressed these issues in other proceedings.[50]

131. We note that the Midwest ISO is continuing discussions on broader rate design issues with stakeholders, and we encourage stakeholders to raise their concerns in that forum, as appropriate.

M. Incorporation of Cost Causation Principles in Redesign Proposal

1. Protests and Comments

132. A number of parties[51] protest that the filing is inconsistent with cost-causation principles. Integrys contends that the Midwest ISO has yet to file cost support or cost-

[50] *Midwest Indep. Transmission Sys. Operator, Inc.*, 115 FERC ¶ 61,108 at P 86 and *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC 61,121 at P 120.

[51] E.ON, Indicated Participants, DC Energy, and Integrys.

causation analysis that would support assessing Revenue Sufficiency Guarantee charges on virtual offers. DC Energy claims that the Redesign Proposal erroneously allocates Revenue Sufficiency Guarantee costs to virtual supplies that would have been incurred in their absence.

133. Reliant faults the Redesign Proposal for not allocating Revenue Sufficiency Guarantee costs solely to market participants that have been determined to contribute to unit commitment and the incurrence of Revenue Sufficiency Guarantee costs. It also faults the Midwest ISO for not demonstrating that generation resource deviations lead to unit commitment to manage a transmission constraint or address a local reliability concern.

2. Answers

134. The Midwest ISO asserts that the Order on Paper Hearing did not require submission of an additional cost-causation study in support of the filing of the Indicative Proposal, and it deemed the Midwest ISO data submissions to be sufficient to support the Indicative Proposal.

3. Commission Determination

135. Cost causation analysis was fully discussed in the Commission's evaluation of the indicative proposal in the Order on Paper Hearing, and the Commission determined there that the indicative proposal "aligns cost responsibility with cost incurrence to the extent possible."[52] Moreover, the Commission specifically noted that the indicative allocation responded to the concerns noted above.[53] This order addresses compliance with the Order on Paper Hearing, and to the extent the Redesign Proposal incorporates the features of the indicative allocation, further cost causation analysis is not required.

136. To the extent that the Redesign Proposal does not reflect the indicative cost allocation, i.e., to the degree that it proposes new features such as exemptions, we need not consider cost causation arguments to make our determinations that the new features exceed the scope of compliance.

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[52] Order on Paper Hearing, 125 FERC ¶ 61,161 at P 117.

[53] *Id.* P 117 n.70 ("We find that the 'indicative' cost allocation is responsive to a number of the concerns of Financial Marketers, DC Energy and Integrys: It nets the virtual offers and bids, does not assign costs to virtual supply offers for intra-hour deviations, and does not subject virtual offers and bids to the second-pass charge that recovers costs that can not be allocated based on cost causation.").

N. **Other Issues**

137. Reliant recommends that the Commission require the Midwest ISO to review the outcomes of the Redesign Proposal through its stakeholder process six months after the effective date of the proposal. This will assist the Midwest ISO in improving its market design and will help minimize uplift payments. Dynegy recommends that the Midwest ISO demonstrate in a compliance filing how the proposed allocation buckets will be applied to selected operating days using Revenue Sufficiency Guarantee cost data.

138. In response to Reliant's request to review outcomes of the redesigned methodology, the Midwest ISO states that it will review the implementation of the Redesign Proposal during its first year.

139. As detailed above, this order addresses a compliance requirement of the Order on Paper Hearing, and we find that the Midwest ISO's filing is consistent with the findings of that order. We will therefore deny as unnecessary the requests for additional proceedings. We encourage the Midwest ISO and stakeholders to discuss the Redesign Proposal, and we encourage the Midwest ISO to provide market participants with the detail and explanation necessary to understand the impact of the Redesign Proposal on their bills.

140. The Midwest ISO indicates that it can make the Redesign Proposal effective 10 days after appropriate software is ready for implementation. In addition to the compliance filing discussed above, we will require the Midwest ISO to refile all the tariff sheets of its Redesign Proposal, with a date certain specified for its effective date, once it has completed all necessary system and software measures to implement the Redesign Proposal, as accepted and conditioned by the Commission.

<u>The Commission orders</u>:

(A) The Midwest ISO's February 23, 2009 compliance filing is accepted in part and rejected in part, subject to a further compliance filing, as discussed in the body of this order.

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

(C) The Midwest ISO is hereby directed to refile the tariff sheets of its Redesign Proposal with a date certain for the effective date, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.