

132 FERC ¶ 61,185
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER04-691-091

ORDER ON COMPLIANCE FILING

(Issued August 30, 2010)

1. On November 7, 2008, the Commission issued an order addressing requests for clarification or rehearing of its November 5, 2007 order on the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) April 17, 2007 compliance filing regarding its proposal to allocate real-time Revenue Sufficiency Guarantee costs.¹ The Fourth Rehearing Order also conditionally accepted a compliance filing the Midwest ISO made on December 5, 2007 (December 5, 2007 Compliance Filing). On December 8, 2008, the Midwest ISO made a compliance filing (December 8 Compliance Filing) required by the Fourth Rehearing Order. In this order we accept the December 8 Compliance Filing.

I. Background

2. Section 40.3.3 of the Midwest ISO Open Access Transmission and Energy Markets Tariff (tariff) charges market participants that withdraw energy in the real-time energy market a real-time Revenue Sufficiency Guarantee charge based on their virtual supply offers and real-time load, injection, export and import deviations. The purpose of the Revenue Sufficiency Guarantee charge is to ensure that any generator that the Midwest ISO schedules or dispatches after the close of the day-ahead energy market – either through the Reliability Assessment Commitment or the real-time energy market – receives no less than its offer price for start-up, no-load, and incremental energy. Units in

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,156 (2008) (Fourth Rehearing Order); *Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,132 (2007) (Second Compliance Order).

the Reliability Assessment Commitment or in the real-time market that do not earn sufficient real-time energy revenues to cover start-up and no-load costs receive Revenue Sufficiency Guarantee credits.

3. This proceeding began on October 27, 2005, with the Midwest ISO's proposal to delete a reference to virtual supply offers from the tariff provision governing the real-time Revenue Sufficiency Guarantee charge. The effect of the proposed change would have been that Revenue Sufficiency Guarantee costs would not be allocated to virtual supply offers. On April 25, 2006, the Commission issued an order rejecting this proposal.² The Commission also found that because the Midwest ISO had not been including virtual supply offers in its Revenue Sufficiency Guarantee calculations, it had violated its tariff and must make appropriate refunds.³

4. The First Rehearing Order affirmed the Commission's rejection of the Midwest ISO's proposal not to allocate Revenue Sufficiency Guarantee costs to virtual supply offers. Based on the requests for rehearing of the Initial Order, the Commission exercised its equitable discretion not to require refunds for the Midwest ISO's failure to include virtual supply offers in its calculation of Revenue Sufficiency Guarantee charges.⁴ It clarified that refunds would be required for Revenue Sufficiency Guarantee charges incorrectly assessed to imports and for incorrect assessments of Revenue Sufficiency Guarantee charges and credits for deviations from dispatch instructions.⁵ For prospective rates, the First Rehearing Order required the Midwest ISO to determine the amount of Revenue Sufficiency Guarantee costs caused by virtual supply offers and to resubmit a proposal to allocate such costs to virtual supply offers based on a cost-causation analysis. The First Rehearing Order also required the Midwest ISO to make tariff revisions, including specification of a tolerance band that would be used in determining responsibility for Revenue Sufficiency Guarantee charges and eligibility for Revenue Sufficiency Guarantee credits.

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

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

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

⁵ *Id.* P 142, 175.

5. The Commission denied rehearing of the First Rehearing Order in an order dated March 15, 2007. It reiterated that “the Midwest ISO’s tariff requires allocation of Revenue Sufficiency Guarantee costs to virtual supply offers, and . . . the Midwest ISO violated its tariff by failing to do so. There no longer seems to be any dispute that this is how the tariff should properly be read.”⁶ The Commission also reaffirmed its prior decision not to impose refunds.⁷ In addition, the Commission rejected the Midwest ISO’s proposal to allocate costs based on net virtual offers, i.e., virtual offers minus virtual bids, and required the Midwest ISO to: (1) reinsert language requiring the actual withdrawal of energy by market participants; (2) either revise the tariff language to reflect partial-hour Security Constrained Unit Commitment instructions or provide an explanation of its efforts to incorporate this refinement in its software development; (3) correct the citation for the definition of real-time Revenue Sufficiency Guarantee charge; and (4) provide revisions, including the reference to Unit Dispatch System, for the definitions of economic maximum and minimum dispatch.⁸

6. The Commission denied requests for rehearing of the Second Rehearing Order and the First Compliance Order on November 5, 2007.⁹ In a concurrently-issued order, it conditionally accepted the tariff sheets that the Midwest ISO filed to comply with the First Compliance Order.¹⁰ The Commission required the Midwest ISO to make a further compliance filing to include the term “aggregate” in the denominator of the per-unit Revenue Sufficiency Guarantee rate.¹¹ The Midwest ISO responded with the December 5, 2007 Compliance Filing.

7. The Commission accepted in part and rejected in part the December 5, 2007 Compliance filing in the Fourth Rehearing Order. That order clarified the Commission’s interpretation of the tariff’s Revenue Sufficiency Guarantee cost allocation formula, and specifically required refunds from April 26, 2006 through March 14, 2007, and for the period after March 15, 2007, to the extent that the Midwest ISO may not have been

⁶ Second Rehearing Order, 118 FERC ¶ 61,212 at P 88 (internal citation omitted).

⁷ *Id.* P 88-98.

⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,213 (First Compliance Order), *order on reh’g*, Third Rehearing Order, 121 FERC ¶ 61,131.

⁹ Third Rehearing Order, 121 FERC ¶ 61,131.

¹⁰ Second Compliance Order, 121 FERC ¶ 61,132.

¹¹ *Id.* P 23.

allocating RSG costs based on the Commission's clarified interpretation.¹² Specifically, the Fourth Rehearing Order clarified that from market start until the day prior to the effective date of the tariff revisions accepted by the Second Compliance Order (i.e., from April 1, 2005, through March 14, 2007), the tariff's Revenue Sufficiency Guarantee cost allocation formula's numerator and denominator both only pertained to market participants – including those making virtual supply offers – that actually withdrew energy.¹³ The Commission also specified that its statement in the Second Rehearing Order that the Revenue Sufficiency Guarantee cost allocation formula also included virtual supply offers of Market Participants that did not actually withdraw energy in the denominator was in error. The Commission therefore required the Midwest ISO to make appropriate refunds to the extent that it may not have been allocating Revenue Sufficiency Guarantee costs based on the Commission's clarified interpretation of the Revenue Sufficiency Guarantee cost allocation formula. These refunds would apply to the period from April 26, 2006 through March 14, 2007. The Commission also required the Midwest ISO to file revised tariff language intended to ensure that the revised tariff and the tariff in effect since market start-up are consistent.¹⁴ The Commission required the Midwest ISO to make refunds to the extent that it may have been settling RSG costs on a different basis on and after March 15, 2007.¹⁵

8. The Midwest ISO explains in the December 8 Compliance Filing that while Revenue Sufficiency Guarantee charges were imposed only on market participants that actually withdrew energy and were not otherwise exempted from those charges, the denominator of the rate calculation included not only deviations that were assessed Revenue Sufficiency Guarantee charges, but also the following: (1) load imbalance served via carved-out grandfathered agreement (GFA) schedules;¹⁶ (2) schedule changes

¹² Fourth Rehearing Order, 125 FERC ¶ 61,156 at P 30, 52-57.

¹³ *Id.* P 28-30.

¹⁴ *Id.* P 55.

¹⁵ *Id.* P 56. The Commission subsequently exercised its discretion and waived refunds for the period prior to November 5, 2007. *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,241, at P 41-42 (2009).

¹⁶ Carved-out GFAs are transmission agreements that are not subject to the scheduling and settlement requirements of the Midwest ISO energy markets. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,236 (2004), *order on reh'g*, 111 FERC ¶ 61,042, *order on reh'g*, 112 FERC ¶ 61,311 (2005), *aff'd sub nom. Wisconsin Public Power, Inc. v. FERC*, 493 F.3d 239 (D.C. Cir. 2007).

from carved-out GFA schedules and schedule changes associated with dynamically dispatchable schedules that follow Midwest ISO instructions; (3) under-generation deviations from uninstructed deviation penalty-exempted units, including intermittent units and those serving carved-out GFA schedules; (4) over-generation setpoint deviation volumes from uninstructed deviation penalty-exempted units including intermittent units and those serving carved-out GFA schedules; (5) derate volumes from uninstructed deviation-exempted units, including intermittent units and those serving carved-out GFA schedules; (6) must-run volumes from uninstructed deviation-exempted units, including intermittent units and those serving carved-out GFA schedules; and (7) virtual supply offers of market participants that did not actually withdraw energy.¹⁷

9. The Midwest ISO states that because it had interpreted the Commission's prior Revenue Sufficiency Guarantee orders to mean that the denominator of the Revenue Sufficiency Guarantee formula includes all deviations, even those exempted from Revenue Sufficiency Guarantee charges, this incorrectly reduced the Revenue Sufficiency Guarantee rate assessed to deviations and uplifted the shortfall to the real-time Revenue Sufficiency Guarantee second-pass amount that was assessed to load. The Midwest ISO therefore proposes to increase the Revenue Sufficiency Guarantee rate by reducing the denominator in the rate equation and eliminating the incorrect shift of charges to the Revenue Sufficiency Guarantee second-pass amount.¹⁸ It also states that the Revenue Sufficiency Guarantee rate will increase through elimination of the rate mismatch and removal of those other deviations that did not necessarily pay the Revenue Sufficiency Guarantee rate.¹⁹

10. On February 9, 2009, Commission staff notified the Midwest ISO that its filing was deficient and requested additional information regarding the proposed Revenue Sufficiency Guarantee charge exemptions. The Midwest ISO filed a response on February 24, 2009.

11. On May 8, 2009, Commission staff notified the Midwest ISO that its February 24, 2009 filing was deficient, and sought additional information regarding the Revenue Sufficiency Guarantee charge exemptions that the Midwest ISO proposes. The Midwest ISO filed a response on June 5, 2009.

¹⁷ December 8 Compliance Filing at 7-8.

¹⁸ *Id.* at 7.A.

¹⁹ *Id.* at 8.A.

II. Notice of Filing and Responsive Pleadings

12. Notice of the December 8 Compliance Filing was published in the *Federal Register*, 73 Fed. Reg. 78,354 (2008), with interventions and protests due on or before December 29, 2008. Tenaska Power Services Co. filed a motion to intervene. Ameren Services Company and Northern Indiana Public Service Company (collectively, Ameren/NIPSCO); Cargill Power Markets, LLC (Cargill); Constellation Energy Commodities Group and Constellation NewEnergy (Constellation); DC Energy Midwest, LLC (DC Energy); EPIC Merchant Energy, LP and SESCO Enterprises LLC (collectively, Financial Marketers); FirstEnergy Service Company (FirstEnergy); Integrys Energy Services, Inc. (Integrys); Otter Tail Corporation (Otter Tail); Westar Energy, Inc. (Westar); and Xcel Energy Services Inc. (Xcel) filed comments and/or protests. On December 31, 2008, Exelon Corporation (Exelon) filed a motion to intervene and protest out of time, and on January 5, 2009, FPL Energy Power Marketing, LLC (FPL Energy) filed a protest out of time.

13. Ameren/NIPSCO filed an answer to the protests of Westar and the Financial Marketers. FPL Energy filed an answer to the protests of DC Energy, FirstEnergy, Westar and the Financial Marketers. The Financial Marketers filed a motion to strike the answer of Ameren/NIPSCO or, in the alternative, an answer to it.

14. The Midwest ISO filed an answer to the protests. Otter Tail filed an answer to the Midwest ISO's answer. DC Energy filed an answer to the answers of the Midwest ISO and FPL Energy.

15. Notice of the Midwest ISO's response to Commission staff's February 9, 2009 letter was published in the *Federal Register*, 74 Fed. Reg. 11,093 (2009), with interventions and protests due on or before March 17, 2009. Cargill, Integrys, Reliant Energy, Inc. (Reliant), Otter Tail, E.ON U.S. LLC (E.ON), DC Energy, DTE Energy Trading, Inc. (DTE Trading), and Westar filed comments or protests. The Midwest TDUs filed an answer to the protests.²⁰ The Midwest ISO filed an answer to the protests. Otter Tail filed an answer to the Midwest ISO's answer. The Financial Marketers, together with Energy Endeavors LP, Jump Power, LLC and Solios Power, LLC, (collectively, the Virtual Trader Group) filed a motion to intervene and protest.

²⁰ For purposes of their filing, the Midwest TDU include: 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 Wisconsin Public Power Inc.

16. Notice of the Midwest ISO's response to Commission staff's May 8, 2009 letter was published in the *Federal Register*, 74 Fed. Reg. 28,686 (2009), with interventions and protests due on or before June 26, 2009. The Financial Marketers, together with Energy Endeavors LP and Jump Power, LLC, filed a protest.

17. The Financial Marketers, along with JPTC Merchant Energy, LP, GLE Trading, LLC, Franklin Power, LLC, Energy Endeavors LP, and Jump Power, LLC, filed a supplemental protest and comments on July 15, 2009 (July 15 Supplemental Protest and Comments). The Midwest ISO and Ameren/NIPSCO filed answers to this filing.

18. The Financial Marketers filed a motion to strike the reply comments of Ameren/NIPSCO, or, in the alternative, a request for leave to answer. Financial Marketers claim that the Ameren/NIPSCO reply comments are a prohibited answer to their protest and therefore should be rejected unless the Commission finds that they provide information that clarifies the issues and assists the Commission in its decision-making.

19. On August 24, 2009, MAG Energy Solutions Inc. (MAG) submitted a motion to intervene and protest out of time. MAG states that it accepts the record as developed until this point in time, but it also seeks to introduce arguments based on findings in the Commission's August 7, 2009 order in Docket No. ER09-411-000.²¹ MAG states that it did not intervene in this proceeding earlier because it did not realize what changes the Midwest ISO was proposing to the Revenue Sufficiency Guarantee rate formula until it began receiving resettlement payments. MAG states that it would have intervened earlier if it had been on notice of the changes. The Midwest ISO and Ameren/NIPSCO filed motions objecting to MAG's motion to intervene and protest.

III. Discussion

A. Procedural Matters

20. 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.

21. 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 Exelon and FPL given their interest in the proceeding, the early stage of the

²¹ *Midwest Ind. Transmission Sys. Operator, Inc.*, 128 FERC ¶ 61,142 (2009), *reh'g pending*.

proceeding, and the absence of undue prejudice or delay. MAG's motion was filed approximately eight months after the original comment date and approximately two months after the date for comments on the Midwest ISO's response to the Commission's May 8, 2009 letter. In addition, MAG seeks to introduce arguments involving intervening events that other parties have not had an opportunity to comment on. Granting MAG's motion would be unduly prejudicial to other parties in this proceeding, and we therefore deny it. We reject MAG's claim that it did not have proper notice of this proceeding. MAG does not dispute that the Midwest ISO's filing was properly noticed, nor does it explain why the required notice procedures are inadequate in its case. In light of this, we do not need to address the motions of the Midwest ISO and Ameren/NIPSCO objecting to MAG's motion to intervene and protest.

22. 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 to protests to the December 8 Filing as well as the answers to the Midwest ISO's February 24, 2009 and June 5, 2009 filings because they provided information that assisted us in our decision-making process. We are not persuaded to accept the answer of Ameren/NIPSCO to the supplemental protest of EPIC/SESCO *et al.* and will, therefore, reject it. In light of this, we do not need to address the Financial Marketers' motion to strike.

B. Substantive Matters

1. Protests

23. DC Energy contends that the Midwest ISO's implementation of the Fourth Rehearing Order violates the tariff and is unlawful. DC Energy argues that an exemption from the Revenue Sufficiency Guarantee charge would require an amendment to or a waiver of the tariff, and the associated volumes cannot be excluded from the denominator retroactively. DC Energy and Cargill argue that the proposed changes require a filing under section 205 or 206 of the Federal Power Act (FPA), and that they would violate the filed rate doctrine if they were not prospective only.

24. DC Energy asserts that the only deviation that is exempt from Revenue Sufficiency Guarantee charges is that associated with carved-out GFAs, which are the subject of prior Commission orders. It states that nothing in the tariff exempts deviation volumes from uninstructed deviation-exempted units.²² DC Energy also notes that

²² DC Energy characterizes under- and over-generation setpoint deviations, derate volumes and must-run volumes from uninstructed deviation penalty exempted units as injections of energy included in the Revenue Sufficiency Guarantee rate. DC Energy also states that negative differences between real-time economic maximum dispatch amounts

(continued...)

Revenue Sufficiency Guarantee charges and uninstructed deviation penalties receive different treatment in the tariff, and it faults the Midwest ISO for not providing a reason to exempt uninstructed deviation penalty exempted units from Revenue Sufficiency Guarantee charges.

25. Cargill and Otter Tail contend, respectively, that the Commission must reject the Midwest ISO's proposal to remove the deviations in question, and to resettle the markets based on those refunds, because the filing goes beyond what is allowed in the compliance filing. Otter Tail and DC Energy maintain that the Commission did not direct the Midwest ISO to change any other component of the rate denominator. DC Energy states that the tariff requires the Midwest ISO to apply Revenue Sufficiency Guarantee charges to generator deviations, including some of the deviations that the Midwest ISO now proposes to exclude from the denominator. According to DC Energy, the Midwest ISO is calculating a higher Revenue Sufficiency Guarantee rate by excluding these deviations. DC Energy thus recommends that the Commission direct the Midwest ISO to include all of the deviations enumerated in section 40.3.3.a.ii in the denominator used to calculate the unit rate pursuant to section 40.3.3.a.iii retroactive to August 10, 2007.

26. Westar and Financial Marketers state that the Midwest ISO's interpretation would increase the level of the Revenue Sufficiency Guarantee charge borne by other, non-exempt, market participants. They assert that the Fourth Rehearing Order does not support this, and that nothing in the Revenue Sufficiency Guarantee tariff provision exempts these categories of deviations. FirstEnergy maintains that the Fourth Rehearing Order does not direct or authorize the Midwest ISO to resettle the market to account for the additional factors it has enumerated.

27. Constellation asks the Commission to clarify whether the Midwest ISO accurately interpreted the Commission's orders, correctly re-calculated the relevant charges and identified the changes correctly. Constellation also requests that the Commission clarify what it describes as the apparent inconsistency between the Commission's finding in the order issued on November 10, 2008 that the use of "actually withdrawing energy" was "unjust and unreasonable" when relating to virtual supply,²³ and its finding in the Fourth Rehearing Order that the charges for the use of such withdrawals were appropriate.

and energy scheduled in the day-ahead market, as well as negative differences between energy scheduled in the day-ahead energy market and real-time economic minimum dispatch amounts, are included in the Revenue Sufficiency Guarantee rate.

²³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,161 (2008), *order on reh'g*, 127 FERC ¶ 61,121 (2009), *reh'g pending*.

2. Answers

28. The Midwest ISO explains that the December 8 Compliance Filing corrects the Midwest ISO's earlier interpretation of the Revenue Sufficiency Guarantee rate without changing the text of the tariff provision itself. It states that this correction neither violates the filed rate doctrine nor constitutes retroactive ratemaking. The Midwest ISO reasons that, in light of the Commission's determination that the Revenue Sufficiency Guarantee denominator should include only the entities that are assessed the Revenue Sufficiency Guarantee charge, and because the aggregate value of the denominator should only represent the sum of the amounts in the individual Revenue Sufficiency Guarantee charges,²⁴ virtual supply offers that do not involve energy withdrawals and uncharged deviations should be excluded from the denominator. The Midwest ISO thus considers the prior inclusion of uncharged deviations to be inconsistent with the Commission's finding that there is no mismatch, and argues that this error must be corrected.

29. The Midwest ISO explains that the uncharged deviations fall into several categories: carved-out GFAs, intermittent resources, and other deviations exempt from Revenue Sufficiency Guarantee charges. It states that the Commission has ruled that Revenue Sufficiency Guarantee charges should not be imposed on deviations relating to carved-out GFAs,²⁵ and that GFA settlements involving Revenue Sufficiency Guarantee exemptions have been deemed not to result in deviations that are subject to Revenue Sufficiency Guarantee charges.²⁶ The Midwest ISO contends that intermittent resources are not dispatchable given the non-controllable nature of their energy source, and therefore these resources do not receive dispatch instructions from which a deviation could be measured for Revenue Sufficiency Guarantee cost purposes.

30. The Midwest ISO states that the tariff exempts resources with deviations caused by following its instructions from Revenue Sufficiency Guarantee charges if they are manually redispached or if they follow the Midwest ISO's emergency directives.

²⁴ Fourth Rehearing Order, 125 FERC ¶ 61,156 at P 26.

²⁵ *Southern Illinois Power Cooperative v. Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,234, at P 5 (2006), *order on reh'g*, 116 FERC ¶ 61,117 (2006); *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,108 at P 135-36 (2006); First Rehearing Order, 117 FERC ¶ 61,113 at P 186-87.

²⁶ *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,491 (2005); Letter Order dated August 30, 2005 and *Midwest Independent Transmission System Operator, Inc.*, Letter Order dated November 16, 2005 in Docket Nos. ER04-691-062, EL04-104-059 and ER04-106-017.

According to the Midwest ISO, Revenue Sufficiency Guarantee charges also are not imposed on deviations that are due to state estimator and unit dispatch system lags in tracking output for similar reasons.²⁷

31. The Midwest ISO maintains in its answer that Revenue Sufficiency Guarantee charge exemptions are broadly based on the principle of cost causation and the corollary principle that market participants should not be held responsible for results beyond their control and that they therefore did not cause. The Midwest ISO deems any resources operating in circumstances where they cannot, and/or cannot be expected to, control their output to avoid deviations from dispatch instructions to be resources that have not incurred a deviation that warrants imposition of Revenue Sufficiency Guarantee charges. The Midwest ISO submits that such deviations thus are properly excluded from the Revenue Sufficiency Guarantee rate calculation denominator.

32. FPL Energy argues that it is reasonable, and consistent with the purpose of the Revenue Sufficiency Guarantee charge, to exclude intermittent resources from the Revenue Sufficiency Guarantee calculation. FPL Energy maintains that intermittent resources are not dispatchable, and their operations therefore are outside the scope of controllable events that should be assessed in determining the application of Revenue Sufficiency Guarantee charges. Exempting intermittent resources is consistent with the exemption of intermittent resources from uninstructed deviation penalties. FPL Energy also claims that DC Energy's position would impose potentially severe financial impacts on parties that have no ability to control their Revenue Sufficiency Guarantee charges. It claims that DC Energy does not point to any Commission orders that require imposing Revenue Sufficiency Guarantee charges on intermittent resources, and the December 8 Compliance Filing is a reasonable interpretation of how to calculate the charges.

33. FPL Energy argues that since the tariff states that no Revenue Sufficiency Guarantee charges shall be assessed for any difference caused by lags in the state estimator and unit dispatch system tracking of unit output that complies with dispatch instructions, and the dispatch of intermittent resources by design includes a lag, the tariff suggests that intermittent resources should not be subject to Revenue Sufficiency Guarantee charges. FPL Energy also contends that it is not just and reasonable, or a reasonable interpretation of the tariff, to assess Revenue Sufficiency Guarantee charges based on inapplicable dispatch instructions. It follows that any intermittent resource

²⁷ State estimator and unit dispatch system lags refer to the time required for the Unit Dispatch System to recognize the status of generating units from the time the unit begins to transition to on-line status. Lags are caused by a number of factors, including insufficient positive injections, the time required for the state estimator to solve, and commitments below the economic minimum level.

subject to a designed lag in the state estimator would not be subject to the Revenue Sufficiency Guarantee charge.

34. FPL Energy recommends that if intermittent resources are to be subject to Revenue Sufficiency Guarantee charges, the Commission should exercise its discretion and permit continued exclusion of those resources from market resettlement and the payment of refunds. FPL Energy maintains that if intermittent resources had known that they could be subject to such charges, they may have worked with the Midwest ISO to develop new rules. Given the reliance of intermittent resources on the Midwest ISO's interpretation of its tariff, it is inequitable now to require their inclusion in a resettlement.

a. First Deficiency Letter and Midwest ISO Response

35. On February 9, 2009, Commission staff notified the Midwest ISO that its filing was deficient, and requested additional information regarding the proposed Revenue Sufficiency Guarantee charge exemptions. The deficiency letter asked the Midwest ISO to provide the tariff provision, Commission order, and Business Practices Manual citations that permit the proposed Revenue Sufficiency Guarantee charge exemptions, as well as the Revenue Sufficiency Guarantee Task Force's findings regarding the exemptions in terms of their contribution to the incurrence of Revenue Sufficiency Guarantee charges. Commission staff also requested that the Midwest ISO indicate its plan for issuing refunds in this proceeding.

36. The Midwest ISO asserts in its response that the principles underlying the Commission's rulings on uninstructed deviation penalty exemptions warrant a corresponding exemption from Revenue Sufficiency Guarantee charges. It notes that these principles require that certain charges not be imposed on market participants for output deviations resulting from three factors beyond their control: (1) directives of the Midwest ISO; (2) limitations of the Midwest ISO's systems and software; and (3) inherent characteristics of a market participant's particular type of resource or energy source.

37. The Midwest ISO provides the following information to explain its basis for exempting from Revenue Sufficiency Guarantee charges the resources and activities listed in the subheadings below.

i. Carved-Out GFAs

38. The Midwest ISO states that section 38.8.4.6 of the tariff provides that carved-out GFAs shall not be subject to any tariff charges other than Schedules 10, 17 and 18. The Midwest ISO also cites to Commission findings that it is inconsistent with the tariff to

assess Revenue Sufficiency Guarantee charges on transactions under carved-out GFAs.²⁸ Finally, the Midwest ISO states that Attachment A of the Business Practices Manual for Market Settlements provides carved-out GFAs with an exemption from Revenue Sufficiency Guarantee charges.

ii. Intermittent Resources

39. To support the exemption of intermittent resources, the Midwest ISO cites to section 40.3.4.d.i of the tariff, which states that notwithstanding any provisions of the tariff to the contrary, intermittent resources shall not be subject to any uninstructed deviation penalties for uninstructed deviations caused solely by their intermittent nature or characteristics, absent fault or negligence on the part of the market participants or generation owners that own or operate them.

40. The Midwest ISO also identifies Commission orders that exempt intermittent resources from uninstructed deviation penalties.²⁹ With respect to operating practices, the Midwest ISO cites to the following statement from the Business Practices Manual for Market Settlements:

Generation assets that receive an hourly Uninstructed Deviation exemption are not considered to have contributing [sic.] Real-Time RSG First Pass Distribution volume for that hour as such are exempted from paying for Real-Time RSG First Pass Distribution Amount.

²⁸ Midwest ISO Deficiency Answers at 7 (citing *Southern Illinois Power Cooperative v. Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,234, at P 25-32, *order on reh'g*, 116 FERC ¶ 61,117, at P 11-13 (2006) (finding that assessment of Revenue Sufficiency Guarantee charges on transactions under carved-out GFAs is inconsistent with the Transmission and Energy Markets Tariff)).

²⁹ *Id.* at 8-9 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,053, at P 220, 222 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,318, at P 258 (2008); *Imbalance Provisions for Intermittent Resources; Assessing the State of Wind Energy in Wholesale Electricity Markets*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,581, at P 9-10 (2005) (“Generator imbalance provisions in transmission providers’ [open access transmission tariffs] are impeding access to transmission by intermittent resources in such a manner to be unduly discriminatory under section 206 of the Federal Power Act.”)).

iii. Following Emergency Directives

41. The Midwest ISO cites to section 40.3.3.a.iv of its tariff to support an exemption for market participants who are following emergency directives. That provision states that a market participant shall not be allocated real-time Revenue Sufficiency Guarantee charges for deviations that are due to reductions in load, increases in imports, or decreases in exports if the market participant is complying with directives issued during a declared emergency condition. The Midwest ISO also cites Commission orders supporting this exemption³⁰ and operating practices in the Business Practices Manual for Market Settlements that exempt from Revenue Sufficiency Guarantee charges generation assets that receive an exemption from uninstructed deviation penalties.³¹

iv. Following Midwest ISO Directives in General

42. To support an exemption for market participants who are following Midwest ISO directives generally, the Midwest ISO interprets the limitation of liability provisions in sections 10.2, 10.3, and 10.6 of the tariff as protecting market participants from unreasonable exposure to tariff charges that result from their good-faith efforts to follow Midwest ISO directives. The Midwest ISO also cites to the same Commission orders and operating practices that it cites in connection with emergency directives.

v. Uninstructed Deviation Penalty-Exempt Resources

43. The Midwest ISO states that uninstructed deviation penalties and Revenue Sufficiency Guarantee charges are each based on deviations from dispatch instructions, and for this reason, the exemption of certain types of resources or situations from uninstructed deviations requires their exemption from Revenue Sufficiency Guarantee charges. The Midwest ISO also contends that when units are not dispatchable, do not receive reliable dispatch instructions, or are otherwise exempt from uninstructed

³⁰ *Id.* (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,325, at P 53 (2006) (“We believe it is important that generators not be penalized for complying with manual redispatch instructions. This includes exemption from [uninstructed deviation penalty] and [Revenue Sufficiency Guarantee] uplift charges...for all time periods in which the generator is starting, implementing, or completing a manual redispatch instruction.”); *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,009, at P 80 (2007)).

³¹ *Id.* at 9, 13-14 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,009, at P 80, *order on reh’g*, 119 FERC ¶ 61,327 (2007); Midwest ISO Business Practices Manual For Market Settlements, Section D.16, page D-102 to D-103).

deviation penalties, it would not be just and reasonable to assess Revenue Sufficiency Guarantee charges on uninstructed deviations.

44. The Midwest ISO finds support for an exemption for uninstructed deviations in Commission orders that state that it would be inappropriate to assess Revenue Sufficiency Guarantee charges for reasons that are beyond a market participant's control,³² and it cites similar statements concerning the exemption of resources from the excessive/deficient energy deployment charge. With regard to operating practices, the Midwest ISO cites to the same Business Practices Manual provisions it cites in connection with emergency directives. The Midwest ISO states that the Revenue Sufficiency Guarantee Task Force devoted relatively little attention to Revenue Sufficiency Guarantee charge exemptions, in particular the extent to which each type of exemption could or does contribute to Revenue Sufficiency Guarantee costs.

vi. **Virtual Supply Offers of Market Participants That Did Not Actually Withdraw Energy**

45. To support the exemption of virtual supply offers by market participants that do not withdraw energy, the Midwest ISO cites to section 40.3.3.a.ii of the tariff, which restricts the allocation of the Revenue Sufficiency Guarantee charge to market participants that physically withdraw energy. The Midwest ISO also cites to Commission orders that recognize this restriction³³ and to provisions in the Business Practice Manual for Market Settlements that restrict the Revenue Sufficiency Guarantee charge to market participants that physically withdraw energy.

b. **Comments On the Midwest ISO Response To the First Deficiency Letter**

46. DC Energy recommends that the Commission reject the Midwest ISO exemption proposal for three reasons. First, it maintains that the Midwest ISO has not demonstrated that the tariff exempts uninstructed deviation penalty-exempt deviations from Revenue Sufficiency Guarantee charges. DC Energy argues that these charges are not intended to function as a penalty, and the Midwest ISO fails to explain why deviations that are exempt from uninstructed deviation penalties should also be exempt from Revenue Sufficiency Guarantee charges. According to DC Energy, the Midwest ISO's analogy between uninstructed deviation penalties and Revenue Sufficiency Guarantee charges amounts to an attempt to amend the tariff to increase the Revenue Sufficiency Guarantee

³² *Id.* (citing Initial Order, 115 FERC ¶ 61,108 at P 80, 82).

³³ *Id.* (citing First Rehearing Order, 117 FERC ¶ 61,113 at P 23, 58).

charge to other parties retroactively. This violates the filed rate doctrine and the doctrine against retroactive ratemaking.

47. Second, DC Energy argues that the Midwest ISO cannot point to any Commission order that would authorize an exemption from the Revenue Sufficiency Guarantee charge for resources that are exempt from uninstructed deviation penalties. DC Energy notes that the Midwest ISO cited the Initial Order in this connection, but that order did not find that deviations are exempt from Revenue Sufficiency Guarantee charges when a market participant does not comply with dispatch instructions for reasons that are beyond its control. It only exempted differences caused by lags in the state estimator and unit dispatch system tracking of market participant unit output that follows dispatch instructions, for instance when a unit goes off-line.

48. Third, DC Energy argues that the Business Practices Manuals are not a valid basis for recalculating the Revenue Sufficiency Guarantee charge. DC Energy contends that the tariff is the lawful filed rate, and it does not exempt intermittent resources from the Revenue Sufficiency Guarantee charge.

49. Virtual Trader Group maintains that Business Practices Manual exemptions are irrelevant because the tariff requires that the Business Practices Manual conform to and comply with it. Moreover, Virtual Trader Group argues that the Business Practices Manuals do not address the exclusion of six categories of deviations from the Revenue Sufficiency Guarantee rate denominator, and the rate formula clearly includes all the deviations the Midwest ISO seeks to exclude.

50. Virtual Trader Group further maintains that the Midwest ISO fails to identify a tariff provision that states that setpoint, derate and must-run volume deviations by uninstructed deviation penalty-exempted units can be excluded from the Revenue Sufficiency Guarantee rate denominator. It asserts that the uninstructed deviation penalty provision that the Midwest ISO contends exempts intermittent resources does not discuss an exemption from Revenue Sufficiency Guarantee charges, and does not address how to allocate the Revenue Sufficiency Guarantee costs that these resources cause. Virtual Trader Group maintains that it is unduly discriminatory to exempt generation resources from Revenue Sufficiency Guarantee charges for events that are beyond their control, and that it disproportionately allocates costs to other market participants when the same events or conditions are beyond their control as well.

51. Virtual Trader Group states that the Midwest ISO fails to identify a tariff provision that exempts load imbalances served through carved-out GFAs. It maintains that the provision that the Midwest ISO cites, section 38.8.4.6, subjects carved-out GFAs only to certain charges but says nothing about the Revenue Sufficiency Guarantee rate formula.

Virtual Trader Group notes that carved-out GFAs are not exempt from Revenue Sufficiency Guarantee charges when there is an imbalance between their injections and withdrawals.³⁴

52. Virtual Trader Group maintains that the Commission never determined that Revenue Sufficiency Guarantee costs should be recovered proportionately from other market participants based on their relative levels of non-exempt deviations. It states that the filed rate doctrine forbids retroactive rate increases, and the Midwest ISO would need to submit a section 205 filing to exclude load imbalances under carved-out GFAs from the Revenue Sufficiency Guarantee charge denominator.

53. Virtual Trader Group states that the Midwest ISO does not identify tariff provisions that state that the schedule changes associated with dynamically dispatched schedules that follow Midwest ISO instructions can be excluded from the denominator used to calculate the per-unit Revenue Sufficiency Guarantee rate. Virtual Trader Group also notes that the Midwest ISO has not provided evidence that the cost shift it proposes is just, reasonable and not unduly discriminatory. It maintains that if market participants are not required to pay the Revenue Sufficiency Guarantee costs caused by their dynamically dispatchable schedules, then the just and reasonable way to allocate them is based on load ratio share.

54. Virtual Trader Group contends that the Midwest ISO should not be permitted to create retroactively a new mismatch in the Revenue Sufficiency Guarantee rate formula by including the Revenue Sufficiency Guarantee costs associated with dynamically dispatchable schedule deviations in the numerator but not including the deviations in the denominator. It recommends that the Commission order the Midwest ISO to correct the resettlements it has been conducting by basing them on a Revenue Sufficiency Guarantee formula that includes the deviations at issue here in the denominator.

55. DTE Trading, Cargill, Westar, Integrys, and Otter Tail all assert that the proposal would result in an improper shift in cost responsibility that is not based on cost causation. For this reason, Integrys and Cargill recommend that the Midwest ISO perform a cost causation study. DTE Trading, Westar and Cargill argue that the proposal is beyond the scope of the Fourth Rehearing Order. Cargill recommends that costs associated with the proposed exemptions be included in the Second Pass Revenue Neutrality Uplift, in recognition of the fact that the costs either benefit the entire market or are costs that the

³⁴ Virtual Trader Group at 11 (citing Initial Order, 115 FERC ¶ 61,108 at P 135-36, First Rehearing Order, 117 FERC ¶ 61,113 at P 186-87 (citing *Southern Illinois Power Cooperative v. Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,234 at P 25-32, *order on reh'g*, 116 FERC ¶ 61,117, at P 11-13 (2006))).

Commission has determined should not be assessed to the market participants incurring them. Cargill considers the Commission's no-mismatch directive in the Fourth Rehearing Order to refer only to issues relating to virtual supply, and therefore it does not encompass exempted deviations.

56. E.ON contends that the Midwest ISO is unclear on how it populates the Revenue Sufficiency Guarantee charge formulas, and therefore the Commission should require supporting data and calculations in further compliance filings or in a technical conference. At a minimum, the Midwest ISO should be ordered to identify separately in resettlement invoices the base Revenue Sufficiency Guarantee charges and the interest-related component of the charges, information that regulated utilities like E.ON require for accounting purposes. E.ON also requests that the Commission order the Midwest ISO to base Revenue Sufficiency Guarantee charges on the tariff and Commission orders, not on reasons derived by implication or analogy.

c. Answers

57. The Midwest ISO states that the December 8 Compliance Filing is not a tariff revision but a correction of prior operational practice for calculating Revenue Sufficiency Guarantee charges, and it thus does not violate the filed rate doctrine. The Midwest ISO asserts it was complying with the Fourth Rehearing Order's interpretation of the filed rate as one that does not involve a mismatch and shortfall. It contends that criticisms of the resulting resettlements and refunds involve issues that should be raised on rehearing and that are therefore out of place in comments on a compliance filing.

58. The Midwest ISO states that its proposed exemptions are consistent with the principle of cost causation and its corollary that market participants should not be held responsible for results that are beyond their control and that they thus did not cause. It submits that imposing Revenue Sufficiency Guarantee charges on resources that cannot be reasonably expected to comply with dispatch instructions would be unreasonable. The Midwest ISO states that the Fourth Rehearing Order did not require any revision to the existing uplift provisions and any contention that the scope of uplift should be modified is something that should be raised on rehearing. The Midwest ISO also argues that cost causation analysis is unnecessary to support its action because it is correcting its operational calculation based on the filed rate.

59. The Midwest TDUs ask that the proposed exemptions, if accepted, be uplifted to all market participants rather than to load. This would ensure that all market participants who benefit from reliable market operations pay Revenue Sufficiency Guarantee costs.

60. Otter Tail contends that the Commission did not direct the Midwest ISO to remove exempted quantities from the Revenue Sufficiency Guarantee charge denominator. It

asserts the Commission should reject the Midwest ISO's new interpretation in its Answer as unsupported and an illegal revision to the tariff for the purpose of imposing retroactive refunds.

61. Otter Tail asserts that if it is inconsistent with cost causation to charge Revenue Sufficiency Guarantee costs to parties that are exempt because they are unable to control whether costs are incurred, it must also be inconsistent to impose those costs on a subgroup of market participants that also could not control them and that did not cause them. Otter Tail states that these costs have been allocated to load, and they should continue to be recovered from all load because they benefit the entire system.

d. Second Deficiency Letter and Midwest ISO Response

62. On May 8, 2009, Commission staff sent a second letter to the Midwest ISO, notifying it that its responses to the first letter were deficient and seeking further information regarding the Midwest ISO's proposed Revenue Sufficiency Guarantee charge exemptions. The deficiency letter requested that the Midwest ISO specify the date(s) on which the real-time Revenue Sufficiency Guarantee charge exemption for intermittent resources became part of its Business Practices Manuals and provide supporting documentation.

63. The Midwest ISO responds that Version 7 of the Business Practices Manual for Market Settlements, which was updated on June 8, 2005, clarified that generation assets, including intermittent resources, that receive an hourly uninstructed deviation exemption are not considered to have contributed real-time Revenue Sufficiency Guarantee first pass distribution volume for that hour. As such, they are exempted from paying for real-time Revenue Sufficiency Guarantee first pass distribution amount.

e. Comments On the Midwest ISO Responses to the Second Deficiency Letter

64. Financial Marketers argue that the Midwest ISO Tariff requires that the Business Practices Manuals conform and comply with the tariff.³⁵ They state that nothing in the Business Practices Manuals approves excluding six categories of deviations from the Revenue Sufficiency Guarantee charge rate denominator, nor do the Business Practices Manuals address how the Midwest ISO is to recover costs caused by exempt deviations.

³⁵ Financial Marketers at 7 (citing Initial Order, 115 FERC ¶ 61,108 at P 29 n.19).

65. Financial Marketers assert that the Midwest ISO is using its compliance filing to circumvent the requirements of FPA section 205 and that it is unlawful to make rate changes in a compliance filing that the Commission did not approve or direct.³⁶

66. Financial Marketers object to excluding categories of deviations from the denominator of the rate formula without evidence that the resulting cost shift is just, reasonable and not unduly discriminatory. They claim that it is more reasonable to allocate costs caused by exempt deviations based on market load ratio share. They argue that the Business Practices Manuals are relevant only to whether a resource qualifies for an exemption from Revenue Sufficiency Guarantee charges. Those manuals do not address how Revenue Sufficiency Guarantee costs that the resource causes should be allocated or whether the resource's deviations should be exempted from the Revenue Sufficiency Guarantee rate formula.

3. Commission Determination

67. In its December 8 Compliance Filing, the Midwest ISO makes the specific tariff revisions that the Fourth Rehearing Order requires, and also proposes to delete from the rate denominator certain deviations that it asserts are exempt from Revenue Sufficiency Guarantee charges.³⁷ The Midwest ISO also calls the Commission's attention to revisions that it says are required to assure its compliance with the more general Commission directive that there should be no mismatch within the Revenue Sufficiency Guarantee rate. The Midwest ISO explains that it has been excluding from the Revenue Sufficiency Guarantee charge megawatt-hours associated with exempted deviations, as it defines them. It has also been including in the denominator of the Revenue Sufficiency Guarantee charge rate megawatt-hours associated with exempt deviations for all market participants, not just those withdrawing energy.³⁸ The result of this practice, which the Midwest ISO has described for the first time in this compliance filing, results in an under-

³⁶ *Id.* at 9 (citing Fourth Rehearing Order, 125 FERC ¶ 61,156 at P 57 n.51 (“Compliance filings must be limited to the specific directives ordered by the Commission.”)).

³⁷ We note that the Midwest ISO made the required tariff revisions only in Third Revised Volume No. 1. Since the effectiveness of that volume terminated with the start of the Ancillary Services Market, we require the Midwest ISO to make this revision in Fourth Revised Volume No. 1.

³⁸ The Revenue Sufficiency Guarantee charge is multiplied by the Revenue Sufficiency Guarantee charge rate in calculating a market participant's bill for Revenue Sufficiency Guarantee charges.

collection of Revenue Sufficiency Guarantee costs through the real-time Revenue Sufficiency Guarantee charge, and an increase in uplift to the footprint.

68. We agree with the Midwest ISO that the calculation it describes in its compliance filing, and the resulting under-collection of Revenue Sufficiency Guarantee funds, is at odds with the Commission's earlier rulings that there is no mismatch between the numerator (the market participant's Revenue Sufficiency Guarantee charge) and the denominator of the Revenue Sufficiency Guarantee charge rate, since the formulation of the denominator states that it is comprised of the aggregate of the amounts set forth in the numerator.³⁹ The filed rate, as the Commission has interpreted it several times, indicates that there should be no mismatch between the numerator and the denominator of the rate: the amounts in the individual Revenue Sufficiency Guarantee charges should "sum to the same summed and aggregate number in the denominator of the Revenue Sufficiency Guarantee charge rate." We acknowledge that even the Commission has misstated the contours of the rate during the course of this proceeding⁴⁰ and that the Midwest ISO is correct in wanting to conform the filed rate, its operational practice, and the Commission's findings. We therefore accept in principle the Midwest ISO's approach to its revisions to its calculation of the denominator of the Revenue Sufficiency Guarantee charge rate so that it is the sum of the amounts in the Revenue Sufficiency Guarantee charge, per the terms of the tariff, and as the Midwest ISO has been directed in previous orders.⁴¹ To be clear, in the context of exemptions, we expect that the Midwest ISO's approach will be to delete exempted quantities from both the Revenue Sufficiency Guarantee charge and from the denominator of the Revenue Sufficiency Guarantee rate, and that the sum of exempted quantities in the Revenue Sufficiency Guarantee charges for individual market participants will sum to the exempted quantity in the denominator of the Revenue Sufficiency Guarantee rate, thereby ensuring there is no rate mismatch.⁴²

³⁹ Second Compliance Order, 121 FERC ¶ 61,132 at P 26; Fourth Rehearing Order, 125 FERC ¶ 61,156 at P 30.

⁴⁰ See Fourth Rehearing Order, 125 FERC ¶ 61,156 at P 30.

⁴¹ Second Compliance Order, 121 FERC ¶ 61,132 at P 26; Fourth Rehearing Order, 125 FERC ¶ 61,156 at P 52-57.

⁴² We do not find that the exemptions create a new rate mismatch, as Virtual Trader Group alleges. The individual market participant megawatts in the Revenue Sufficiency Guarantee charge will sum to the total megawatts in the Revenue Sufficiency Guarantee charge rate denominator, which ensures that all costs are recovered. Accordingly, we see no reason to revise the Revenue Sufficiency Guarantee charge calculation.

69. When doing this the Midwest ISO is acting in compliance with Commission orders ruling that there is no rate mismatch. The Commission has already stated that it is proper in a compliance filing for the filer to attempt to implement the Commission's interpretation of specific tariff provisions.⁴³ In such circumstances, the resulting changes do not represent a new rate that requires a section 205 filing. Because there is no new rate, there is no possibility of retroactive ratemaking. The Commission provided notice of its determination that there is no rate mismatch in the Second Compliance Order issued on November 5, 2007, and affirmed that determination in the Fourth Rehearing Order and in an order issued on June 12, 2009.⁴⁴

70. However, while we accept what the Midwest ISO has done as meeting in principle the requirements of the Fourth Rehearing Order, the question remains whether in practice the Midwest ISO's compliance with the no-mismatch directive appropriately exempted certain deviations from the Revenue Sufficiency Guarantee charge. Some of the exemptions that the Midwest ISO enumerates comply with the tariff and Commission orders that specifically allow exemptions from Revenue Sufficiency Guarantee charges: deviations associated with carved-out GFAs,⁴⁵ carved-out GFA and dynamically dispatchable schedule changes that follow Midwest ISO instructions,⁴⁶ uninstructed deviations during emergency conditions,⁴⁷ and deviations resulting from state estimator lags.⁴⁸

⁴³ Fourth Rehearing Order, 125 FERC ¶ 61,156 at P 51.

⁴⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,241 (2009).

⁴⁵ *Southern Illinois Power Cooperative v. Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,234, at P 25-32, *order on reh'g*, 116 FERC ¶ 61,117 at P 11-13 (2006) (finding that assessment of Revenue Sufficiency Guarantee charges on transactions under carved-out GFAs is inconsistent with the Transmission and Energy Markets Tariff).

⁴⁶ Responding to Virtual Trader Group, dynamically dispatchable schedules following Midwest ISO instructions are exempted from Revenue Sufficiency Guarantee charges by Commission order. *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,009, at P 80, *order on reh'g*, 119 FERC ¶ 61,327 (2007).

⁴⁷ *Id.*

⁴⁸ Initial Order, 115 FERC ¶ 61,108 at P 80-82.

71. The remaining exemptions, including the exemption for intermittent resources, are not specifically provided for in either the tariff or Commission orders. Instead, the primary guidance on the treatment of these deviations comes from the Business Practices Manuals. Specifically, the Midwest ISO cites to the following Business Practices Manual language:

Generation assets that receive an hourly Uninstructed Deviation exemption are not considered to have contributing [sic.] Real-Time RSG First Pass Distribution volume for that hour as such are exempted from paying for Real-Time RSG First Pass Distribution Amount.⁴⁹

The Midwest ISO indicates in its second deficiency letter response that the Business Practices Manuals have provided this exemption since June 2005. While “generation assets” could be interpreted as not including intermittent resources, because intermittent resources generally cannot follow setpoint instructions, the Midwest ISO tariff suggests the opposite.⁵⁰ Under the tariff, intermittent resources are specifically exempted from uninstructed deviation penalties, which implies that the Midwest ISO considers them part of the set of generation assets receiving an uninstructed deviation penalty exemption from Revenue Sufficiency Guarantee charges.

72. While we can find support for the exemption, we disagree with the Midwest ISO’s assumption that the Business Practices Manuals is an appropriate venue for articulating an exemption not specified in the tariff. The Midwest ISO has a general responsibility to ensure that the rates and terms of service are clearly set forth in the tariff.⁵¹ It has not provided that clarity in the instances at issue, and therefore has been violating its tariff. As we have stated many times in this proceeding, the Business Practices Manuals must conform to the tariff, not the other way around. It is particularly inappropriate for the Midwest ISO to attempt to put such an exemption on file with the Commission in the context of a compliance proceeding, rather than through a new filing under FPA section 205.

⁴⁹ Midwest ISO Second Deficiency Letter Response at 4 (citing Market Settlements Business Practices Manual Version 7 at A-211; Tab A at 4).

⁵⁰ An Intermittent Resource is a Resource that is not capable of being committed or decommitted by, or following Set-Point Instructions of, the Transmission Provider in the Real-Time Energy and Operating Reserves Market. Midwest ISO FERC Electric Tariff, First Revised Sheet No. 184, Section 1.329.

⁵¹ Initial Order, 115 FERC ¶ 61,108 at P 29 n.19.

73. Despite the recurring issue of tariff violations with regard to Revenue Sufficiency Guarantee charges, we will exercise our discretion to waive refunds for those exemptions that are not specifically exempted in the Midwest ISO Tariff or in Commission orders. The Commission stated previously in this proceeding that it “is well-established that the Commission has broad discretion to fashion appropriate remedies ‘unless the statute itself mandates a particular remedy.’”⁵² The Commission also stated:

The Commission, in its decision to order (or not to order) refunds for a tariff violation must provide “a reasoned explanation for its decision: it must show that it has ‘considered relevant factors and . . . struck a reasonable accommodation among them,’ and that its order was ‘equitable in the circumstances.’”⁵³

74. We find here that because the Midwest ISO has exempted the deviations in question from Revenue Sufficiency Guarantee charges in the Business Practices Manuals and because the tariff does not specifically address these deviations, the most reasonable expectation of market participants is that these deviations are exempt.⁵⁴ We hesitate to undo any of the economic decisions made on this basis, given that they cannot be revisited regardless of the basis for reliance.

75. In response to Virtual Trader Group, all the exemptions cited by the Midwest ISO are included in the Business Practices Manuals, tariffs or Commission orders.⁵⁵ Our

⁵² *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,212, at P 87 (2007) (citing *Connecticut Valley Electric Co v. FERC*, 208 F.3d 1037, 1043 (D.C. Cir. 2000) (citing *Towns of Concord v. FERC*, 955 F.2d at 67, 72-73, 76 n.8 (D.C. Cir. 1990) (*Towns of Concord*))).

⁵³ *Id.* (citing *Consolidated Edison Company of New York, Inc. v. FERC*, 347 F.3d 964, 972 (2003) (quoting *Towns of Concord*, 955 F.2d at 73)).

⁵⁴ The Commission has found such an expectation by market participants to be reasonable. See *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,212, at P 89 (2007) (citing *PPL EnergyPlus, LLC v. New York Independent System Operator, Inc.*, 115 FERC ¶ 61,383, at P 29 (2006) (“It is unfair to market participants to assume that interpretations made by [an RTO] in its own publications...cannot be regarded as coming from a credible source.”)).

⁵⁵ The tariff provision that exempts dynamically dispatched schedules is section 40.3.4.d.

decision here to waive refunds does not purport to justify the exemptions based on the fact that resources cannot control their deviations or on cost causation analysis.⁵⁶

76. We disagree with DC Energy's argument that resettling with these exemptions violates the filed rate doctrine. As the Court of Appeals has noted:

This argument assumes that the "right" [to be charged no more than the filed rate] ceases to exist unless it is backed up by a remedy, that the Commission's denying refunds equals the Commission's authorizing the utility to violate the filed rate doctrine This is good advocacy but the case cannot be decided on any such theory. The Towns possess only the "rights" the Federal Power Act confers, no more, no less. The filed rate doctrine does not have a life of its own.⁵⁷

We disagree with DC Energy that the facts presented represent retroactive ratemaking. Where market participants have been relying on the Midwest ISO's operating practices to define exemptions, our decision to waive refunds does not result in a resettlement rate that is a surprise to market participants. Our decision therefore does not represent impermissible retroactive ratemaking.⁵⁸

77. We agree with parties that the Midwest ISO has not been clear on how it is calculating the Revenue Sufficiency Guarantee charge, and we therefore encourage the Midwest ISO to provide supporting data and calculations to market participants in the course of stakeholder discussions.

78. We consider Constellation's request that the Commission square its findings in this proceeding with the Commission's findings in Docket Nos. EL07-86, *et al.* and its

⁵⁶ The Commission has separately considered the issue of whether the exemptions are just and reasonable on a prospective basis. *Midwest Ind. Transmission Sys. Operator, Inc.*, 128 FERC ¶ 61,142 (2009), *reh'g granted in part and denied in part*, 132 FERC ¶ 61,184 (2010).

⁵⁷ *Towns of Concord*, 955 F.2d at 73 (quoting *Jackman v. Rosenbaum Co.*, 260 U.S. 22, 31 (1922)).

⁵⁸ *Sithe New England Holdings, LLC v. FERC*, 308 F.3d 71, 78 (D.C. Cir. 2002) (ruling that "[w]hat is primarily restricted by the statute . . . is for the agency to surprise buyers, who paid the tariffed rate for a service, by telling them that they must now pay an increased price for past services.").

assertion that the phrase “actually withdrawing energy” needs to be removed from the Revenue Sufficiency Guarantee charge to be requests for rehearing of previous Commission orders. These requests are therefore beyond the scope of this proceeding, and we will not address them here.

C. Refund Period

1. Fourth Rehearing Order

79. The Commission required the Midwest ISO to make refunds based on the Commission’s rulings in the Fourth Rehearing Order that there is no mismatch between the numerator and denominator of the Revenue Sufficiency Guarantee charge.⁵⁹ Responding to requests for rehearing of the Second Compliance Order,⁶⁰ the Commission required the Midwest ISO to provide refunds starting April 25, 2006.⁶¹

2. Compliance Filing

80. The Midwest ISO states that the Fourth Rehearing Order implies that its prior resettlement from market start to April 24, 2006 was erroneous to the extent that it presumed that there was a mismatch between the Revenue Sufficiency Guarantee formula numerator and denominator. The Midwest ISO explains that it resettled Revenue Sufficiency Guarantee charges for that period based on the existence of a mismatch, which resulted in Revenue Sufficiency Guarantee cost recovery shortfalls that needed to be allocated through the Second Pass allocation of Revenue Sufficiency Guarantee costs to all market participants. According to the Midwest ISO, the pre-April 25, 2006 resettlement therefore included the components in the denominator of the charge that the Midwest ISO now proposes to exempt from Revenue Sufficiency Guarantee charges.⁶² For these reasons, the Midwest ISO maintains that resettlement of Revenue Sufficiency

⁵⁹ Fourth Rehearing Order, 125 FERC ¶ 61,156 at P 56.

⁶⁰ Second Compliance Order, 121 FERC ¶ 61,132.

⁶¹ Fourth Rehearing Order, 125 FERC ¶ 61,156 at P 30.

⁶² The Midwest ISO also notes that in the November 28, 2007 order in Docket No. EL07-86, *et al.*, the Commission did not limit the refund period when it indicated the need for refunds if the Midwest ISO had been calculating Revenue Sufficiency Guarantee charges based on a mismatch between the Revenue Sufficiency Guarantee charge numerator and denominator. *See Ameren Services Co., et al., v. FERC*, 121 FERC ¶ 61,205, at P 86 (2007).

Guarantee charges from market start to April 24, 2006 is necessary, but it states that it will defer resettlement until the rehearing requests have been resolved.

3. Protests

81. A number of commenters recommend that the Commission reject the Midwest ISO proposal to provide refunds prior to April 25, 2006. Integrys claims that resettling Revenue Sufficiency Guarantee charges incurred prior to April 25, 2006 is outside the scope of the compliance filing. It states that the Commission requires that compliance filings be limited to the specific directives that the Commission ordered.⁶³ Integrys argues that the Midwest ISO cannot use a Commission holding in Docket No. EL07-86, *et al.*, to resettle Revenue Sufficiency Guarantee charges incurred up to April 25, 2006 because that order only granted refunds beginning August 10, 2007. Applying that finding to the period before August 10, 2007 would represent prohibited retroactive ratemaking. Otter Tail, Westar, Financial Marketers, FPL, Exelon, DTE, Reliant, Hoosier, Cargill, E.ON,⁶⁴ FirstEnergy⁶⁵ and Xcel⁶⁶ make many of the same arguments.

82. Integrys contends that resettling the market for a period beginning over three years ago has a deleterious effect on the market and the settled expectations of market participants. It claims that additional liability for refunds creates additional uncertainty and imposes new and unjustified financial liability on market participants. Integrys notes that the Commission has ruled that it would be unfair to require refunds in situations where customers cannot effectively revisit their economic decisions.⁶⁷ It considers

⁶³ Parties also note that the Commission set April 25, 2006 as the date from which refunds should be provided in the Fourth Rehearing Order. *Id.*

⁶⁴ E.ON argues that the Midwest ISO should have filed a request for rehearing instead of proposing its own remedies in a compliance filing.

⁶⁵ FirstEnergy objects to any resettlement since it considers the fact that the Commission did not consider equitable considerations against requiring refunds to represent an abuse of discretion by the Commission.

⁶⁶ Xcel asserts that the Commission decision not to order refunds for the Midwest ISO's failure to include virtual supply offers in the calculation of the Revenue Sufficiency Guarantee charge should guide the Midwest ISO with regard to settlement.

⁶⁷ *New York Indep. Sys. Operator, Inc.*, 92 FERC ¶ 61,307 (2000), *reh'g denied*, 97 FERC ¶ 61,154 (2001).

resettlement to be unfair and inequitable treatment and recommends that the Midwest ISO proposal be rejected. Cargill and FirstEnergy make similar arguments.

83. Westar argues that the Commission should reject the resettlements for the same reasons the Commission previously declined to order refunds for the pre-April 25, 2006 period,⁶⁸ *i.e.*, because market participants relied on the allocation method in place when trades were made. Westar also claims that the resettlements would be detrimental to the public interest because market efficiency and liquidity would be reduced and generators would regain market power. Cargill claims that summary rejection is warranted given that many companies have stopped trading in the Midwest ISO energy markets since April 2005, and the Midwest ISO has not proposed a mechanism to account for Revenue Sufficiency Guarantee costs that otherwise would be assessed, creating additional uncertainty.

84. Xcel objects to refunds for the period after April 26, 2006, because refunds would be inconsistent with the balance of equities approach taken in this proceeding and would foster greater uncertainty. Xcel considers the relevant language in the tariff to be ambiguous and states that the Midwest ISO reasonably relied on the Commission's statements in paragraph 58 of the Second Rehearing Order to calculate market resettlements, which makes refunds inappropriate. Xcel contends that the Midwest ISO should not be required to implement refunds where no party acted in bad faith. Cargill makes similar arguments.

85. Ameren and NIPSCO recommend that the Midwest ISO continue the resettlement process, noting that Commission orders are effective when issued and requests for rehearing do not operate as a stay.⁶⁹

86. Integrys, Westar, Financial Marketers, FirstEnergy, FPL, Hoosier and Otter Tail argue that the Commission should reject the Midwest ISO proposal to charge interest because the Fourth Rehearing Order did not order the Midwest ISO to pay interest. Integrys, Otter Tail, Cargill, FirstEnergy, FPL, Hoosier and Xcel also support the Midwest ISO plan to defer resettlement.

87. Several commenters assert that the Commission should direct the Midwest ISO to provide detailed information that allows market participants to ascertain their refund liability. Constellation requests that the Commission specify which resettlement dates relate to the various Revenue Sufficiency Guarantee charges and related tariff provisions.

⁶⁸ First Rehearing Order, 117 FERC 61,113 at P 92-96.

⁶⁹ 18 C.F.R. § 385.713 (2010).

It also requests that the Commission confirm whether the December 8 Compliance Filing accurately reflects the Fourth Rehearing Order. Finally, Constellation requests that the Commission require the Midwest ISO to make a filing that details how it resettled the market, whether resettlement occurred only for those factors identified in Commission orders, and whether cost-causation principles were adhered to.

88. Westar maintains that the Midwest ISO must explain fully each step in its resettlement process so that the Commission can determine whether the resettlement is being done correctly and in a just, reasonable and not unduly discriminatory manner. Westar states that market participants should have an opportunity to be heard on issues the filing raises.

89. Ameren and NIPSCO request that the Commission confirm that the recalculation of refunds will restore market participants to the financial position they would have had if the Revenue Sufficiency Guarantee tariff provisions been interpreted correctly in the first place. To this end, Ameren and NIPSCO recommend that the Commission direct the Midwest ISO to calculate refunds and surcharges with interest on the new Revenue Sufficiency Guarantee resettlement and repay the interest charged on prior settlement, with interest on the interest. They also assert that the Midwest ISO should have to submit a refund report that explains how it made the calculations, and interested parties should have an opportunity to comment on the report.

90. E.ON argues that the Midwest ISO should be required to submit all supporting data and calculations in a future compliance filing. It recommends that the Commission institute a technical conference to account for the resettlements the Midwest ISO proposes. Financial Marketers argue that the Commission should direct the Midwest ISO to providing detailed data that allows market participants to ascertain their refund liability.

91. Constellation requests that the Commission clarify the effective dates of the refund and of the Revenue Sufficiency Guarantee charges.

92. Ameren/NIPSCO assert that the Initial Order was clear that the Midwest ISO was required to make refunds with interest, and therefore statements by other protestors that interest is not required are erroneous collateral attacks on the Initial Order and therefore should be rejected. Ameren/NIPSCO request that the Commission affirm the Midwest ISO's intention to include interest on resettlements.

4. Answers

93. The Midwest ISO asserts that the date of April 25, 2006 identified in the Fourth Rehearing does not limit additional refunds that are necessary to correct related settlement errors. It states that the Commission's determination that the Second Rehearing Order contains erroneous language on the rate mismatch issue warrants

correction of prior Revenue Sufficiency Guarantee charge resettlements that the Midwest ISO had performed in reliance on the Commission's misstatement. The Midwest ISO notes that resettlement prior to April 25, 2006 is appropriate in light of the specific directives in the Initial Order issued on that date that certain transactions other than virtual supply offers, *i.e.*, other deviations, also should be subject to refund.⁷⁰ The Midwest ISO states that the Commission subsequently withdrew only the refund directive relating to virtual supply offers, not the refund requirements for specified non-virtual transactions.

94. The Midwest ISO clarifies that the proposed correction would neither impose previously un-assessed Revenue Sufficiency Guarantee charges on virtual supply offers involving actual energy withdrawal prior to April 25, 2006 nor any additional Revenue Sufficiency Guarantee charges on virtual supply offers not involving actual energy withdrawals.

95. The Midwest ISO believes it would be appropriate to pay interest on the refunds the Fourth Rehearing Order requires because the Initial Order's original refund directives that were affirmed on rehearing awarded interest.⁷¹ The Midwest ISO also notes that the Fourth Rehearing Order did not otherwise state any distinguishing factor or reason that would preclude the payment of interest for the most recently required refunds in this proceeding. The Midwest ISO requests that the Commission exercise its discretion not to grant interest on any previously paid interest because none of the Revenue Sufficiency Guarantee refund directives expressly grant interest on interest and because the Midwest ISO made its prior Revenue Sufficiency Guarantee calculations in good faith and in reliance on the Commission's earlier mismatch misstatement.

96. The Midwest ISO states that while it is amenable to filing a refund report regarding the results of the resettlement, it is unnecessary to report on the associated calculation method. It explains that it has already completed and provided market participants with initial estimates of resettlement amounts, and it has explained the resettlement in stakeholder forums. For these reasons, the Midwest ISO recommends that the Commission deny requests for further reporting on the resettlement method and reject E.ON's request for technical conference.

97. Otter Tail responds that the Commission should reject the Midwest ISO's compliance filing because the Commission did not direct refunds back to April 1, 2005

⁷⁰ Midwest ISO at 15 (citing Initial Order, 115 FERC ¶ 61,108 at P 77, 115, 116, Ordering Paragraph (A); First Rehearing Order, 117 FERC ¶ 61,113 at P 176).

⁷¹ *Id.*

and it did not impose interest on these refunds. Otter Tail also asserts that the Midwest ISO answer is an impermissible answer to protests since it does not provide new information that will clarify the record or aid the Commission's understanding of the issues before it.

98. Financial Marketers assert that the Initial Order has no relevance to whether interest should be applied to refunds, contrary to the claims of Ameren/NIPSCO. Financial Marketers note that the portion of the Initial Order that required the payment of refunds with interest was vacated,⁷² and it therefore cannot be relied upon for determining whether refunds ordered at later phases of this proceeding would be subject to interest. Financial Marketers further note that the Initial Order ruling on refunds with interest only applied to the period April 2005 through April 25, 2006, whereas the Fourth Rehearing Order required payment of refunds for the period of April 25, 2006 through March 14, 2007. Financial Marketers assert that the refund amounts at issue here are different from those under the Initial Order, since the Fourth Rehearing Order determined that the Midwest ISO had miscalculated the level of the Revenue Sufficiency Guarantee charge while the Initial Order determined that certain virtual supply offers had been mistakenly exempted from Revenue Sufficiency Guarantee charges.

99. Financial Marketers argue that it would not offend equity and good conscience if interest is not required. This is because market participants were relying on the Midwest ISO interpretation of the Commission's orders, and they had a reasonable expectation that Revenue Sufficiency Guarantee charges would be assessed based on that interpretation. Financial Marketers also contend that to order refunds plus interest would exacerbate uncertainty in the markets and would be unfair because market participants cannot effectively revisit past economic decisions.

100. In its response to the Commission's May 8, 2009 letter, the Midwest ISO states that it will commence resettlements for operating days occurring from April 1, 2005 through April 25, 2006 concluding on or about February 4, 2010, subject to the Commission's guidance on whether or not to include such earlier period in the resettlement. The Midwest ISO reiterates in its answer that it is seeking Commission guidance on the appropriate Revenue Sufficiency Guarantee refund periods.

⁷² First Rehearing Order, 117 FERC ¶ 61,113 at P 92-95; Second Rehearing Order, 118 FERC ¶ 61,212 at P 87-95.

5. Commission Determination

101. The Commission has waived refunds associated with the rate mismatch for the period from April 25, 2006 to November 4, 2007,⁷³ and resettlement of customer bills therefore is not required for this period. We will not require refunds associated with the rate mismatch for the period prior to April 25, 2006 for the same reasons given previously, namely, that the Commission did not make a determination on the completed tariff provision and did not address the rate mismatch issue comprehensively until the Second Compliance Order issued on November 5, 2007.⁷⁴

102. The Commission determined that there is no rate mismatch in the Revenue Sufficiency Guarantee charge for the period beginning November 5, 2007, and therefore refunds are appropriate from this date forward.⁷⁵ Accordingly, it is appropriate for the Midwest ISO to resettle its markets with the exemptions discussed in this order starting on November 5, 2007. Since the exemptions have been specified either in the Business Practices Manuals since June 2005, in Commission orders, or in the tariff, parties have had sufficient notice. We clarify that the resettlement must reflect the Commission's determination that there is no rate mismatch, and therefore we expect that the Midwest ISO's approach will be to delete exempted quantities from both the Revenue Sufficiency Guarantee charge and the denominator of the Revenue Sufficiency Guarantee rate, and the sum of exempted quantities in the Revenue Sufficiency Guarantee charges for individual market participants will sum to the exempted quantity in the denominator of the Revenue Sufficiency Guarantee rate, thereby ensuring there is no rate mismatch.

103. Inasmuch as the Commission required interest on refunds in the Fourth Rehearing Order,⁷⁶ arguments that interest on the refunds is not reasonable are rehearing requests of that order, and they therefore are beyond the scope of this compliance proceeding.

104. We do not see the need to file reports on refund results and calculations, nor do we see the need for a technical conference on refunds. The Midwest ISO has been providing estimates and discussing issues with stakeholders, and there is no need for an additional and redundant process at the Commission.

⁷³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,241, at P 2 (2009).

⁷⁴ *Id.* P 41.

⁷⁵ *Id.* P 42.

⁷⁶ *Id.*

D. Proposed Tariff Provision

105. The Midwest ISO states that the tariff language in P 54 of the Fourth Rehearing Order deleted the period from the penultimate sentence in section 40.3.3.a.iii and also certain language in that section. It proposes to restore the period and immediately following it the phrase “In the event that the aggregate Real-Time Revenue Sufficiency Guarantee Charge payment in that Hour attributed to Resources committed in any RAC processes conducted for the Operating Day” in section 40.3.3.a.iii of the Midwest ISO tariff. The Midwest ISO explains that it appears that the Commission inadvertently deleted the period and this language in the Fourth Rehearing Order and that the deleted phrase is necessary for its rate recovery mechanism. Otter Tail supports the Midwest ISO’s proposal.

106. We agree that the period and the phrase in question were part of the Midwest ISO tariff and were inadvertently deleted in the Fourth Rehearing Order. The tariff sheet that the Midwest ISO submitted retains the period and phrase in question, and we accept that tariff sheet as filed.

E. Other Issues

107. Financial Marketers consider it irrational to assess Revenue Sufficiency Guarantee charges on any day in which the market participant withdrew energy, irrespective of the hour in which such withdrawals took place. They also assert that the Fourth Rehearing Order’s failure to address their concerns was erroneous. According to Financial Marketers, no Revenue Sufficiency Guarantee costs should be allocated to virtual supply offers of market participants in any hour in which the market participant did not withdraw energy.

108. The issue raised by Financial Marketers is a rehearing request that is beyond the scope of this compliance proceeding.

109. We are not addressing the July 15 Supplemental Protest and Comments of Financial Marketers because the analysis it supplies is not pertinent to whether the December 8 Compliance Filing fulfills the requirements of the Fourth Rehearing Order.

The Commission orders:

(A) The Midwest ISO’s December 8, 2008 Compliance Filing is hereby accepted, as discussed in the body of this order.

(B) The Midwest ISO is required to file the revised tariff sheet discussed in the body of this order within 30 days of the date of this order.

By the Commission. Commissioner Moeller is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.