

138 FERC 61,148
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Demand Response Compensation in Organized
Wholesale Energy Markets

Docket No. RM10-17-002

ORDER NO. 745-B

ORDER DENYING REHEARING

(Issued February 29, 2012)

1. In this order, the Commission denies rehearing of Order No. 745-A.¹ Order No. 745-A denied rehearing and granted in part and denied in part clarification of Order No. 745.² Order No. 745 amended Commission regulations to require that a demand response resource participating in an organized wholesale energy market must be compensated for the service it provides at the market price for energy when the demand response resource has the capability to balance supply and demand as an alternative to a generation resource and when the dispatch of the demand response resource is cost-effective.
2. On January 17, 2012, Midwest Independent Transmission System Operator, Inc. (MISO) filed a request for rehearing in three separate proceedings, including the Order No. 745-A proceeding.³ MISO requests rehearing of the Commission's determinations

¹ *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745-A, 137 FERC ¶ 61,215 (2011).

² *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, FERC Stats. & Regs. ¶ 31,322 (2011).

³ The three proceedings are: Order on Compliance Filing for Order No. 719, Docket Nos. ER09-1049-000, -002, -003; Order on Compliance Filing for Order No. 745, Docket No. ER11-4337-000; and Order No. 745-A, Docket No. RM10-17-001.

on issues involving MISO's Marginal Foregone Retail Rate (MFRR),⁴ MISO's net benefits supply curve, and MISO's implementation timeframe of the accepted portions of its proposed demand response program.⁵

3. Of these issues, the only one MISO identifies as being related to Order No. 745-A is the MFRR issue.⁶ MISO argues, and then only briefly, that:

the rationale provided in the concurrently issued in [sic] Order No. 745-A on the same topic erroneously rejected the use of MFRR as an economic calculation performed by the RERRA. MISO respectfully requests that the Commission reverse its decision in Order No. 745-A to [sic] extent that the Order would preclude MISO from allocating costs associated with [Demand Response Resources Type I and Type II] through the proposed bifurcated cost allocation methodology.⁷

⁴ MISO describes the MFRR as a rate established by the relevant electric retail regulatory authority (RERRA) and assigned to an individual entity that registers a demand response resource. *See* MISO Request for Rehearing at 5-6. MISO proposes to use a bifurcated cost allocation methodology where the methodology first directly allocates costs to each load-serving entity and second utilizes a zonal energy surcharge. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,212, at P 77 (2011). For purposes of the direct allocation of costs, MISO states that it will use the MFRR to calculate the benefits realized by load-serving entities from “avoiding losses from selling energy to retail customers at their respective retail rates (i.e., the avoided loss benefit).” *MISO*, 137 FERC ¶ 61,212 at P 77.

⁵ *See* MISO Jan. 17, 2012 Request for Rehearing at 2. The Commission notes that on February 1, 2012, MISO filed a motion for extension of time in Docket No. ER11-4337-000 that duplicates its request to extend the implementation timeframe of the accepted portions of its proposed demand response program. The Commission will address that motion separately in Docket No. ER11-4337-000.

⁶ MISO also argues that all three orders, including Order No. 745-A, fail to resolve the “missing money” problem. *See* MISO Request for Rehearing at 9. However, MISO does not identify any specific finding on this point in Order No. 745-A to which it objects or which bears upon the MFRR.

⁷ MISO Request for Rehearing at 4.

MISO cites paragraph 65 of Order No. 745-A, in which the Commission did not address the MFRR, but merely affirmed a prior determination in Order No. 745. Specifically, the Commission stated:

[E]xamining cost avoidance by demand response resources is not consistent with the treatment of generation. In the absence of market power concerns, the Commission generally does not examine each of the costs of production for individual resources participating as supply resources in the organized wholesale electricity markets. The Commission has long held that payment of LMP to supply resources clearing in the day-ahead and real-time energy markets encourages more efficient supply and demand decisions in both the short run and long run, notwithstanding the particular costs of production of individual resources.[⁸]

4. The Commission denies rehearing with respect to the Order No. 745-A proceeding.⁹ Order No. 745-A did not address MISO's MFRR, or revise Order No. 745 with respect to MISO's MFRR. MISO did not identify any specific aspect of Order No. 745-A addressing the propriety of using the MFRR, nor did it explain how paragraph 65 relates to the MFRR issue. MISO's brief reference to Order No. 745-A, repeating the language of Order No. 745 quoted above, is not sufficient to disclose the basis of its rehearing request.¹⁰

5. Moreover, because the language in Order No. 745-A (paragraph 65) to which MISO cites merely affirmed a determination made in Order No. 745, if MISO objected to that determination, it properly should have sought rehearing of Order No. 745 on that

⁸ Order No. 745-A, 137 FERC ¶ 61,215 at P 65 (citing Order No. 745 at P 62).

⁹ MISO's request for rehearing concerning the other two proceedings identified in the caption of its filing will be considered in those proceedings.

¹⁰ See *Constellation Energy Commodities Group, Inc. v. FERC*, 457 F.3d 14, 22 (D.C. Cir. 2006) (finding a party failed to preserve its appeal because "[p]arties are required to present their arguments to the Commission in such a way that the Commission knows 'specifically . . . the ground on which rehearing [i]s being sought'"); *North Carolina v. FERC*, 112 F.3d 1175, 1192-1193 (D.C. Cir. 1997) (finding party had not preserved an issue for appeal when "petitioners' discussion of the issue in their request for rehearing was tucked away in a footnote in a paragraph primarily devoted to a discussion of ASR systems").

issue. Having failed to do so, MISO cannot now seek rehearing of that determination in the guise of a timely request for rehearing of the Order No. 745-A rehearing order.¹¹

6. Order No. 745-A also made clear that issues with respect to specific cost allocation compliance matters need to be addressed in the individual ISO/RTO compliance filings.¹² And so, MISO's arguments as to the other two proceedings it has identified will be addressed in those proceedings.

The Commission orders:

The request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹¹ See *Williston Basin Interstate Pipeline Co. v. FERC*, 475 F.3d 330 (D.C. Cir. 2006) (petitioner must seek timely rehearing of the order taking the agency action about which the petitioner complains); *Sierra Ass'n For Env't v. FERC*, 791 F.2d 1403, 1407 (9th Cir. 1986) (party that failed to timely seek either rehearing or review of one order is precluded from doing so under the guise of filing a request for rehearing of another order).

¹² See Order No. 745-A, 137 FERC ¶ 61,215 at P 75 (“RTOs and ISOs may have different cost allocation and measurement and verification programs. Each of these elements can be addressed on an individual basis through the RTO and ISO compliance filings.”).