

147 FERC ¶ 61,268
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

Midwest Independent Transmission
System Operator, Inc.

Docket Nos. ER12-678-001
ER12-678-002
ER12-678-003
EL14-58-000

ORDER GRANTING REHEARING, INSTITUTING SECTION 206 PROCEEDING,
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES AND
CONDITIONALLY ACCEPTING COMPLIANCE FILINGS

(Issued June 30, 2014)

1. On December 23, 2011, Midwest Independent Transmission System Operator, Inc. (MISO)¹ made two filings proposing revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff). In Docket No. ER12-678-000, MISO proposed to allocate an increased proportion of Revenue Sufficiency Guarantee (RSG) costs associated with resources committed for voltage or local reliability (VLR) requirements to the load in the Local Balancing Authority Area (Local BAA) that benefited from such commitments. In Docket No. ER12-679-000, MISO proposed a mechanism by which to mitigate the exercise of market power with regard to offers for resources committed to address VLR issues. The Commission, by order dated March 31, 2012,² accepted and suspended for five months both of MISO's filings, subject to the outcome of a technical conference and to further Commission order. The Commission

¹ Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

² *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,235 (2012) (March Order).

held the technical conference on May 15, 2012 and subsequently received briefs and reply briefs from the parties. In an order dated August 31, 2012,³ the Commission conditionally accepted MISO's proposals based on the entire record of the proceeding, including the technical conference and subsequent pleadings, and ordered a compliance filing.⁴

2. In this order, we grant the request for rehearing of the August Order filed in Docket No. ER12-678-001 and conditionally accept MISO's compliance filings submitted in Docket Nos. ER12-678-002 and ER12-678-003, subject to a further compliance filing. In addition, pursuant to section 206 of the Federal Power Act (FPA),⁵ we institute an investigation as to the just and reasonable allocation of VLR costs to pseudo-tied load in Docket No. EL14-58-000. We also establish hearing and settlement judge procedures, establish a refund effective date, and consolidate the instant proceedings for purposes of hearing and settlement judge procedures.

I. Background

3. Under section 39.3.2B of the Tariff, a generation or demand response resource receives day-ahead RSG credits if MISO commits it in the Day-Ahead Energy and Operating Reserve Markets and if the resource then receives insufficient Day-Ahead Energy and Operating Reserve revenues to cover its as-offered production and operating reserve costs. To fund these RSG credits, pursuant to section 39.3.1A of the Tariff, MISO assesses market participants a day-ahead RSG charge based on their cleared demand bids, virtual bids, and export schedules.

4. Under section 40.2.19 of the Tariff, a generation or demand response resource receives real-time RSG credits if MISO commits it through the Reliability Assessment Commitment process after the close of the Day-Ahead Energy and Operating Reserve Markets and if the resource then receives insufficient Real-Time Energy and Operating Reserve Market revenues to cover its as-offered production costs. To fund these RSG credits, pursuant to section 40.3.3 of the Tariff, MISO assesses market participants a real-

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 140 FERC ¶ 61,171 (2012) (August Order).

⁴ The Commission's decision in the March Order to suspend the effectiveness of the filings for five months means that although MISO requested an April 1, 2012 effective date for its proposed tariff revisions in both dockets, the effective date for the proposed tariff revisions was September 1, 2012.

⁵ 16 U.S.C. § 824e (2012).

time RSG charge based on their virtual supply offers and real-time load, injection, export, and import deviations from their day-ahead schedules both system-wide and at constraints.

5. In addition, Module D of the Tariff provides for mitigation of offers by resources in Narrow Constrained Areas and Broad Constrained Areas⁶ that fail both conduct and impact tests. MISO's conduct test determines whether a resource's offers differ from its reference levels by more than certain threshold amounts.⁷ The conduct test includes sets of thresholds for both economic withholding and uneconomic production. The economic withholding thresholds include price-based and non-price thresholds for increases in offer prices or other parameters from a resource's reference levels. The uneconomic production thresholds also apply price and non-price offer parameters, but are triggered by offers featuring decreases from reference levels or operation of units at above reference level capacity.

6. When resources fail the conduct test, MISO applies an impact test to determine whether their conduct substantially changes market prices or increases RSG payments. The impact test contains thresholds including a \$50 per MW per hour increase in the operating reserve prices, or day-ahead or real-time RSG credits.⁸ Offers failing the impact test are subject to mitigation under section 65 of Module D.

⁶ A Narrow Constrained Area is an electrical area identified by the Independent Market Monitor (Market Monitor) that is defined by one or more Binding Transmission Constraints or Binding Reserve Zone Constraints that are expected to be binding for at least 500 hours during a given twelve-month period and within which one or more suppliers are pivotal. A Broad Constrained Area is an electrical area in which sufficient competition usually exists even when there are one or more Binding Transmission Constraints or Binding Reserve Zone Constraints, or into which the Binding Transmission Constraints or Binding Reserve Zone Constraints bind infrequently, but within which a transmission or reserve constraint can result in substantial locational market power under certain market or operating conditions. Tariff, sections 63.4.1.a and 63.4.1.b.

⁷ A resource's reference level is a price estimate that is "intended to reflect a Generation Resource's or Stored Energy Resource's marginal costs, including legitimate risk and opportunity costs or justifiable technical characteristics for physical Offer parameters." Tariff, section 64.1.4; *see also* Tariff, section 1.544.

⁸ Tariff, section 64.2.1(d).

7. As described below, MISO and the Market Monitor identified the offer behavior of resources taken to meet VLR requirements as leading to large increases in RSG credits. Finding that the existing mitigation provisions had not been effective in addressing potential market power exercised by suppliers resolving local reliability requirements, MISO proposed mitigation revisions as well as cost allocation modifications. Since MISO made the December 2011 filings, the Market Monitor has continued to monitor the offer behavior of resources that are frequently accepted for VLR requirements and has found that “suppliers with resources committed for VLR have recently been offering consistent with offer reference levels.”⁹

II. Request for Rehearing in Docket No. ER12-678-001

A. August Order

8. The Commission found that it was reasonable to allocate the costs of VLR commitments to Local BAAs instead of pricing zones. The Commission noted that Local BAAs have responsibility for managing voltage and local reliability, and therefore found that an allocation of VLR costs to Local BAAs comports with cost causation. The Commission also explained that when the VLR issue is commercially significant¹⁰ and affects multiple Local BAAs, MISO will allocate the costs to the impacted Local BAAs such that any difference between transmission pricing zones and impacted Local BAAs might not be meaningful.¹¹

⁹ Market Monitor Technical Conference Presentation at 3.

¹⁰ A VLR commitment is “commercially significant” if: (1) the number of days for which a VLR issue has a resource committed to relieve it exceeds 90 days in a year or 15 days in two out of four quarters of the year; or (2) the sum of day-ahead and real-time RSG payments to resources to commit for a VLR issue exceeds \$800,000 in a year or \$200,000 in two out of four quarters of the year. MISO Technical Conference Presentation at 31. The cost of a commercially significant VLR commitment is allocated more broadly to include neighboring Local BAAs.

¹¹ August Order, 140 FERC ¶ 61,171 at P 83.

9. The Commission found that MISO's proposal, which would allocate RSG costs related to VLR commitments to pseudo-tied load,¹² was reasonable since the Local BAA of the host load is responsible for voltage management in the pseudo-tied Local BAA.¹³ Such a requirement applies to all pseudo-tied load, including remote pseudo-ties, such as those discussed in Midwest Transmission Dependent Utilities' (Midwest TDUs)¹⁴ protest.¹⁵

B. Request for Rehearing

10. WPPI filed a request for rehearing of the August Order in Docket No. ER12-678-001 raising an issue concerning cost allocation. WPPI requests the Commission grant rehearing to require that VLR RSG costs be allocated to loads in the Schedule 2 pricing zones where responsibility for responding to localized thermal and voltage constraints

¹² Load that is pseudo-tied is effectively transferred from a source Local BAA (the Local BAA in which that load is physically located) to a different host Local BAA (i.e., sink Local BAA) even though no physical tie exists for the transfer. The pseudo-tie uses a telemetered value that is updated in real-time and reflected in the Area Control Error equation of the source and host Local BAAs.

¹³ August Order, 140 FERC ¶ 61,171 at P 87 n.101 (citing MISO Post-Technical Conference Reply Comments at 13).

¹⁴ The Midwest TDUs include Madison Gas and Electric Company, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services and WPPI Energy (WPPI).

¹⁵ During the proceeding, Midwest TDUs explained:

[WPPI] currently has more than 400 MW of load that is pseudo-tied into the Wisconsin Electric [Local BAA]. While these loads are physically located in two other [Local BAAs], for purposes of MISO's VLR RSG cost allocation proposal they would be counted as being within the [Wisconsin Electric Local BAA]. Under MISO's proposal, WPPI would be allocated a share of cost responsibility for VLR commitments in the [Wisconsin Electric Local BAA] on the basis of approximately twice the amount of load that it physically has in the [Wisconsin Electric Local BAA.]

Post-Technical Conference Comments of Midwest TDUs at 7.

actually occur rather than allocate VLR RSG costs to Local BAAs, as proposed by MISO.¹⁶

11. WPPI states that MISO's proposal to allocate VLR RSG costs to the metered load of a Local BAA, including load pseudo-tied into that Local BAA, violates cost causation, and therefore is not reasonable as it pertains to the pseudo-tied load of WPPI and other Midwest TDUs.¹⁷ WPPI notes that its load is pseudo-tied into the Wisconsin Electric Local BAA, which is the Local BAA in which the majority of VLR RSG costs have been incurred to date.¹⁸ WPPI notes that the Commission stated, based on MISO's Post-Technical Conference Comments, that MISO's proposal was consistent with cost causation because the host Local BAA of the pseudo-tied load is responsible for voltage management.¹⁹ According to WPPI, MISO claimed, with no citation or evidentiary support, that in the "exceptional" circumstance of load that is pseudo-tied from one Local BAA to another within MISO, the host Local BAA into which the load is pseudo-tied assumes the responsibility for providing that load with voltage management service.²⁰

12. WPPI states that the Commission mistakenly accepted MISO's sweeping assertion as the sole basis for the Commission's ruling, without even acknowledging, much less attempting to reconcile the conclusion, with a contrary showing made by Midwest TDUs. WPPI states that Midwest TDUs refuted MISO's assertion that the new host Local BAA always takes responsibility for providing voltage management service to loads pseudo-tied into the Local BAA area.²¹ WPPI contends that voltage management service means

¹⁶ WPPI Request for Rehearing at 6. Schedule 2 pricing zones, referred to by WPPI, are the bases for allocating the revenue requirements of generators providing reactive power under Schedule 2, Reactive Supply and Voltage Control Service, of the MISO Tariff.

¹⁷ WPPI states that the central premise of MISO's proposal to allocate the costs of VLR RSG to Local BAAs was that voltage and "local" reliability issues are limited in geographical scope and that costs should be allocated to the customers that cause them to be incurred or who otherwise benefit from their incurrence. *Id.* at 2-3.

¹⁸ WPPI Request for Rehearing at 4.

¹⁹ *Id.* at 3 (citing August Order, 140 FERC ¶ 61,171 at P 87).

²⁰ *See* MISO Post-Technical Conference Reply Comments at 12-13.

²¹ WPPI Request for Rehearing at 4 (citing Midwest TDUs June 27, 2012 Motion for Leave to Reply and Reply to MISO's Post-Technical-Conference Reply Comments).

service under Schedule 2 of the Tariff.²² WPPI explains that Midwest TDUs showed that MISO's description of Schedule 2 cost responsibility is not true with respect to the portion of WPPI's load that is pseudo-tied into a Local BAA from a distant Local BAA.²³ WPPI states that its load is pseudo-tied into the Wisconsin Electric Local BAA, but Wisconsin Electric does not provide Schedule 2 service to WPPI.²⁴ Rather, WPPI states that it receives this service from the Local BAA in whose area WPPI's pseudo-tied load physically resides and pays the corresponding zone-specific Schedule 2 rate applicable to the Local BAA.²⁵

13. WPPI states that MISO did not dispute WPPI's arrangement for Schedule 2 service in its July 3, 2012 Answer to Midwest TDUs' June 27 reply. Instead, WPPI states, MISO raised a new claim that it would require a significant investment in technical infrastructure to submit another set of billable meter data. WPPI notes that Midwest TDUs disputed that significant investment would be required. WPPI states that if the Commission is concerned about this, the Commission should provide an opportunity for further input on the topic so that it may make a reasoned decision based on information from all the affected parties.²⁶

²² *Id.* (“[f]or WPPI's load that is pseudo-tied into the Wisconsin Electric [Local BAA] (almost all of which is located at a substantial distance from the boundary), Wisconsin Electric does *not* provide Schedule 2 service. Rather, the obligation to provide Reactive Supply and Voltage Control service remains with the [Local BAA] in whose area WPPI's pseudo-tied load physically resides” (emphasis in original)). WPPI also states that MISO raised this argument to support charging pseudo-tied load only after WPPI contested earlier arguments raised by MISO. Specifically, while MISO claimed during the proceeding that the costs to pseudo-tied load would be *de minimis*, WPPI states that Midwest TDUs showed during the proceeding that the impact to WPPI would be significant. Moreover, while MISO stated that it did not expect a large amount of load to be pseudo-tied in the future, WPPI states that the argument is irrelevant to the discussion of whether the allocation of VLR costs to existing pseudo-tied load is reasonable. *Id.* at 3 n.4.

²³ WPPI states that MISO's description of Schedule 2 cost responsibility for pseudo-tied load may be true in many cases involving load located along a boundary between two areas. WPPI Request for Rehearing at 4.

²⁴ *Id.*

²⁵ *Id.* at 4-5.

²⁶ *Id.* at 5 n.8.

C. Commission Determination

14. We grant WPPI's request for rehearing of the August Order, on the basis that we erred in finding that MISO had met its burden under FPA section 205 of showing that its proposal as to how to allocate VLR-related RSG costs to pseudo-tied load is just and reasonable. The Commission found in the August Order that MISO's proposal regarding the cost allocation for VLR-related RSG costs was just and reasonable, on the basis that loads in the Local BAA are the primary beneficiary of VLR commitments, and therefore MISO's proposed cost allocation that allocates these costs predominantly to loads in the Local BAA is reasonable and consistent with Commission precedent.²⁷ MISO has relied throughout this proceeding on its position that "MISO's business practices allow Load to be pseudo-tied into [a Local BAA] other than the one where it is located *in order to facilitate scheduling and settlements*,"²⁸ and that "[i]n such exceptional situations . . . the host [Local BAA] into which the Load is pseudo-tied assumes the responsibility for providing that Load with Reactive Supply and Voltage Control." MISO asserts that "[o]n this basis, it is . . . just and reasonable, to assign costs based on a Market Participant's choice to represent the Load as a pseudo-tie in the Commercial Model."²⁹

15. MISO's broad statement on this question is consistent with prior Commission rulings.³⁰ However, parties have raised concerns here that suggest that, in some

²⁷ August Order, 140 FERC ¶ 61,171 at P 78.

²⁸ MISO Post-Technical Conference Reply Comments at 12 (emphasis added) (citing Section 3.1.2 of MISO's Business Practice Manual for Network and Commercial Models, BPM-010-r3, "In some instances, Market Participants may wish to consolidate Loads into one Load Zone for the loads that are on the periphery of the Local [BAA]. This implementation is done in the Network Model by pseudo-tying loads from one Local [BAA] to another. This implementation redefines the Load boundary of both Local [BAA].").

²⁹ *Id.* at 12-13.

³⁰ See *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, at P 631 (2007) ("Under a pseudo-tie, the control area receiving the new load or generation signal assumes responsibility for ensuring that the load is properly balanced moment-to-moment, for planning for the load, and for providing various other ancillary services including energy or generator balancing service"); *Cal. Indep. Sys. Operator, Inc.*, 142 FERC ¶ 61,072, at P 10 n.12 (2013) ("A pseudo-tie is a functionality where the output of a generating unit physically located in one balancing authority area is deemed to be produced in a different balancing authority area. The balancing authority area where the pseudo-tied generator is deemed to be

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circumstances, an exception to that broad general policy might be necessary to render the allocation of VLR costs to pseudo-tied load just and reasonable, and MISO has failed to provide sufficient information to determine whether or not this is the case. Parties to this case have asserted that allocation of the costs of VLR commitments to the Local BAAs into which that load is pseudo-tied might not be just and reasonable. In a filing prior to the technical conference in this docket, Midwest TDUs stated that:

Midwest TDU member WPPI Energy . . . has approximately 410 MW of load that is pseudo-tied into the Wisconsin Electric [Local BAA] which is the very [Local BAA] in which VLR commitments have already resulted in RSG costs so high as to spur MISO to make its filing in this proceeding.³¹ WPPI Energy has approximately 425 MW of load physically located in the Wisconsin Electric [Local BAA], which at least arguably could be said to contribute to the need for (or benefit from) such VLR commitments. However, under MISO's proposal, its allocation of cost responsibility for such VLR commitments would be based on the full 835 MW of *metered* load that is included in the Wisconsin Electric [Local BAA], including the pseudo-tied load that physically resides in other [Local BAAs]. In short, its share of the VLR commitment costs in this [Local BAA] would nearly double as a result of the pseudo-tie.³²

16. Midwest TDUs also argued that, although MISO claimed that it did not anticipate any significant cost shifting through the MISO footprint as a result of pseudo-tie modeling, at the technical conference, MISO's representative could not "point to any data

produced is known as the 'attaining' balancing authority area. The attaining balancing authority area takes operational control of the pseudo tied generator, despite its physical location in a different balancing authority area.'").

³¹ As noted in the March Order, resources committed for VLR issues on the transmission system resulted in associated RSG costs that increased from approximately \$500,000 in 2009 to \$29 million in 2010, and, according to MISO's Market Monitor, this increase was due primarily to more than \$25 million in payments made from September to December to units that were committed routinely to resolve a local voltage issue in Wisconsin and the Upper Peninsula of Michigan. March Order, 138 FERC ¶ 61,235 at P 8 n.5.

³² Midwest TDUs Answer at 3.

or analyses – or even review of existing pseudo-tie configurations within the region – behind MISO’s assertion that its VLR RSG cost allocation proposal would not have a significant effect on pseudo-tied load [and] . . . would not even admit that MISO *could* study the impact on load that is currently pseudo-tied from one [Local BAA] to another.”³³ MISO has not disputed this statement; rather, MISO has suggested that it disagrees with the proposal to allocate costs based on physical location because currently, “Market Participants report billable metered data for Loads at the Commercial Pricing Node level, which can only exist in one [Local BAA] Area *under current business practices and system capabilities*.”³⁴ MISO stated that allocating costs to load based on that load’s physical location “would require significant investment in technical infrastructure for MISO and Market Participants to submit another set of billable meter data.”³⁵ This statement suggests that, in situations where load is pseudo-tied to a remote Local BAA, MISO does not gather enough information about the manner and extent to which the host Local BAA manages voltage and local reliability commitments to meet the needs of its pseudo-tied load to demonstrate whether MISO’s cost allocation practice is just and reasonable.

17. Midwest TDUs also asserted that MISO’s position that pseudo-tied load is receiving Reactive Supply and Voltage Control services from its host Local BAA under Schedule 2 is not accurate with regard to WPPI’s load that is pseudo-tied to the Wisconsin Electric LBA. Midwest TDUs stated:

For this load, Schedule 2 pricing zones correspond to historic – not metered – [Local BAAs], and WPPI pays the zone-specific Schedule 2 rate for each [Local BAA] in which WPPI’s load is physically located, without regard to pseudo-tie arrangements. This cost-allocation arrangement is necessary to achieve appropriate outcomes because reactive power must be supplied locally since it cannot be effectively transported over long distances, and several of the pseudo-

³³ Midwest TDUs Post-Technical Conference Comments at 7-8.

³⁴ MISO Response to Wisconsin Electric Supplemental Confidential Post-Technical Conference Appendix and Midwest TDUs Reply Comments at 4 (emphasis added).

³⁵ *Id.*

tied WPPI loads are geographically remote from the Wisconsin Electric [Local BAA] area.³⁶

18. WPPI similarly argued in its request for rehearing that:

[While] reactive power must be supplied locally since it cannot be effectively transported over long distances, . . . if there were [a Load Serving Entity] with loads physically located near the Upper Peninsula constraints that are giving rise to the vast majority of VLR RSG costs, but which are pseudo-tied into a distant LBA area, this [Load Serving Entity] would avoid paying its fair share of the VLR RSG costs. The physical location of its loads is what drives the need for MISO to commit units to supply reactive power to address the local voltage problem, yet the RSG costs would be billed (or, in this case, not billed) based on the pseudo-tied location of the loads.³⁷

19. MISO has failed to respond to, or provide any data responding to, these concerns raised by Midwest TDUs. This creates the possibility that costs of VLR commitments may not be allocated consistently with cost causation in some situations. We therefore find that MISO has not met its burden of demonstrating that all of the cost allocation provisions of its original filing are just and reasonable, and we grant WPPI's request for rehearing, with regard to the narrow question of whether it is just and reasonable to allocate the costs of VLR commitments made in the host Local BAA to load that is physically located outside the host Local BAA, but is contractually pseudo-tied to it. Whether the cost allocation is reasonable will be based on whether the host Local BAA (in fact) is responsible for voltage and local reliability for that pseudo-tied load, and/or whether pseudo-tied load obtains a benefit from the VLR commitments in the host LBA.

20. We find that MISO's proposal as to the allocation of VLR costs to pseudo-tied load raise issues of material fact that cannot be resolved based on the record before us and will institute hearing and settlement judge procedures to address these issues. We find, based on parties' arguments on rehearing, that MISO's proposed cost allocation for pseudo-tied load has not been shown to be just and reasonable and may be unjust,

³⁶ Midwest TDUs Reply to MISO Post-Technical Conference Reply Comments at 3.

³⁷ WPPI Request for Rehearing at 5 n.7.

unreasonable, and unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will grant rehearing to provide a forum for parties to address this issue.

21. Because the Commission accepted MISO's cost allocation without suspension or setting it for hearing, we will institute a section 206 proceeding, in Docket No. EL14-58-000, with a refund effective date. In addition, because this investigation will involve issues of material fact, we will set the matter for a trial-type evidentiary hearing.

22. In cases where, as here, the Commission institutes a section 206 investigation on its own motion, section 206(b) of the FPA requires that the Commission establish a refund effective date that is no earlier than publication of the notice of the Commission's initiation of its investigation in the *Federal Register*, and no later than five months after the publication date. We will establish as a refund effective date the earliest date possible in order to provide maximum protection to customers, i.e., the date the notice of the initiation of the investigation in Docket No. EL14-58-000 is published in the *Federal Register*.

23. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within nine months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, by March 30, 2015. Thus, we estimate that if the case were to go to hearing immediately, we would be able to issue our decision within approximately six months of the filing of briefs on and opposing exceptions, or by November 30, 2015.

24. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.³⁸ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.³⁹ The settlement judge

³⁸ 18 C.F.R. § 385.603 (2013).

³⁹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of the date of this order. The Commission's website contains a list of Commission judges available

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shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

25. In light of the common issues of law and fact presented in Docket Nos. ER12-678-001 and EL14-58-000, we will consolidate the two proceedings for purposes of settlement, hearing and decision.

III. Compliance Filings in Docket Nos. ER12-678-002 and ER12-678-003

A. August Order

1. VLR Commitment Definition

26. In the August Order, the Commission noted that the definition of VLR Commitment was a threshold issue in both Docket Nos. ER12-678-000 and ER12-679-000 because it was essential for the application of proper cost allocation and mitigation thresholds.⁴⁰ The Commission found that MISO's proposed definition, as modified by the Commission, was reasonable and offered MISO the flexibility it needs to remedy voltage and local reliability problems for which it makes commitments.⁴¹ The Commission required MISO to file in a compliance filing a revised definition for VLR Commitment as follows:⁴²

A Transmission Provider issued Resource commitment in addition to, or in lieu of, commitments resulting from the Security Constrained Unit Commitment in the Day-Ahead Energy and Operating Reserve Market or any Reliability Assessment Commitment, in order to mitigate issues with Transmission System voltage or other local reliability concerns. These Resource commitment requirements are established prior to or during an Operating Day and are based

for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

⁴⁰ August Order, 140 FERC ¶ 61,171 at P 21.

⁴¹ *Id.* P 43.

⁴² *Id.* P 54 (bolded and struck-out text in original).

on projected ~~system~~ **local** reliability requirements, operational considerations, and generation and transmission outages. **VLR commitments will be based on Operating Guides for recurring voltage and local reliability requirements, but an Operating Guide is not required prior to a resource commitment being designated as a voltage and local reliability commitment.** ~~Resource commitments to manage congestion on facilities below voltage levels of 100 kV will be designated in this category.~~ Resource commitments to relieve a potential or actual [Interconnection Reliability Operating Limits (IROL)⁴³] violation will not be designated in this category.

2. VLR Cost Allocation

27. The Commission conditionally accepted MISO's proposed allocation of RSG costs related to VLR issues, subject to MISO filing a compliance filing to reflect specific changes discussed in the order. The Commission found that local load is the primary beneficiary of VLR commitments, and that MISO's proposed cost allocation of these costs predominantly to local load is reasonable.⁴⁴

28. The Commission found that the Market Monitor's study is a reasonable method to account for any discernible regional benefit of the VLR commitments⁴⁵ and the results of the Market Monitor study are reasonable for the commencement of the cost allocation

⁴³ The North American Electric Reliability Corporation defines Interconnection Reliability Operating Limit as the value (such as MW, MVar, Amperes, Frequency or Volts) derived from, or a subset of the System Operating Limits, which if exceeded, could expose a widespread area of the Bulk Electric System to instability, uncontrolled separation(s) or cascading outages.

⁴⁴ August Order, 140 FERC ¶ 61,171 at P 78.

⁴⁵ After MISO determines the total cost for VLR commitments, it determines the portion of those VLR commitment costs that pertain to regional benefits such as meeting market-wide capacity requirements through a periodic study conducted by the Market Monitor. The Market Monitor study calculates the portion of total VLR commitment costs to allocate locally and the portion to allocate market-wide to reflect the regional benefits. The initial Market Monitor study indicates that 8 percent of the total VLR commitment costs should be allocated regionally with the remaining 92 percent subject to the proposed local cost allocation. *Id.* P 66, n.79.

proposal.⁴⁶ However, the Commission expressed concern about the timing of, and data to be used in, future revisions to the study. The Commission directed MISO to update the study periodically (i.e., quarterly) using a rolling 12 months of data and to explain the study process in more detail in its Tariff.⁴⁷

29. The Commission accepted MISO's proposal to allocate costs associated with commercially significant VLR commitments on a more refined basis than the Local BAA, as defined by a study. However, the Commission noted that MISO proposed to use its own discretion using criteria set forth in Business Practice Manuals to determine when a VLR commitment is commercially significant. Because the criteria and process to identify a commercially significant VLR commitment will significantly affect rates, the Commission directed MISO to revise the Tariff to incorporate the criteria and process for determining when a VLR issue is commercially significant.⁴⁸ The Commission clarified that these required revisions also need to specify a process for notifying market participants potentially impacted by MISO's determination of commercially significant VLR commitments.⁴⁹

30. Moreover, while the Commission found that based on the entirety of the record, MISO had demonstrated that its studies are a reasonable basis for allocation of these local reliability costs, the Commission required MISO to file a compliance filing to revise the Tariff. The Commission directed MISO to revise the Tariff to contain a sufficient description of the study process, including the methodology, inputs and periodicity.

⁴⁶ *Id.* P 79.

⁴⁷ The Market Monitor explained its study process in the submitted testimony and its answers at the technical conference; however, the Tariff did not contain a corresponding discussion of the study methodology. With a discussion of the process in the Tariff, MISO need not include the resulting percentage split in the Tariff, but need only identify the location on MISO's Open Access Same-Time Information System (OASIS) where the resulting percentage split can be found. *Id.* n.94.

⁴⁸ August Order, 140 FERC ¶ 61,171 at n.96 (citing *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (requiring utilities to file "only those practices that affect rates and service significantly, that are reasonably susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous"); *Cal. Indep. Sys. Operator Corp.*, 122 FERC ¶ 61,271 (2008) (assessing whether certain business practice manual provisions significantly affect rates, terms and conditions, and, therefore, must be included in a tariff)).

⁴⁹ August Order, 140 FERC ¶ 61,171 at P 80.

Additionally, the Commission required MISO to modify the Tariff to allow Local BAAs and other interested stakeholders to participate in the study process, as MISO agreed to do during the technical conference, and to clarify in the Tariff that the study assumptions and results will be posted.⁵⁰

31. In its answer, MISO agreed to make several small editorial changes that MidAmerican Energy Company (MidAmerican) identified in its protest. The Commission directed MISO to make the changes as discussed in MISO's answer.⁵¹

3. VLR Mitigation

32. The Commission conditionally accepted MISO's proposed revisions to the uneconomic production threshold, the economic withholding threshold and the market impact threshold, noting that there was no opposition to MISO's proposed new mitigation thresholds.⁵² To clarify that VLR mitigation measures are applicable for the duration of the VLR commitment period, the Commission directed MISO to revise the economic withholding threshold to state "Economic withholding of Generation Resources needed for Voltage and Local Reliability may warrant mitigation for the duration of their commitment periods...."⁵³

33. With respect to concerns regarding the applicability of MISO's proposed VLR mitigation provisions outside of Narrow Constrained Areas and Broad Constrained Areas, the Commission found that MISO intended for VLR mitigation to extend to the entire MISO footprint. It also found that the application of VLR mitigation throughout the MISO footprint is just and reasonable, but agreed with MidAmerican that existing provisions in Module D of the Tariff may limit mitigation to Narrow Constrained Areas and Broad Constrained Areas. Accordingly, the Commission directed MISO to, in its compliance filing, either explain why existing Module D provisions do not limit mitigation to Narrow Constrained Areas and Broad Constrained Areas or propose revisions to such provisions to the extent necessary to enable VLR mitigation throughout the MISO footprint.⁵⁴

⁵⁰ *Id.* P 81.

⁵¹ *Id.* P 88.

⁵² *Id.* P 116.

⁵³ *Id.* P 123.

⁵⁴ *Id.* P 128.

34. The Commission found the proposed clean-up revisions that MidAmerican proposed, and to which MISO agreed, to be reasonable.⁵⁵ The Commission also directed MISO to replace “total production costs” in section 64.1.2.g.i with “Production Cost and Operating Reserve Cost.”⁵⁶

B. MISO’s Compliance Filings

35. On October 1, 2012, MISO filed a compliance filing (October 1 Filing) in Docket No. ER12-678-002 to address the compliance requirements set forth in the August Order. MISO revised the definition of the VLR Commitment to be consistent with the definition the Commission instructed MISO to incorporate into the Tariff. It also revised sections 40.1.4.c and 40.1.A.3c of the Tariff to provide procedures to inform market participants of their VLR status for the next operating day.

36. Additionally, MISO proposed to revise the Tariff to include a new Schedule 44, Voltage and Local Reliability Commitment Allocation Study and commercially significant VLR Issue Study. Proposed Schedule 44 required the use of a rolling twelve months of data for the Market Monitor study, explained the detailed step-by-step study process,⁵⁷ and identified the location on MISO’s OASIS where the resulting percentage split of costs could be found.⁵⁸ MISO also proposed to revise the Tariff to provide the criteria and process used in the studies to determine if a VLR issue is commercially significant. MISO proposed to allow stakeholders to participate in the study process and to make several other small editorial changes requested by protesting parties.

37. Moreover, MISO proposed to revise the Tariff to clarify that the VLR mitigation measures are applicable for the duration of the VLR commitment period, regardless of when the VLR concerns are satisfied. Additionally, while the Commission ordered MISO to clarify that VLR mitigation measures are applicable throughout the footprint

⁵⁵ These edits included replacing “Market Participant submitted Generation Offer” with “Generation Offer” in section 64.1.2.g.i, replacing “Reference Level Generation Offer for a Generation Resource” with “Reference Level Generation Offer” section 64.1.2.g.i, and replacing “Generation Resource Voltage and Local Reliability Commitments” with “Voltage and Local Reliability Commitments” in sections 64.2.1.d and 64.2.1.f.

⁵⁶ August Order, 140 FERC ¶ 61,171 at P 129.

⁵⁷ *Id.* P 79.

⁵⁸ *Id.* n.94.

and are not limited to just Narrow Constrained Areas and Broad Constrained Areas, MISO stated that MISO and the Market Monitor believed that no changes were necessary. MISO explained that the proposed uneconomic production thresholds in section 64.1.2.g and market impact thresholds in section 64.1.2.f are separate from the existing Narrow Constrained Area and Broad Constrained Area mitigation authority. MISO stated that Narrow Constrained Area and Broad Constrained Area mitigation authority does not limit the scope of VLR mitigation to Narrow Constrained Area and Broad Constrained Areas. It adds that for purposes of evaluation of conduct and impact for mitigation of RSG payments, the Tariff's provisions on Broad Constrained Area, Narrow Constrained Area and VLR Commitment mitigation are independent of each other, and the exercise of each mitigation authority is separate from the others (i.e., each commitment is separately identified as being required to resolve a Broad Constrained Area, Narrow Constrained Area or VLR constraint). Accordingly, MISO stated that VLR mitigation can be pursued independently of the geographic parameters of Broad Constrained Area and Narrow Constrained Area mitigation.

38. On October 16, 2012, MISO filed a compliance filing (October 16 Filing) in Docket No. ER12-678-003 to address two compliance issues it did not address in the October 1 Filing. Specifically, MISO added revisions to sections 40.3.3.a.xviii and 64.1.2.g.i of the Tariff that were required in paragraph 129 of the August Order.⁵⁹ MISO also corrected the spelling of Transmission Provider in section 40.3.3.a.xviii and revised section 64.1.2.g.i to replace "total production costs" with "Production Costs and Operating Reserve Cost."

C. Notices and Responsive Pleadings

39. Notice of the October 1 Filing was published in the *Federal Register*, 77 Fed. Reg. 62,504 (2012), with interventions and protests due on or before October 22, 2012. Notice of the October 16 was published in the *Federal Register*, 77 Fed. Reg. 64,976 (2012), with interventions and protests due on or before November 6, 2012. Midwest TDUs and MidAmerican filed protests to the compliance filings. MISO filed an answer and Midwest TDUs filed a reply to MISO's answer.

1. Study Participation for Cost Allocation Purposes

40. Midwest TDUs argue the Commission should require modifications to MISO's new Schedule 44. Midwest TDUs state that each quarterly study will evaluate all VLR issues for potential designation as commercially significant. Thus, the only value in being able to request a study of a particular VLR issue is to expedite such consideration

⁵⁹ See n.61, *infra*.

rather than waiting for the quarterly study. Midwest TDUs ask the Commission to direct MISO to modify Schedule 44 to provide that studies of potentially commercially significant VLR issues will be performed between quarterly studies at the request of a Local BAA or other interested party.⁶⁰

41. Midwest TDUs also argue that MISO has not complied with the requirement to make the study process open and transparent. Midwest TDUs state that MISO was ordered to modify the Tariff to allow Local BAAs and other interested stakeholders to participate in the study process and to clarify in the Tariff that the study assumptions and results will be posted.⁶¹ Midwest TDUs state that while the compliance filings indicate that MISO will post the study results, the proposed Tariff revisions do not say anything about the study assumptions. Moreover, Midwest TDUs state that based on informal communications with MISO representatives, MISO has no intention of posting the assumptions underlying its studies of commercially significant VLR issues. Midwest TDUs argue that these assumptions are important and need to be disclosed.⁶² They state that given the Commission's finding that regional market flows may contribute to the need for VLR commitment, using an unduly narrow closed-loop interface could misallocate the costs associated with a VLR issue.

42. Midwest TDUs also argue that revisions need to be made to section C of Schedule 44, which provides for interested stakeholders to participate in studies "in accordance with procedures described by the Transmission Provider in a Business Practice Manual." Midwest TDUs state that they can find no such Business Practice Manual and it appears that MISO is not currently preparing one. They argue that if there is no such Business Practice Manual, then the reference should be deleted; if there will be such a Business Practice Manual, then it should be developed quickly and identified in the Tariff; and most importantly, any such Business Practice Manual must ensure interested parties a meaningful opportunity to participate in the development of VLR-related studies.⁶³

⁶⁰ Midwest TDUs Protest at 2-3.

⁶¹ *Id.* at 3 (citing August Order, 140 FERC ¶ 61,171 at P 81).

⁶² For example, Midwest TDUs state that MISO may be using an unduly narrow closed-loop interface to define the load affecting any given VLR issue which would exclude from the analysis any impacts of flows across a load pocket to load in surrounding areas. Midwest TDUs Protest at 4 (citing Midwest TDUs January 13, 2012 Protest at 8, n.13).

⁶³ *Id.* at 3-5.

43. MISO, in its answer, disagrees with Midwest TDUs' assertion that requested studies of situations that may qualify as commercially significant VLR Issues should be performed in between quarterly scheduled studies of such issues, so that an issue arising during a quarter can be addressed immediately. MISO maintains that such studies should be wrapped into the quarterly study process for determining commercially significant VLR Issues and their resulting VLR Local BAA Share percentages, because this process depends on the quarterly Energy Management System (EMS) model update. As described in Schedule 44, once a commercially significant VLR Issue is identified, the VLR-related Interface is built into MISO's EMS model during its quarterly update. MISO states that model updates outside the normal quarterly schedule are reserved for emergency corrections necessary "to ensure reliable operation of the MISO Transmission System and Market Operations," which do not include cost allocation issues. MISO adds that Schedule 44 currently requires a VLR Issue to exceed thresholds on either an annual level or in two out of four quarters of the year to be considered commercially significant.⁶⁴

44. MISO states that if the Commission so directs, MISO would, in consultation with its stakeholders, consider modifying the existing commercially significant VLR Issue study protocols to include a criterion of commercially significant based on a single quarter of data. MISO would designate a VLR Issue as commercially significant if a single quarter of Day-Ahead and VLR-related Real-Time RSG Make-Whole Payments exceeded \$400,000, or if a resource was committed for more than 45 days to relieve a VLR Issue. MISO explains that this change to the criteria would allow MISO to include a new commercially significant VLR Issue in the next quarterly model update rather than waiting until the VLR Issue meets the two-out-of-four-quarters criteria.⁶⁵

45. Regarding the editorial changes suggested by Midwest TDUs, MISO agrees that amending Schedule 44, Part B, Step 3.c to include the phrase, "or an interested Market Participant," would ensure consistency between Schedule 44 and section 1.74a of the Tariff's definition of the term commercially significant Voltage and Local Reliability Issue. Therefore, MISO agreed to add that language to Schedule 44 as part of a further compliance filing, if so directed by the Commission.⁶⁶

46. MISO disagrees with Midwest TDUs' argument that MISO's study process is insufficiently open and transparent. MISO states that along with providing significant

⁶⁴ MISO Answer at 3-4.

⁶⁵ *Id.* at 4.

⁶⁶ *Id.* at 4-5.

detail regarding the input data, assumptions, and study process in Schedule 44 of the Tariff, MISO posts the results of the study process, along with relevant data that can be provided publicly, on its website. MISO explains that the documents it posts include such information as: the Study Period, the commercially significant VLR Issue names, and the associated Local BAA Share percentages. MISO also includes the Interface constraint name that is built into the EMS model and the load CPNodes⁶⁷ for the most recent model updates that are affected by the VLR Issue. MISO states that it also posts the associated percentage for each load CPNode to show the percentage of Load each load CPNode contributes to the total Adjusted Load Volume.

47. MISO argues that much of the data it uses to conduct the study is at such a granular level that providing the data publicly would violate the Tariff's confidentiality requirements, including those regarding Critical Energy Infrastructure Information. In coordination with its Market Monitor, MISO has conducted a detailed review of all data points used to determine the commercially significant VLR Issue and Local BAA Share percentages to determine what data is confidential or could be used to derive Confidential Information. As a result of this review, MISO currently provides all data associated with the determination of a commercially significant VLR Issue and Local BAA Share percentages that can be publicly provided without violating the Tariff's confidentiality and Critical Energy Infrastructure Information restrictions.

48. Further, according to MISO, in conformance with the changes to the definition of VLR Commitment that were required by the August Order, MISO bases all VLR commitments on Operating Guides, or it will create an Operating Guide should one not already exist, for recurring VLR Issues. Additionally, Operating Guides are created by MISO with the assistance of the Transmission Operator. MISO states that the interface constraint that is used to define the transmission facilities that comprise a commercially significant VLR Issue is defined within the Operating Guide. Given the process used to create an Operating Guide and the requirement that a VLR Commitment be supported by an Operating Guide, MISO believes that any discretion that may be employed when defining an interface constraint is balanced by the Transmission Operator input. To the extent that a Local BAA is also a Transmission Operator, it would work with MISO in defining the Operating Guide.⁶⁸

⁶⁷ A CPNode is an Elemental Pricing Node or an Aggregate Price Node in the Commercial Model used to schedule and settle Market Activities. Commercial Pricing Nodes include Resources, Hubs, Load Zones and/or Interfaces.

⁶⁸ MISO Answer at 5-6.

49. Finally, MISO acknowledges that there is a reference to a Business Practice Manual in Schedule 44, section C. MISO does not object to including in the Tariff, rather than a Business Practice Manual, the way in which a Local BAA or other interested party may participate in the commercially significant or Local BAA Share studies. Therefore, MISO proposes to update Schedule 44, section C to read: “[Local BAAs] and interested Market Participants may participate in the above studies by requesting that reoccurring VLR Commitments be studied to determine if they meet the criteria of a Commercially Significant VLR Issue and those requests will be handled as part of the quarterly study process.”⁶⁹

50. Midwest TDUs reply that MISO’s answer confirms that it plans to roll any request to study a potential commercially significant VLR issue into the normal quarterly study process, which renders meaningless the requirement to allow parties to request a study.⁷⁰ Midwest TDUs also state that only minimal study results will be posted, and MISO has no intention of posting the assumptions underlying its studies despite the Commission’s express directive to do so. They contend that this means that MISO has not complied with the requirements to make the study process open and transparent.⁷¹ Midwest TDUs also argue that MISO does not intend to permit Market Participants to actually participate in studies despite the Commission’s directive to do so.⁷² Midwest TDUs state that if MISO didn’t want to comply with the Commission directives it should have requested rehearing, but MISO did not do that, such that its attempts to avoid compliance constitute a collateral attack on the August Order and should be rejected.⁷³

⁶⁹ *Id.* at 7.

⁷⁰ Midwest TDUs Reply at 2 n.3.

⁷¹ Midwest TDUs state that MISO frequently posts confidential and Critical Energy Infrastructure Information on a portion of MISO’s website that limits access. They state that MISO does not need to post the confidential and Critical Energy Infrastructure Information on MISO’s public site, but MISO cannot justify failing to post such information at all. Midwest TDUs Reply at 3.

⁷² Midwest TDUs oppose MISO’s proposal in its answer to revise Schedule 44, Section C to allow Local BAAs and Market Participants to participate in a study by requesting a reoccurring VLR commitment be studied. Midwest TDUs argue that just making such a request is not participation and is meaningless if MISO is going to roll all requests into the quarterly study. *Id.* at n.3.

⁷³ *Id.* at 2-3.

2. Mitigation Measures

51. With respect to mitigation of costs related to VLR issues, Midwest TDUs disagree with MISO's statement that it was unnecessary to clarify Module D to state that the new VLR-related mitigation measures apply throughout the footprint. Midwest TDUs state that given the numbering logic in Module D, the VLR rules could easily be read as applying only in Narrow Constrained Areas. Midwest TDUs explain that section 64.1.2 has six subsections, 64.1.2.a through 64.1.2.g, and that the first two subsections pertain solely to Broad Constrained Areas. Midwest TDUs state that section 64.1.2.c, which pertains to Narrow Constrained Areas, mirrors section 64.1.2.a; subsections 64.1.2.d and 64.1.2.e identify certain types of offers that may trigger mitigation in Narrow Constrained Areas and are similar to subsections 64.1.2.a.i and 64.1.2.a.iv. While section 64.1.2.f does not expressly state where it applies, given the numbering scheme MISO has employed, Midwest TDUs argues it could easily be read as applying only to Narrow Constrained Areas. In addition, Midwest TDUs argue that the new VLR mitigation section 64.1.2.g does not specify where the mitigation will and will not apply. Midwest TDUs argue the Commission should require MISO to clarify that the new provisions in the Tariff apply throughout the MISO footprint.⁷⁴

52. MidAmerican restates its earlier arguments that the VLR-related mitigation measures should apply throughout the MISO footprint, not just in Broad Constrained Areas or Narrow Constrained Areas. MidAmerican states that if the Commission agrees that the Tariff accomplishes that objective, then MidAmerican seeks no further revisions. However, MidAmerican reiterates that other Tariff provisions might appear to limit the applicability of MISO's VLR-related mitigation measures.⁷⁵

53. For example, MidAmerican states that the limitation in section 63.2 could be read to apply broadly to all mitigation measures, including those related to VLR commitments.⁷⁶ Additionally, MidAmerican argues that the language in section 63.4 could be read to limit mitigation to only Broad Constrained Areas and Narrow Constrained Areas.⁷⁷ It is also concerned that section 65 identifies a broad principle that

⁷⁴ Midwest TDUs Protest at 5-7.

⁷⁵ MidAmerican Protest at 2-3.

⁷⁶ Section 63.2b provides that mitigation measures will apply in the presence of binding transmission constraint to binding reserve zone constraint.

⁷⁷ Section 63.4, Defining Transmission Constrained Areas, contains a general statement that mitigation measures are intended to mitigate locational market power, which can occur in Narrow Constrained Areas or Broad Constrained Areas, resulting

(continued...)

limits mitigation to Broad Constrained Areas and Narrow Constrained Areas unless the Tariff makes specific exceptions.⁷⁸ MidAmerican states that the October 1 Filing suggests that VLR-related mitigation is similar to mitigation related to Planning Resources, which is not limited to Broad Constrained Areas and Narrow Constrained Areas. However, MidAmerican notes that Planning Resources can be mitigated outside of Broad Constrained Areas and Narrow Constrained Areas because of an explicit exception for Planning Resources in Tariff section 65.2.2.b. MidAmerican states that there is no similar exception for VLR commitments.⁷⁹

54. Midwest TDUs state that the numbering of section 64.1.2 should be corrected to eliminate confusion and clarify that the VLR mitigation provisions apply throughout the MISO footprint.⁸⁰ In its answer MISO states that while it believes the proposed Tariff revisions adequately indicate the footprint-wide scope of VLR mitigation, MISO is amenable to making Midwest TDUs' recommended sub-section numbering change, as part of a further compliance filing, if so directed by the Commission. In particular, MISO is willing to make the provisions on Narrow Constrained Areas consistent with those for Broad Constrained Areas by renumbering: (1) sections 64.1.2.d and 64.1.2.e to become Sub-sections c.i and c.ii of section 64.1.2.c; (2) existing section 64.1.2.f as section 64.1.2.d; and (3) proposed section 64.1.2.g as new section 64.1.2.e.

55. MISO in its answer states that it is unnecessary to add text to the latter two provisions to expressly state that they apply footprint-wide.⁸¹

from transmission congestion.

⁷⁸ Section 65.2.2.b of the MISO Tariff provides that "a Default Offer shall only be imposed on a Generation or Stored Energy Resource if it is located in a Broad Constrained Area or a Narrow Constrained Area and if there are one or more Binding Transmission Constraints or Binding Reserve Zones Constraints defining the area. This limitation shall not apply to the imposition of Default Offers on Planning Resources."

⁷⁹ Additionally, MidAmerican states that it is not able to identify a location where the October 1 Filing addresses the compliance requirements of Paragraph 129 of the August Order. MidAmerican Protest at 3-4.

⁸⁰ Midwest TDUs Protest at 5-7.

⁸¹ MISO Answer at 7.

D. Discussion**1. Procedural Matters**

56. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.213(a)(2) (2013), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the answers because they have provided information that has assisted us in our decision-making process.

2. Commission Determination

57. We conditionally accept the October 1 and October 16 Filings, subject to MISO filing an additional compliance filing. Although we find that MISO has complied with most of the directives in the August Order, we agree with the protestors that MISO did not adequately comply with other directives; as a result, the Tariff needs further clarification. Accordingly, we direct MISO to file a compliance filing within 30 days of the date of this order to reflect the directives discussed below.

a. Study Participation for Cost Allocation Purposes

58. With regard to Tariff revisions for cost allocation, we conditionally accept MISO's compliance filing subject to the changes discussed below. MISO initially proposed Tariff revisions allowing Local BAAs to request a study and specifying that otherwise such studies would be done at MISO's discretion.⁸² The Commission found that MISO had

⁸² The August Order states in part:

we accept the MISO proposal, subject to the filing of revised tariff sheets that contain a *sufficient description of the study process*, including the methodology, inputs and *periodicity*. [footnote omitted] Additionally *while the Tariff provisions provide for Local BAAs to request a study*, we direct MISO to modify the Tariff to allow Local BAAs and other interested stakeholders to participate in the study process, as MISO

agreed to do during the technical conference, and to clarify in the Tariff that the study assumptions and results will be posted.

(continued...)

too much discretion as to when to perform a study to determine commercially significant VLRs and required MISO to specify how often it would perform such studies (i.e., periodicity).⁸³ In the October 1 Filing, MISO specified that it will perform these studies annually and quarterly, and we will accept MISO's changes as complying with the August Order. Because the Commission did not require MISO to change the Tariff provisions allowing Local BAAs to request a study, either within or outside the quarterly study process, we deny Midwest TDUs' protest as a prohibited out-of-time rehearing request. Even if we were to consider Midwest TDUs' protest, we would find that MISO has properly supported its proposal to base studies on the quarterly EMS model updates, and that more frequent studies are not required.

59. In its further compliance filing, we require MISO to remove from Tariff section 1.74a, regarding commercially significant VLRs, the phrase "at the discretion of the Transmission Provider." The purpose of the requirement that MISO add criteria for determining commercially significant VLR was to limit MISO's discretion. Similarly, we require MISO to remove the same language in section 40.3.3. xviii, regarding the VLR commitment allocation ratio, because the Commission requires more specificity to the determination of when the study would be performed to remove MISO's discretion. We also require MISO to include the phrase, "or an interested Market Participant" in Schedule 44, as it agreed to do, to ensure consistency between Schedule 44 and section 1.74a.

60. We will not accept MISO's new proposal to revise the commercially significant criteria to one quarter of data, because not all parties have had an opportunity to comment on it. MISO may make a section 205 filing to propose such a Tariff change with adequate support demonstrating that it is just and reasonable.

61. Additionally, we agree with Midwest TDUs that MISO has not yet made the study process open and transparent. MISO incorporated much of the study process into the Tariff and provided a basic summary of the results.⁸⁴ Without more information, however, it is hard to see how interested stakeholders will be able to participate in the study process and ensure that MISO is properly calculating the VLR charges. MISO counters that much of the information is confidential in nature or constitutes Critical Energy Infrastructure Information and it should not be required to provide it publicly. We agree that such information should not be provided publicly; however, we find that

August Order, 140 FERC ¶ 61,171 at P 81 (emphasis added).

⁸³ *Id.*

⁸⁴ *Id.*

with suitable non-disclosure agreements, Local BAAs and other interested parties should be able to obtain all of the assumptions and outputs of the model and we require MISO to provide such information.⁸⁵ Similar information is provided during the transmission planning process despite concerns about confidentiality or Critical Energy Infrastructure Information, and we see no reason why MISO cannot establish similar safeguards here for confidential or Critical Energy Infrastructure Information.⁸⁶ MISO is accordingly directed to file a compliance filing within 30 days to incorporate into the Tariff a process for making the study assumptions available to parties willing to sign non-disclosure agreements.

62. We find that section C of Schedule 44 needs to be modified because it states that interested stakeholders may participate in studies “in accordance with the procedures described by the Transmission Provider in a Business Practices Manual,” but MISO has not developed such a Business Practices Manual. Thus, we direct MISO to remove the phrase “in accordance with the procedures described by the Transmission Provider in a Business Practices Manual” to clarify that interested stakeholders may participate.

b. Mitigation Measures

63. With regard to mitigation, we accept, as compliant with the Commission’s directives, MISO’s proposals to revise its Tariff to clarify that VLR commitments will be subject to mitigation for the duration of each VLR commitment periods, and to replace “total production costs” with “Production Costs and Operating Reserve Costs.”

64. We find that MISO has not complied with the Commission’s directive to make certain revisions to Tariff sections 64.1.2 and 64.2.1. We again direct MISO, in its compliance filing, to: (1) replace “Market Participant submitted Generation Offer” with “Generation Offer” in section 64.1.2.g.i, (2) replace “Reference Level Generation Offer for a Generation Resource” with “Reference Level Generation Offer” in section 64.1.2.g.i, and (3) replace “Generation Resource Voltage and Local Reliability

⁸⁵ To the extent that parties have concerns about the model itself, that MISO is not performing the study in accordance with the procedures set forth in the Tariff, or that the study procedures in the Tariff have become unjust and unreasonable, they may file a complaint with the Commission under section 206 of the FPA.

⁸⁶ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 471 (2007), *order on reh’g*, Order No. 890-A, FERC Stats & Regs. ¶ 31,261 (2007), *order on reh’g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

Commitments” with “Voltage and Local Reliability Commitments” in sections 64.2.1.d and 64.2.1.f.

65. We conditionally accept MISO’s proposed revisions to renumber certain sections of 64.1.2 in order to clarify that provisions on Narrow Constrained Areas are consistent with those regarding Broad Constrained Areas. We agree with MidAmerican that section 65.2.2.b needs to be revised as follows to be clear that Default Offers will apply to all generation resources with VLR Commitments, not just those in Narrow Constrained Areas or Broad Constrained Areas:

A Default Offer shall only be imposed on a Generation or Stored Energy Resource if it is located in a Broad Constrained Area or Narrow Constrained Area and if there are one or more Binding Transmission Constraints or Binding Reserve Zone Constraints defining the area. This limitation shall not apply to impositions of Default Offers on Planning Resources *or resources with VLR Commitments*.

66. We find, however, that MISO has not fully addressed the concerns of MidAmerican that provisions elsewhere in the Tariff could be read to preclude VLR mitigation outside of Narrow Constrained Areas or Broad Constrained Areas. Accordingly, we direct MISO to revise section 63.2 as follows:

The categories of conduct that are inconsistent with competitive conduct include the categories of conduct specified in Section 63.3 below. In general, the Transmission Provider shall consider a Market Participant’s conduct for a given Electrical Facility to be inconsistent with competitive conduct if the conduct would (i) reduce the net revenue associated with the facility, but for the effect of the conduct on market outcomes; or (ii) inefficiently reduce the capability of the Transmission System. The Mitigation Measures will only apply in the presence of a Binding Transmission Constraint or a Binding Reserve Zone Constraint **or where there is a VLR Commitment**. Binding Transmission constraints shall include constraints that are monitored by the Transmission Provider and affect the dispatch or commitment of Electrical Facilities in the Transmission Provider Region.

67. For similar reasons, we direct MISO to revise section 63.4 as follows:

As described above, *one of the purposes of* the Mitigation Measures ~~is are intended~~ to mitigate locational market power resulting from transmission congestion. Locational market

power *associated with transmission congestion* can occur in Narrow Constrained Areas or Broad Constrained Areas.

The Commission orders:

(A) The request for rehearing is hereby granted, as discussed in the body of this order.

(B) MISO's proposed revised Tariff revisions in Docket Nos. ER12-678-002 and ER12-678-003 are hereby conditionally accepted, to be effective September 1, 2012, subject to a compliance filing, as discussed in the body of this order.

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

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. EL14-58-000 concerning the just and reasonable allocation of VLR costs to pseudo-tied load. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(F) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(H) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the investigation ordered in Ordering Paragraph (D) above, under section 206 of the FPA.

(I) The refund effective date in Docket No. EL14-58-000, established pursuant to section 206(b) of the FPA, will be the date that the notice of the initiation of the investigation in that docket is published in the *Federal Register* discussed in Ordering Paragraph (H) above.

(J) Docket Nos. ER12-678-001 and EL14-58-000 are hereby consolidated for the purposes of settlement, hearing and decision.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.