

136 FERC ¶ 61,100
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System
Operator, Inc.

Docket No. ER11-1991-001

ORDER DENYING REHEARING

(Issued August 12, 2011)

1. On March 30, 2011, American Wind Energy Association and Wind on the Wires (collectively, AWEA-WOW) filed a request for rehearing of the Commission's initial order in this proceeding¹ with respect to the Commission's determination not allowing Dispatchable Intermittent Resources to revert back to Intermittent Resource status. Big Bog Energy LP; JPTC, LLC; Jump Power, LLC; SESCO Enterprises LLC; and Solios Power, LLC (collectively, Financial Marketers) requested rehearing of the February 28 Order with respect to the Commission's determinations involving real-time revenue sufficiency guarantee (RSG) charges imposed by Midwest Independent Transmission System Operator, Inc. (MISO). In this order, we deny AWEA-WOW's and the Financial Marketers' requests for rehearing of the February 28 Order, as discussed below.

I. Background

2. On November 1, 2010, MISO submitted for filing, under section 205 of the Federal Power Act (FPA),² proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to create a new category of resources called Dispatchable Intermittent Resources. MISO proposed to add the Dispatchable Intermittent Resources category to its Tariff as a subset of the Generation Resource category, and to treat Dispatchable Intermittent Resources similarly to other Generation Resources in MISO's real-time market.

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 134 FERC ¶ 61,141 (2011) (February 28 Order).

² 16 U.S.C. § 824d (2006).

3. In its filing, MISO explained that the Tariff treated Intermittent Resources³ differently than traditional Generation Resources in the real-time energy market, by excluding Intermittent Resources from consideration in the real-time security-constrained economic dispatch process, due to the variability of Intermittent Resources' fuel source. As a result, Intermittent Resources did not receive dispatch instructions, and MISO needed to manually curtail their output in order to manage congestion and minimum load conditions. The proposal allowed Intermittent Resources to register as Dispatchable Intermittent Resources, and enabled MISO to utilize the capability of some of these resources to respond to instructions to reduce output. Dispatchable Intermittent Resources therefore can participate in the real-time security-constrained economic dispatch process. MISO asserted that the proposal addressed the market and operational inefficiencies caused by manual curtailment of Intermittent Resources and would increase the participation of variable resources in the MISO markets.

4. Under the proposal, MISO would require all Intermittent Resources to register as Dispatchable Intermittent Resources after a two-year transition period, unless the resource is incapable of being dispatched or of following setpoint instructions, and either: (1) the resource began commercial operations prior to April 1, 2005; or (2) 100 percent of the resource's total capacity is delivered, either separately or combined, as Network Integration Transmission Service (NITS), Network Resource Interconnection Service (NRIS), and/or Long-Term Firm Point-to-Point Transmission Service.

5. In the February 28 Order, the Commission conditionally accepted in part and rejected in part MISO's proposal. Specifically, the Commission found that incorporating certain Intermittent Resources into the security-constrained economic dispatch process would reduce MISO's need to manually curtail Intermittent Resources, and would thereby improve the efficiency of MISO's real-time energy market and reliability function. In addition, the Commission found that the proposal would allow resources that register as Dispatchable Intermittent Resources, rather than as Intermittent Resources, to set market prices and to receive real-time make-whole credits.⁴

³ Intermittent Resources are defined as “[a] [r]esource that is not capable of being committed or decommitted by, or following [s]etpoint [i]nstructions of, [MISO]. . . .” MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 184, § 1.329.

⁴ Unlike Intermittent Resources, Dispatchable Intermittent Resources are subject to Excessive/Deficient Energy Deployment Charges, are eligible to receive real-time make-whole credits (i.e., real-time RSG credits and Real-Time Offer RSG Payments), and are allocated real-time RSG charges in a manner similar to Generation Resources. February 28 Order, 134 FERC ¶ 61,141 at P 78, 93.

6. With regard to MISO's proposal to exempt certain resources that do not have the physical capability to be dispatchable, the Commission found that it was just and reasonable to exempt resources that either began commercial operations before April 1, 2005 or have 100 percent of their capacity covered by Long-Term Firm Point-to-Point Transmission Service, NITS, and/or NRIS. The Commission found that MISO adequately supported the pre-April 2005 exception by consulting with the resource operators of its existing wind fleet, as well as three of the largest turbine manufactures, in order to conclude that it would be unduly burdensome to require resources that began commercial operations before April 1, 2005 to become dispatchable.⁵

7. The Commission also found that MISO adequately supported its proposal to allow certain Intermittent Resources with Long-Term Firm Point-to-Point Transmission Service and/or NITS to remain Intermittent Resources, if they do not have the necessary equipment to be dispatchable.⁶ The Commission noted that Intermittent Resources with Long-Term Firm Point-to-Point Transmission Service and/or NITS have been studied for deliverability and any network upgrades required by such studies have been made. Accordingly, the Commission found that the need to manually curtail these resources is significantly reduced, and that these resources should not be burdened with the additional costs to upgrade their equipment to become dispatchable.⁷ Similarly, the Commission found that resources with NRIS already have installed upgrades identified in studies to determine whether the aggregate generation in the local area can be reliably delivered to the aggregate load on the transmission or distribution system.⁸ In contrast, the Commission found that resources without these services are more likely to be manually curtailed because they have neither undergone such studies nor installed the associated upgrades, and because they take transmission service on an as-available basis.⁹

8. The Commission rejected AWEA-WOW's argument that Dispatchable Intermittent Resources should have the option of reverting back to Intermittent Resource status, and held that:

Once a resource qualifies as a Dispatchable Intermittent Resource and, thus, is physically capable of being dispatched, it is not reasonable to allow that resource to switch back and forth on its whims. Such switching would defeat the significant reliability and market transparency reasons for

⁵ *Id.* P 36.

⁶ *Id.* P 37.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

requiring Intermittent Resources to register as Dispatchable Intermittent Resources in the first place, as well as the efficiency gains associated with this requirement.¹⁰

As part of the compliance filing, the Commission required MISO to submit tariff revisions providing that resources that have previously registered as Dispatchable Intermittent Resources may no longer register as Intermittent Resources.¹¹

9. With regard to real-time RSG charges, the Commission found the allocation of these costs to Dispatchable Intermittent Resources to be just and reasonable.¹² Because Dispatchable Intermittent Resources, like Generation Resources, can cause the incurrence of real-time RSG costs, it is appropriate for MISO to assess Dispatchable Intermittent Resources these charges. As far as the Financial Marketers' claim that the proposal for rolling Forecast Maximum Limits would allow Dispatchable Intermittent Resources, but not virtual supply offers, to potentially avoid paying some real-time RSG charges, the Commission stated that Dispatchable Intermittent Resources can comply with MISO's real-time dispatch instructions in order to avoid deviations that cause RSG charges, similar to any other resource in the security-constrained economic dispatch process.¹³ Furthermore, the Commission found that "Dispatchable Intermittent Resources could avoid an assessment of [RSG] charges only to the extent that they avoid causing the incurrence of [RSG] costs and, therefore, this behavior should not shift costs to other resources."¹⁴

II. Requests for Rehearing

10. AWEA-WOW assert that the February 28 Order erred in ruling that a Dispatchable Intermittent Resource cannot revert back to Intermittent Resource status even if it meets the definitional requirements for an Intermittent Resource. They state that this decision provides an unduly discriminatory and preferential treatment for certain resources under the Tariff in violation of the FPA, was not the result of reasoned decision-making based on substantial record evidence, and is thus arbitrary and capricious.¹⁵

¹⁰ *Id.* P 41.

¹¹ *Id.*

¹² *Id.* P 93.

¹³ *Id.* P 94.

¹⁴ *Id.*

¹⁵ AWEA-WOW Request for Rehearing at 6.

11. AWEA-WOW state that resources can take different service at different times, and that the February 28 Order ignores this reality by refusing to permit resources the ability to revert to Intermittent Resource status if they acquire one of the needed services to be exempt from registering as a Dispatchable Intermittent Resource. AWEA-WOW argue that the Commission's determination provides a preference for those Intermittent Resources that currently have NITS, NRIS, or Long-Term Firm Point-to-Point Transmission Service, and unduly discriminates against the resources that lack such service now but could obtain such service in the future. AWEA-WOW state that resources that have such service, and those that could obtain it in the future, are similarly situated in that both have options with respect to interconnection and/or transmission service, but some have already availed themselves of those options while others have yet to do so. AWEA-WOW maintain that precluding the latter type of resource from ever having that option in a meaningful manner means that such resources cannot choose to be Intermittent Resources even if they obtain NITS, NRIS, or Long-Term Firm Point-to-Point Transmission Service. However, AWEA-WOW note that the February 28 Order does not preclude a switch the other way – that is, resources currently with such service can choose to be a Dispatchable Intermittent Resource if it is beneficial to them.¹⁶

12. In addition, AWEA-WOW state that there are significant cost issues with obtaining NITS, NRIS, or Long-Term Firm Point-to-Point Transmission Service status; therefore, there is no risk that resources would game the system by obtaining such services on a frivolous basis. AWEA-WOW argue that the Commission's failure to recognize that resources can take different services at different times led the Commission to erroneously and arbitrarily reach the conclusion that it is not reasonable to allow Dispatchable Intermittent Resources to switch back to being an Intermittent Resource. In this regard, AWEA-WOW assert that the Commission did not provide a reasoned explanation as to why resources that currently have NITS, NRIS, or Long-Term Firm Point-to-Point Transmission Service have been able to designate themselves as Intermittent Resources but such resources in the future will not be able to do so.¹⁷

13. The Financial Marketers assert that the February 28 Order erred in five respects: first, when it held, without any supporting evidence, that Dispatchable Intermittent Resources could avoid an assessment of RSG charges “only to the extent that they avoid causing the incurrence of [RSG] costs;” second, when it failed to require MISO to accord comparable treatment to virtual supply offers; third, when it held, without any supporting evidence, that MISO's proposal “should not shift costs to other resources;” fourth, when it accepted an unjust, unreasonable, and unduly discriminatory shift of RSG costs to customers that already are being overcharged; and fifth, when it abdicated the

¹⁶ *Id.* at 7-8.

¹⁷ *Id.* at 8-9.

Commission's statutory duty to ensure just and reasonable rates by failing to adequately scrutinize MISO's filing and thereby unlawfully delegating its duty to MISO.¹⁸

14. With respect to the first issue, the Financial Marketers argue that MISO's proposal would allow Dispatchable Intermittent Resources to sharply reduce, if not eliminate, the amount of deviations they have that would be subject to RSG charges by providing rolling forecasts updated in real time. They state that the February 28 Order accepted this change based on an unsupported assertion that "Dispatchable Intermittent Resources could avoid an assessment of [RSG] charges only to the extent that they avoid causing the incurrence of [RSG] costs and, therefore, this behavior should not shift costs to other resources."¹⁹ The Financial Marketers assert that it is undisputed that intermittent resources cause MISO to incur RSG costs; however, the February 28 Order would allow MISO to exempt Dispatchable Intermittent Resources from virtually all RSG charges without any cost-causation showing to justify such a charge. Contrary to the Commission's holding that Dispatchable Intermittent Resources could only avoid RSG charges in those instances in which they do not cause RSG charges, the Financial Marketers state that both MISO and the Independent Market Monitor have found that a significant portion of the resources committed for Headroom are committed to address intermittent resources. The mere fact that a Dispatchable Intermittent Resource may be capable of reducing its output in response to instructions from MISO, the Financial Marketers assert, cannot change the fact that MISO had to commit additional units into the Reliability Assessment Commitment (RAC) process to address the intermittency of that resource.²⁰

15. With respect to the Financial Marketers' claim of undue discrimination against virtual supply offers, the Financial Marketers state the February 28 Order permits Dispatchable Intermittent Resources to escape liability for RSG costs by providing updated forecasts during real time. However, the Financial Marketers assert that entities conducting virtual transactions are precluded from avoiding RSG charges on their virtual supply offers notwithstanding the fact that MISO knows the full amount of virtual supply offers at the close of the day-ahead market, long before it would have updated forecasts from Dispatchable Intermittent Resources. The Financial Marketers maintain that "MISO cannot lawfully exempt Dispatchable Intermittent Resources from RSG charges for merely providing updated forecasts in real-time, if MISO is going to continue to impose RSG charges on virtual supply offers."²¹ The Financial Marketers argue that

¹⁸ Financial Marketers Request for Rehearing at 4-6.

¹⁹ *Id.* at 6-7 (quoting February 28 Order, 134 FERC ¶ 61,141 at P 94).

²⁰ *Id.* at 6-8.

²¹ *Id.* at 8.

MISO's proposal grants an undue preference to Dispatchable Intermittent Resources and unduly discriminates against virtual supply offers by granting an RSG exemption to Dispatchable Intermittent Resources and denying an exemption to virtual supply offers.

16. The Financial Marketers assert that Dispatchable Intermittent Resources would be exempt from virtually all RSG charges because "the updated forecasts that [Dispatchable Intermittent Resources] can provide could potentially allow MISO to reduce the amount of RSG costs incurred."²² The Financial Marketers state that if the Commission is going to allow MISO to adjust its RSG allocation to reflect the RSG cost impact of information updates, it must do so on a nondiscriminatory basis by allowing all types of market participants to reduce their allocation of RSG costs by providing similar information updates. Moreover, the Financial Marketers state that MISO has notice of the amount of cleared virtual supply offers at the close of the day-ahead market and therefore it never needs to commit expensive generation with short ramp times to address virtual supply deviations, as it does with real-time deviations. Yet, the Financial Marketers maintain, virtual supply offers receive no discount on their RSG charges to reflect the benefit of this earlier notice.²³

17. With respect to the Financial Marketers' claim that the February 28 Order arbitrarily and capriciously held that MISO's proposal would not shift costs to other resources, the Financial Marketers state that by exempting Dispatchable Intermittent Resources from paying RSG costs, MISO would shift the RSG costs to non-exempt deviations that otherwise would have been borne by Dispatchable Intermittent Resources. Because this shift is not based on cost-causation principles and would fall disproportionately on the Financial Marketers and others conducting virtual transactions, the Financial Marketers maintain that the shift is unjust, unreasonable, and unduly discriminatory. In support of this position, the Financial Marketers state that the Commission previously rejected MISO proposals to exempt intermittent resources from RSG charges and to shift the associate costs to non-exempt deviations,²⁴ and they argue that the Commission should have reached a similar result here.

18. The Financial Marketers assert that there is no evidence to justify the RSG cost shift imposed by the February 28 Order. They argue that shifting responsibility for RSG costs to non-exempt deviations has a disproportionately large and unduly discriminatory adverse impact on virtual supply offers because every megawatt-hour of virtual supply is currently assessed RSG charges, while only a small fraction of load is subject to RSG

²² *Id.* at 9.

²³ *Id.* at 10.

²⁴ *Id.* at 11 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,184, at P 88 (2010)).

charges. The Financial Marketers state that “[i]f RSG costs attributable to [Dispatchable Intermittent Resources] are going to be shifted to market participants that clearly did not cause them, they should be allocated to all market participants based on Market Load Ratio Share, absent a demonstration that it is just and reasonable to allocate them to a subset of market participants.”²⁵ They claim that no such showing has been made and, therefore, the February 28 Order unduly discriminates against virtual supply offers by disproportionately shifting these costs to them.

19. Furthermore, the Financial Marketers claim that the February 28 Order erred in allowing MISO to impose an unwarranted RSG rate increase on virtual supply offers and other non-exempt deviations, for which MISO has provided no supporting evidence. Because the Commission cannot accept an unjust and unreasonable shift in RSG costs, the Financial Marketers argue that the rate increase should be rejected under section 205 of the FPA. The Financial Marketers maintain that MISO’s current allocation of RSG costs to virtual supply offers and other deviations is grossly excessive.²⁶

20. Finally, the Financial Marketers argue that in the February 28 Order, the Commission unlawfully delegated to MISO its duty to ensure just and reasonable rates, in violation of the subdelegation doctrine.²⁷ They state that by summarily approving MISO’s proposal, the Commission has failed to scrutinize whether the reallocation of RSG costs the proposal would produce is just, reasonable, and not unduly discriminatory. The Financial Marketers state that “the Commission has previously held that ‘increases and decreases in the real-time output of intermittent resources, as well as the reduced forecasts or unavailability of such resources, may cause real-time [RSG] costs.’”²⁸ Yet, they argue, the February 28 Order asserted that “Dispatchable Intermittent Resources

²⁵ *Id.*

²⁶ *Id.* at 13 (citing MISO, Compliance Filing, Tab B, RSG Cost Attribution Study, Docket No. ER09-411-004, at 14 (filed Dec. 7, 2009); MISO, Compliance Filing, Tab C, RSG Cost Attribution Study, Docket No. ER09-411-004, at 8 (filed Dec. 7, 2009)). The Financial Marketers state that MISO’s Independent Market Monitor concluded in its RSG Cost Attribution Report that virtual supply offers have been overcharged at least \$0.60/megawatt, or by 86 percent, and only 13 percent of real-time RSG costs could potentially be attributed to virtual supply offers. However, the Financial Marketers argue that the 13 percent figure presented by MISO’s Independent Market Monitor is overstated for several reasons and the actual amount of overcharge is significantly greater than \$0.60/megawatt. *Id.* at 14-15.

²⁷ *Id.* at 15 (citing *U.S. Telecom Ass’n v. FCC*, 359 F.3d 554, 568 (D.C. Cir. 2004)).

²⁸ *Id.* at 16 (quoting *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,184 at P 88).

could avoid an assessment of [RSG] charges only to the extent that they avoid causing the incurrence of [RSG] charges.”²⁹ The Financial Marketers state that there is no evidence in the record to support the Commission’s assertion, and that the February 28 Order does nothing to ensure that Dispatchable Intermittent Resources bear the appropriate amount of RSG costs. For these reasons, the Financial Marketers request that the Commission: (1) either reject MISO’s proposed tariff revisions or eliminate the undue discrimination under MISO’s proposal by directing MISO to make a compliance filing exempting virtual supply offers from RSG charges; and (2) order MISO to provide refunds with interest on all non-exempt transactions to which RSG cost have been shifted under the tariff changes approved by the February 28 Order.

III. Commission Determination

21. We will deny AWEA-WOW’s and the Financial Marketers’ requests for rehearing of the February 28 Order. AWEA-WOW and the Financial Marketers have presented no new arguments to persuade us to reconsider the findings of the February 28 Order.

22. As explained in the February 28 Order, MISO’s proposal to require Intermittent Resources to register as Dispatchable Intermittent Resources significantly improves reliability by allowing MISO to manage Dispatchable Intermittent Resources in a manner similar to other resources, rather than taking manual curtailment actions, and increases the efficiency of the real-time energy market.³⁰ As described above, the proposal requires all Intermittent Resources to register as Dispatchable Intermittent Resources, unless the resource meets two conditions. First, the resource has to be incapable of being dispatched or of following setpoint instructions. Second, the resource must either: (1) have begun commercial operations prior to April 1, 2005; or (2) have 100 percent of its total capacity delivered, either separately or combined, as NITS, NRIS, and/or Long-Term Firm Point-to-Point Transmission Service. If an Intermittent Resource fails to meet both of these conditions, the resource must register as a Dispatchable Intermittent Resource. The limited exceptions to the registration requirement recognize that requiring certain resources to upgrade their facilities in order to become dispatchable may be too costly and/or burdensome.

23. Although we agree with AWEA-WOW’s statement that resources can take different interconnection and/or transmission services at different times, we disagree that such a switch would, by itself, qualify a Dispatchable Intermittent Resource to revert back to Intermittent Resource status. Once a resource has qualified to register as a Dispatchable Intermittent Resource, it must be dispatchable or capable of following setpoint instructions. Accordingly, a Dispatchable Intermittent Resource would not

²⁹ *Id.* (quoting February 28 Order, 134 FERC ¶ 61,141 at P 94).

³⁰ February 28 Order, 134 FERC ¶ 61,141 at P 11, 33, 41.

qualify for Intermittent Resource status regardless of whether it obtained NITS, NRIS, or Long-Term Firm Point-to-Point Transmission Service in the future because it would fail to meet the first condition of the exception – that is, to be incapable of being dispatched or following setpoint instructions.

24. We disagree with AWEA-WOW's argument that the Commission's decision to preclude a Dispatchable Intermittent Resource from reverting back to Intermittent Resource status was not the result of reasoned decision-making. The February 28 Order stated that "[o]nce a resource qualifies as a Dispatchable Intermittent Resource and, thus, is physically capable of being dispatched, it is not reasonable to allow that resource to switch back and forth based on its whims,"³¹ and provided several reasons for this determination. First, the Commission observed that "[b]y definition, Dispatchable Intermittent Resources and Intermittent Resources are differentiated by their physical capability, and a single unit cannot meet both definitions simultaneously (i.e., a single unit cannot be both physically capable and physically incapable of being dispatched)."³² Second, the Commission found that "[s]uch switching would defeat the significant reliability and market transparency reasons for requiring Intermittent Resources to register as Dispatchable Intermittent Resources in the first place, as well as the efficiency gains associated with the requirement."³³ Moreover, we note that permitting Dispatchable Intermittent Resources to switch back to Intermittent Resource status undermines the very purpose of allowing the limited exception from the registration requirement for facilities, i.e., that in some cases it may be too costly and/or burdensome to upgrade in order to become dispatchable. We find that the February 28 Order's determination is well reasoned and supported by substantial evidence in the record and, accordingly, AWEA-WOW's argument is without merit.

25. In addition, we disagree with AWEA-WOW's argument that the February 28 Order provides preferential treatment for resources that currently have NITS, NRIS, or Long-Term Firm Point-to-Point Transmission Service and unduly discriminates against the resources that currently lack such service. We consider AWEA-WOW's position – that the MISO proposal provides a preference to non-dispatchable resources that have obtained the necessary firm interconnection and/or transmission services vis-à-vis other similarly situated non-dispatchable resources – to be a mischaracterization of the proposal. Non-dispatchable resources that do not have these services have two years before they must register as Dispatchable Intermittent Resources.³⁴ If they arrange for

³¹ *Id.* P 41.

³² *Id.* P 40.

³³ *Id.* P 41.

³⁴ *See* MISO, FERC Electric Tariff, § 40.3.4.d.ii (1.0.0).

these services during this period, these resources can also qualify for Intermittent Resource status. We consider this transition period to be reasonable, and it ensures that these other resources have the opportunity to obtain the resource status that they desire.

26. Responding to the Financial Marketers, we do not consider the allocation of RSG costs to Dispatchable Intermittent Resources to be unduly discriminatory vis-à-vis virtual traders. Virtual offers are not similarly situated to physical offers from resources such as Dispatchable Intermittent Resources in the real-time market since virtual supply offers are made and accepted in financially binding transactions in the day-ahead market. Therefore, application of a real-time notification deadline to virtual supply offers is not possible, and there are no real-time market adjustments to these offers. We note that virtual offers do have a netting adjustment feature that nets virtual offers against virtual bids and therefore virtual offers have a parallel adjustment feature that provides for a reduction in RSG cost assignment and is consistent with cost causation.³⁵

27. The Commission's statement that Dispatchable Intermittent Resources could avoid paying RSG charges only to the extent that they avoid causing the incurrence of RSG costs is based on how the allocation process applies to real-time deviations of Generation Resources, of which Dispatchable Intermittent Resources are a subset. This process allocates RSG costs to Generation Resources based on when the updated real-time forecast is provided to MISO. If the updated information is timely provided, MISO has sufficient time to take that information into account in determining its RAC, and thereby additional commitment – that can cause the incurrence of RSG costs – can be avoided. The Commission accepted this allocation³⁶ as part of its acceptance of the Indicative Allocation in Docket Nos. EL07-86, *et al.*³⁷ and the Financial Marketers did not challenge that allocation mechanism in those proceedings. The Financial Marketers should have raised their arguments at that time, and the time to challenge this cost allocation has since past. Accordingly, the Financial Marketers arguments are collateral attacks on previous Commission orders.

³⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 134 FERC ¶ 61,264, at P 73 (2011).

³⁶ MISO explained the purpose of the adjustment process associated with notification deadlines as part of its Indicative Rate filing. *See Ameren Servs. Co. and N. Ind. Pub. Serv. Co., Complainants' Brief*, Docket Nos. EL07-86, *et al.*, Attachment C at 7, 16, 19, 20.

³⁷ *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,161 (2008), *order on reh'g*, 127 FERC ¶ 61,121 (2009).

28. Based on the foregoing discussion and the record of these previous Commission proceedings, we affirm that Dispatchable Intermittent Resources avoid paying RSG charges only to the extent that they avoid causing the incurrence of RSG costs. For this reason, we find no basis for the Financial Marketers' claims that the RSG allocation to Dispatchable Intermittent Resources results in cost shifts to virtual offers.

29. We do not consider the rolling Forecast Maximum Limits to provide an exemption from RSG costs, as Financial Marketers claim. For example, Dispatchable Intermittent Resources are allocated RSG costs based on differences between the Notification Deadline Dispatchable Intermittent Resource Forecast and the Day-Ahead Schedule.³⁸ Changes in weather conditions between the time the day-ahead schedule is submitted and the real-time notification deadline are expected to result in differences between these amounts (deviations from the day-ahead schedule), and therefore, typically, Dispatchable Intermittent Resources would be allocated RSG costs. As another example, Dispatchable Intermittent Resources are allocated additional RSG costs based on the negative difference between the Forecast Maximum Limit and the Notification Deadline Dispatchable Intermittent Resource Forecast.³⁹ To the extent that weather conditions change so that the updated Notification Deadline Dispatchable Intermittent Resource Forecast is below the Forecast Maximum Limit, Dispatchable Intermittent Resources will be allocated RSG costs based on this deviation.

30. MISO's Dispatchable Intermittent Resources proposal made no changes to the allocation of RSG charges between the Forward and Intra-Day Reliability Assessment Commitment processes. There is, therefore, no rate increase associated with this filing, and the Financial Marketers' argument that virtual offers should not be assessed costs associated with intra-day commitments is beyond the scope of this proceeding. We note that the Commission has previously addressed this issue,⁴⁰ and therefore the position of the Financial Marketers is a collateral attack on that determination.

31. Finally, the Financial Marketers allege that the Commission erred in summarily approving MISO's proposal, without scrutinizing its effect on ratepayers. As detailed above, the February 28 Order evaluated the filing and the protests thereto before conditionally accepting in part and rejecting in part MISO's filing; we therefore disagree with the Financial Marketers' characterization of the ruling as "summary." Further, the February 28 Order imposed a number of compliance requirements intended to, among other things, "better demonstrate[] how the existing tariff provisions for Generation

³⁸ MISO, FERC Electric Tariff, § 40.3.3.a.ii(2) (1.0.0).

³⁹ *Id.*, § 40.3.3.iii(2) (1.0.0).

⁴⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,121 at P 120.

Resources will apply to Dispatchable Intermittent Resources,”⁴¹ and provide “an explanation and tariff revisions regarding how [RSG] charges will be assessed to Dispatchable Intermittent Resources.”⁴² The compliance requirements indicate the Commission’s interest in better understanding how the MISO proposal would operate in practice. The Commission also required MISO to provide follow-up analysis within one year of the date of the order with regard to the effectiveness of the tolerance band.⁴³ We fail to see how the Commission’s effort in approving the filing and ongoing interest in its effectiveness amounts to an unlawful subdelegation of statutory authority to MISO, as the Financial Marketers assert.

The Commission orders:

AWEA-WOW’s and the Financial Marketers’ requests for rehearing of the February 28 Order are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴¹ February 28 Order, 134 FERC ¶ 61,141 at P 13.

⁴² *Id.* P 15.

⁴³ *Id.* P 14.