141 FERC ¶ 61,155
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. — Docket No. ER12-2706-000

ORDER CONDITIONALLY ACCEPTING TARIFF REVISIONS

(Issued November 27, 2012)

1. On September 28, 2012, Midwest Independent Transmission System Operator, Inc. (MISO) filed proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) to clarify Load Serving Entities' (LSEs) resource adequacy obligations where load switches providers. As discussed below, we conditionally accept MISO's proposal, to become effective on November 28, 2012.

I. Background

2. On June 11, 2012, the Commission conditionally accepted MISO's proposal for an annual resource adequacy construct, as provided in a new Module E-1 of the Tariff that will supersede Module E.[1] Pursuant to Module E-1, MISO will conduct an annual planning resource auction that will begin three days before the last business day in March and will end on the last business day in March. During this period, market participants will submit their resource offers into the auction for the planning year that begins on June 1 and ends on May 31 of the following calendar year.[2] LSEs can obtain resources to

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[1] *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,199 (2012) (Capacity Auction Order); *see also* MISO, Application, Docket No. ER11-4081-000 (filed July 20, 2011) (July 20, 2011 Filing).

[2] Capacity Auction Order, 139 FERC ¶ 61,199 at P 175; July 20, 2011 Filing, Doying Aff. at ¶¶ 82-91.

satisfy their planning reserve margin requirements[3] by either offering or self-scheduling resources in the annual auction or submitting a Fixed Resource Adequacy Plan (FRAP) that demonstrates that they have obtained sufficient capacity resources.[4]

3. Notably, however, the Commission rejected MISO's proposal to require all LSEs within the MISO footprint to procure sufficient resources through the planning resource auction and/or a FRAP.[5] The Commission explained MISO had not justified its proposal and, therefore, directed MISO to address resource deficiencies without requiring LSEs' participation in the auction.

4. The Commission also found unreasonable MISO's proposed default method for coincident peak demand allocation where an electric distribution company[6] in a retail choice region does not provide a procedure for assigning LSEs' obligations and MISO and the electric distribution company are unable to agree on an alternative method.[7] Under MISO's proposed default methodology, MISO would have apportioned the daily capacity charges related to obligations arising from the reserve requirement during the planning year *pro rata* on a daily energy basis. The Commission held that MISO's proposal was unreasonable and directed MISO to use the peak load contribution

[3] The planning reserve margin requirement represents the amount of zonal resource credits required of each LSE with Coincident Peak Demand in a local resource zone to meet the LSE's resource adequacy requirements. Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Module A, 1.504a, Planning Reserve Margin Requirement (PRMR), 1.0.0.

[4] A FRAP is "a plan submitted by an LSE through the [Module E capacity tracking tool] to the [t]ransmission [p]rovider that is approved by the [t]ransmission [p]rovider which demonstrates that the LSE has sufficient [capacity] to meet all or part of its [planning reserve margin] for one or more Local Resource Zones." Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Module A, 1.234a, Fixed Resource Adequacy Plan (FRAP), 0.0.0.

[5] Capacity Auction Order, 139 FERC ¶ 61,199 at P 40.

[6] An electric distribution company is "[a] company that distributes electricity to retail customers through distribution substations and/or lines owned by the company." Midwest Independent Transmission System Operator, Inc., FERC Electric Tariff, Module A, 1.170a, Electric Distribution Company (EDC), 0.0.0. Notably, in jurisdictions that permit retail competition, electric distribution companies can be LSEs.

[7] Capacity Auction Order, 139 FERC ¶ 61,199 at PP 222-223.

methodology as its default methodology for assigning capacity obligations.[8] In addition, with respect to entities that lack data necessary to use the peak load contribution methodology, the Commission directed MISO to use a daily peak load methodology.[9] However, once MISO has acquired sufficient historical data to determine the peak load contribution for each LSE, the Commission directed MISO to begin utilizing the peak load contribution methodology.

5. In its September 28, 2012 filing, MISO explains that the Commission's rejection of MISO's proposal to require LSEs to procure sufficient resources through a FRAP and/or the planning resource auction affected MISO's ability to ensure that LSEs obtain sufficient capacity resources, especially in jurisdictions that allow retail competition.[10] Specifically, MISO contends that by permitting capacity deficient LSEs to avoid participating in the planning resource auction, LSEs could avoid obtaining capacity, and, as a result, some load could go unrepresented because no LSE accepts the obligation prior to the start of the planning year.[11] MISO adds that the Tariff also requires clarification to address wholesale load switching during the planning year.[12] MISO further notes that the Tariff does not clearly provide that it has the requisite authority to charge, on a daily basis, LSEs that gain or lose load during the planning year and the Tariff does not provide an appropriate charge for switched load.[13]

6. Thus, MISO explains that its existing Tariff provisions do not account for two risks.[14] First, MISO states that some of the planning reserve margin may not be sufficiently accounted for and modeled at the time of the planning resource auction. Second, MISO states that some load may switch providers during the planning year, which would result in the original LSE serving that load to have over-procured capacity and the new LSE serving that load to have under-procured capacity.

[8] The peak load contribution methodology allocates an LSE's share of the coincident peak load in its retail choice area.

[9] The daily peak load methodology allocates an LSE's share of the daily peak load in the retail choice area.

[10] Kuhn Test. at 3-4.

[11] *Id.* at 4.

[12] September 28 Filing at 2.

[13] Kuhn Test. at 6.

[14] September 28 Filing at 3.

7. To address these deficiencies, MISO proposes Tariff revisions that clarify: (1) total LSE requirements for identifying the planning resources that will be required to meet the planning reserve margin requirement during the planning year; (2) which LSEs will be responsible for acquiring planning resources to meet forecast loads during a planning year; and (3) how MISO will calculate and assign LSE obligations as retail and/or wholesale load switches during the planning year.[15]

II. Notice of Filing and Responsive Pleadings

8. Notice of MISO's filing was published in the *Federal Register*, 77 Fed. Reg. 61,403 (2012), with interventions, comments and protests due on October 19, 2012. The Detroit Edison Company (Detroit Edison); Consumers Energy Company (Consumers);[16] NRG Companies;[17] and Wisconsin Electric Power Company filed timely motions to intervene. The Retail Energy Supply Association (RESA) filed a timely motion to intervene and protest. Detroit Edison and Consumers (collectively, Joint Commenters) filed comments. FirstEnergy Solutions Corporation (FirstEnergy)[18] and Ameren Services Company (Ameren), on behalf of Ameren Illinois Company, Union Electric Company d/b/a Ameren Missouri, Ameren Energy Marketing Company, Ameren Energy Generating Company, and AmerenEnergy Resource Generating Company filed motions to intervene out-of-time. MISO filed an answer to the arguments raised by RESA and Joint Commenters.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant the late-filed motions to intervene of Ameren and FirstEnergy,

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[15] Kuhn Test. at 8.

[16] Consumers revised its motion to intervene on October 18, 2012.

[17] For the purposes of this proceeding, NRG Companies consist of NRG Power Marketing LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Louisiana Generating LLC, NRG Sterlington Power LLC, and Cottonwood Energy Company LP.

[18] FirstEnergy agrees with the arguments raised by RESA in this proceeding. *See* FirstEnergy Motion to Intervene at 1.

given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept MISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Assignment of Resource Adequacy Requirements

a. Filing

11. In retail choice areas, MISO's Tariff permits use of either the peak load contribution or the daily peak load method for determining the assignment of the electric distribution company's[19] forecast coincident peak demand to LSEs. MISO proposes to clarify the forecast process by which electric distribution companies and LSEs report demand forecasts to MISO in order to clarify how LSEs will be allocated their portion of an electric distribution company's forecast based on retail customer demand for a planning year. Specifically, MISO proposes to require electric distribution companies to provide MISO and the relevant LSE with either the LSE's peak load contribution or the LSE's historical share of the coincident peak demand by December 15.[20] In order to assist the efforts of electric distribution companies, MISO proposes to publish the calculation of transmission losses by the first business day in December, which MISO notes is one month earlier than the Tariff currently provides.[21] MISO additionally proposes to require market participants serving wholesale customers to provide MISO with demand forecasts by November 1.[22]

12. MISO explains that, in a retail choice setting, there may be customers that have not finalized their electricity service provider selection by the resource adequacy deadlines. Such customers will be served by some supplier, and it is that relationship that must be captured through the retail switching provisions of the Tariff. Prior to the planning year, when resources are being secured to meet planning year needs, some entity needs to assume the temporary obligation to secure capacity resources to provide

[19] In retail choice areas, LSEs are required to work with the electric distribution company in their area in developing demand forecasts.

[20] September 28 Filing at 5; Kuhn Test. at 10.

[21] September 28 Filing at 5.

[22] Kuhn Test. at 11.

for these customers. MISO considers the provider of last resort to be the logical choice for such an obligation.[23]

13. MISO's proposal further addresses its assignment of resource adequacy obligations to LSEs in jurisdictions that permit retail competition. In particular, MISO proposes to require an LSE to notify MISO on or before January 15 of its planning reserve margin requirement based on the LSE's share of the electric distribution company's forecast demand.[24] Under MISO's proposal, after the LSEs have submitted their planning reserve margin requirements, the LSE that is the provider of last resort for an electric distribution company's service territory would be required to procure the planning reserve margin requirement for remaining demand (i.e., the remaining demand is the electric distribution company's forecast coincident peak demand minus the sum of the LSEs' allocated portions of forecast coincident peak demand in the electric distribution company's service territory).[25]

14. With respect to wholesale customers that may switch providers during the next planning year, MISO proposes to ensure that the reserve requirement is met as follows: (1) if an LSE has responsibility to serve a wholesale load during the entirety of the next planning year, then such LSE will be obligated to meet the reserve requirement for such load; (2) if no LSE has responsibility for serving wholesale load for the entirety of the next planning year, then the LSE with an obligation to serve such load on the November 1 before the planning year will be obligated to meet the reserve requirements for the upcoming planning year, so long as the LSE anticipates that the contract for the wholesale load will be extended; or (3) if the LSE currently responsible for the wholesale load's capacity obligation advises MISO that the LSE will not renew the contract, then the customer for such load must inform MISO by January 30 of the name of the market participant that will be required to meet the reserve requirements for such load.[26]

[23] *Id.* at 12.

[24] *Id.* at 11.

[25] *Id.* at 11-12. MISO proposes to notify the providers of last resort of any remaining portion of the reserve margin requirement no later than five business days after January 15. *Id.* at 12.

[26] *Id.* at 13-14.

b. Comments

15. Joint Commenters request that the Commission direct MISO to provide transmission loss information no later than two weeks before electric distribution companies are required to post their demand forecasts.[27] According to Joint Commenters, transmission loss data is "an important input in the determination" of the electric distribution forecasts. Joint Commenters assert that "it is difficult for [electric distribution companies] to provide an accurate forecast without this information."[28] Joint Commenters suggest that this could be accomplished by either adjusting the date on which electric distribution companies are required to submit their demand forecasts or by requiring MISO to publish the calculation of transmission losses at an earlier date.

16. RESA argues that retail load forecasting should be performed under the same procedures as apply to wholesale load forecasting.[29] Specifically, RESA asserts that "[e]ach LSE should forecast the load of the customers that it serves as of November 1 prior to the planning year. Customer switching among LSEs subsequent to that date would be handled by the provisions for load switching."[30] Further, RESA contends that the due date for LSE forecasts could be extended in order to reduce the portion of the reserve requirement that must be reallocated to account for load switching.[31] According to RESA, such a revision would render the peak load contribution methodology and the daily peak load methodology unnecessary.[32]

17. RESA also asserts that MISO's proposal creates the possibility of unassigned demand that it is intended to remedy.[33] In particular, RESA asks, "if [MISO] is going to require individual forecasts from LSEs and then use the forecasts in a meaningful way, why not just use the individual LSE forecasts to determine the LSE's [planning reserve

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[27] Joint Commenters at 2-3.

[28] *Id.* at 3.

[29] RESA at 14.

[30] *Id.*; *see also id.* at 13 ("Second, if [MISO] is going to require individual forecasts from LSEs . . . why not just use the individual LSE forecast to determine the LSE's [planning reserve margin requirement]? . . . . [MISO's] latest proposal does not remedy an otherwise unjust and unreasonable methodology.").

[31] *Id.* at 14-15.

[32] *Id.* at 15.

[33] *Id.* at 13.

margin requirement]?"[34] RESA additionally states that MISO's proposal does not make clear what would occur if the sum of the LSE forecasts submitted to an electric distribution company exceeds the electric distribution company's forecast. RESA also argues that MISO should use individual load forecasts to determine the LSEs' resource adequacy requirements.

c. Answer

18. In its answer, MISO states that it has not proposed to alter the timing of electric distribution companies' submission of their load forecasts to MISO.[35] MISO argues that, to the extent that Joint Commenters request that the Commission modify this Tariff provision, that request is a collateral attack on the Capacity Auction Order and should be rejected.[36]

19. Moreover, MISO asserts that the revision sought by Joint Commenters is unnecessary. MISO believes that the appropriate amount of transmission losses to be removed from a forecast that includes such losses is the amount of transmission losses estimated by the party making the forecast. MISO states that the amount of transmission losses included by MISO has no bearing on the amount of transmission losses that were included in any particular forecast. MISO adds that most LSEs in the region have found demand forecasting methodologies that exclude transmission losses and are nevertheless consistent with Good Utility Practice.[37]

20. According to MISO, RESA's contention that the proposal fails to remedy the possibility of an unassigned portion of the electric distribution company's reserve margin is misplaced.[38] MISO characterizes RESA's argument as asserting that the problem created by unclaimed demand would be resolved if MISO alone reviewed each individual LSE's forecast.[39] Even if the Commission was to accept RESA's proposal, MISO suggests that demand may nevertheless go unaccounted for. That is, MISO points out that RESA's proposal would not resolve the issue of ensuring that all load is accounted for in a jurisdiction that permits retail competition.[40] Specifically, MISO states that

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[34] *Id.*

[35] MISO Answer at 4.

[36] *Id.* (citing Capacity Auction Order, 139 FERC ¶ 61,199).

[37] *Id.* at 5.

[38] *Id.* at 8.

[39] *Id.*

[40] *Id.* at 8-9.

RESA's proposal would not account for new customers and would fundamentally require an existing LSE that serves an existing customer to satisfy the reserve requirement for that customer, even if the LSE has no expectation or intention of serving that customer in the next planning year.[41]

21. Furthermore, MISO dismisses RESA's contention that retail load forecasting should be conducted on the same schedule as wholesale load forecasting as a collateral attack on the methodologies accepted by the Commission in the Capacity Auction Order.[42] MISO explains that the Commission approved its load forecasting methodologies, which will assist market participants in crafting their load forecasts.

d. Commission Determination

22. As discussed below, we will conditionally accept MISO's proposed Tariff revisions, effective November 28, 2012. MISO's proposal establishes detailed procedures governing the assignment of resource adequacy obligations in circumstances where wholesale or retail load switches providers. In doing so, MISO's proposal will prevent LSEs from avoiding their resource adequacy obligations. Further, the proposed procedures will ensure that LSEs serving load in jurisdictions that permit retail competition are neither required to procure more capacity resources than is necessary nor allowed to procure insufficient resources to satisfy their resource adequacy obligations.

23. Notably, MISO's proposal to hold LSEs in the electric distribution company's area that serve as the provider of last resort responsible for procuring resources for any unassigned forecast demand in its service territory is necessary to ensure system reliability in retail choice jurisdictions. For this reason we consider MISO's proposal to be reasonable.

24. We disagree with Joint Commenters' contention that it is necessary for MISO to publish transmission loss information before electric distribution companies are required to post their demand forecasts. Load forecasts need not be dependent upon MISO's provision of transmission loss information. As MISO points out, the appropriate amount of transmission losses to be removed from a forecast that includes losses is the amount of transmission losses estimated by the party making the forecast. We note, however, that MISO's proposal does not include a revision to section 69A.1.1(c) to require MISO to publish transmission loss information by the first day of December, the date it specifies in its transmittal letter to be the revised date by which it will provide transmission loss

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[41] *Id.* at 9-10.

[42] *Id.* at 11.

information.[43] Accordingly, we direct MISO to replace “January” with “December” in section 69A.1.1(c) in the compliance filing to be made within 30 days of this filing.

25. In the Capacity Auction Order, the Commission accepted MISO’s proposal to require LSEs in retail choice jurisdictions to submit their demand forecasts to electric distribution companies. Consequently, we dismiss RESA’s arguments in support of allowing LSEs in jurisdictions that permit retail choice to submit their demand forecasts directly to MISO as a collateral attack against the Commission’s prior holding.

26. With respect to RESA’s concern regarding the result if the sum of the LSEs’ forecasts is more than the electric distribution company’s forecast, MISO confirms that its Tariff holds the electric distribution company responsible for load forecasts in retail choice areas.[44] Therefore, the electric distribution company’s forecast will be the basis for the peak load contribution of each LSE. The Commission accepted this method of forecasting in the Capacity Auction Order, and therefore we will not address this issue further in this proceeding.

27. Finally, we find that the Tariff does not specify how the provider of last resort can recover the administrative cost of procuring the planning reserve margin requirement for remaining demand. We find that such compensation would ensure that the provider of last resort would be revenue neutral. Accordingly, we direct MISO to propose such language in its compliance filing.

2. Cost Responsibility

a. Filing

28. MISO's proposal will allow the provider of last resort to charge and credit LSEs on a daily basis that lose or gain load during the planning year. MISO's proposal would set a charge for load that is gained (based on the auction price of capacity purchased by the provider of last resort in the auction) which is also the basis for amounts to be credited to LSEs that lose load during the planning year. As MISO explains, since payments for such capacity are made daily during the planning year and some entity other than the provider of last resort would be supplying the load, the provider of last resort would be debited (for the auction secured capacity) and at the same time credited (for the same capacity) at the identically same rate, leaving the provider of last resort in a net-zero position.[45]

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[43] September 28 Filing at 5.

[44] MISO Answer at 8.

[45] September 28 Filing at 5; Kuhn Test. at 13.

29. MISO further proposes to allocate the costs incurred by the provider of last resort for procuring the planning reserve margin requirement for remaining demand on a daily basis. Under MISO's proposal, in jurisdictions that permit load switching, an LSE's cost responsibility for capacity procured by the provider of last resort would be based upon the LSE's load and the applicable auction clearing price for the local resource zone in which the load is located. The cost allocation would be based on either the peak load contribution method or the daily peak method.[46]

b. Comments

30. Joint Commenters support MISO's proposal to assign a capacity procurement obligation to a provider of last resort in the event that there is load in an electric distribution company's footprint that is not claimed by LSEs.[47] However, Joint Commenters condition their support for MISO's proposal on the existing Tariff provisions that permit the capacity costs for any electric distribution company in a retail choice state to be fully allocated to all load within the electric distribution company remaining in place.[48] Joint Commenters contend that such provisions are necessary to assure the electric distribution company's recovery of costs associated with its obligation as the provider of last resort.

c. Answer

31. In response to Joint Commenters, MISO explains that its proposal will ensure that any unclaimed load will have its resource adequacy obligations satisfied by the providers of last resort and "appropriately assigned to the responsible LSE."[49] MISO adds that proposed section 69A.1.2.1(c) appropriately assigns [the cost of] resource adequacy obligations to all load within an electric distribution company's service territory.[50]

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[46] September 28 Filing at 5-6; Kuhn Test. at 15.

[47] Joint Commenters at 3-4.

[48] *Id.* at 4 (footnotes omitted).

[49] MISO Answer at 3.

[50] *Id.*

d. Commission Determination

32. We accept MISO's proposed revisions to section 69A.1.2 describing the allocation of capacity costs to LSEs in states with retail choice, both where the electric distribution company has adopted the peak load contribution method and where it has adopted the daily peak load method. MISO's proposed cost allocation complies with the Commission's directives in the Capacity Auction Order.

33. We consider MISO's answer to be responsive to the concerns of Joint Commenters. MISO's proposal ensures that the cost of the remaining capacity that has not been claimed by LSEs is accounted for in the electric distribution company's demand forecast and allocated to all load.

3. Load Forecasting and the Planning Reserve Margin Requirement

a. Filing

34. MISO proposes to refine the explanation of the peak load contribution and daily peak load methodologies in the Tariff.[51] MISO explains that the proposed formula for determining the planning reserve margin requirement will ensure that electric distribution companies' peak load contributions match their reserve requirements.[52] MISO also proposes to no longer allow electric distribution companies to submit alternative methods of forecasting coincident peak demand.

b. Comments

35. RESA argues that MISO's load forecasting methodologies are unjust, unreasonable, and unduly discriminatory.[53] In particular, RESA contends that MISO's load forecasting methodologies discriminate between: (1) LSEs in retail choice states and LSEs in non-retail choice states; (2) electric distribution companies and LSEs in retail choice states; and (3) all customers.[54] RESA states that all LSEs should be permitted to compile their own load forecasts irrespective of whether those LSEs serve load in a jurisdiction that permits retail competition.[55]

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[51] September 28 Filing at 6.

[52] *Id.*

[53] RESA at 7.

[54] *Id.*

[55] *Id.*

36. RESA asserts that the daily charge applicable to LSEs using the daily peak load methodology "results in unduly discriminatory results in that LSEs with *high* annual load factors would pay proportionally *more* than LSEs with *low* annual load factors."[56] RESA elaborates on this point, stating that the planning reserve margin is "not dependent on load factor" where electric distribution companies and LSEs in jurisdictions that do not permit retail choice utilize the peak load contribution methodology.[57]

37. Moreover, RESA requests that the Commission direct MISO to acquire and use peak load contribution data to the extent that such data become available, as the Commission required in the Capacity Auction Order[58]

c. <u>Answer</u>

38. According to MISO, RESA's assertions that MISO's demand forecasting methodologies are unlawful fails to address the current proposal to resolve the potential challenges to resource adequacy in the context of retail competition and wholesale load switching.[59] Moreover, MISO points out that the Commission has conditionally approved MISO's use of the peak load contribution methodology and the daily peak load methodology.[60]

39. MISO argues that RESA's request regarding MISO's use of the peak load contribution methodology is beyond the scope of the proceeding.[61] MISO notes that the compliance filing required by the Capacity Auction Order is currently pending before the Commission. Nevertheless, MISO confirms that it plans to use the peak load contribution methodology once sufficient historical data is available.[62]

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[56] *Id.* at 9; *see id.* at 9-13.

[57] *Id.* at 9.

[58] *Id.* at 14 (citing Capacity Auction Order, 139 FERC ¶ 61,199 at P 223).

[59] MISO Answer at 6.

[60] *Id.* at 7 (citing Capacity Auction Order, 139 FERC ¶ 61,199 at P 223).

[61] *Id.* at 10.

[62] *Id.* at 8.

d. Commission Determination

40. MISO's proposal provides a number of improvements to its description of the peak load contribution and daily peak load methodologies. Nevertheless, the planning reserve margin requirement formula based on peak load contributions provided in 69A.1.2.1(b) fails to define each element of the formula as well as the adjustment factor. As a result, we direct MISO to define each element of its proposed formula, including the adjustment factor and all mathematical symbols used in the formula in the compliance filing. We assume that the adjustment factor in the formula represents the planning reserve margin that applies to the retail area. We require MISO to confirm this assumption in the compliance filing.

41. RESA's various arguments that MISO's load forecasting methodologies are unjust, unreasonable, and unduly discriminatory are not only beyond the scope of the current proceeding, but a collateral attack on the Commission's determinations in the Capacity Auction Order as well. MISO's current proposal is intended to address issues that arise as a result of load switching. As such, the proposal appropriately works within the confines of the approved forecasting methodologies. The lawfulness of those methodologies is not at issue in this proceeding. Rather, in the Capacity Auction Order, the Commission explicitly directed MISO to utilize the peak load contribution and daily peak load methodologies.[63] Thus, to the extent that RESA disagrees with that holding, the proper procedural avenue through which to challenge that determination would have been a request for rehearing of the Capacity Auction Order.

42. To the extent that RESA challenges MISO's proposed implementation of the daily peak load methodology with respect to the capacity cost allocation, MISO's proposal necessarily must base the daily charge for LSEs that use the daily peak method on the LSE's percentage of load served by the electric distribution company during the MISO daily peak. The fact that such a charge has a different impact on high and low load factor LSEs does not make such an allocation unreasonable. Such an allocation reflects the proportion of peak requirements for the LSE and therefore provides a reasonable basis for allocating cost responsibility for obtaining resources to meet its peak demand requirements where entities lack the necessary data to use the peak load contribution methodology.

43. We are also not persuaded by RESA's assertion that MISO's proposed Tariff language must be revised to require MISO to acquire and use peak load contribution data. As discussed with respect to MISO's forecasting methodologies, MISO's compliance with the Capacity Auction Order is not at issue in the current proceeding. We consider MISO's answer—that it will use peak load data when it becomes available—to be responsive to RESA's concern.

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[63] Capacity Auction Order, 139 FERC ¶ 61,199 at P 223.

44. We accept MISO's proposal to eliminate the alternative method for assigning coincident peak demand obligations as well as clarifying edits. We consider it reasonable for LSEs to use either the peak load contribution method or the daily peak method if data is not available for the peak load contribution method.

45. We are, however, concerned that neither accepted Module E-1 provisions nor MISO's proposed Tariff revisions in this filing specify when and if LSEs in retail choice areas must report their plan for meeting their capacity obligation to MISO. Such a plan would specify whether the LSE intends to satisfy its capacity obligation through submittal of a FRAP, participation in the market, payment of the deficiency charge, or allocation of the cost based on one of the default methodologies. Accordingly, we direct MISO, in its compliance filing, to amend to the Tariff to specify the reporting of resource plans to MISO for LSEs in retail choice areas.

46. In light of MISO's proposal to make providers of last resort responsible for obtaining capacity based on their demand forecasts, the costs of which are assessed to LSEs, and RESA's concerns, we are concerned that the Tariff does not specify a process for LSEs to challenge demand forecasts provided by the electric distribution company, which inform MISO's cost allocation to LSEs. Accordingly, we direct MISO to propose Tariff revisions in its compliance filing specifying the procedures for LSEs to challenge demand forecasts submitted to MISO by electric distribution companies.

<u>The Commission orders</u>:

(A) MISO's proposal is hereby conditionally accepted, effective November 28, 2012, as discussed in the body of this order.

(B) 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.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.