155 FERC ¶ 61,082
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

Midwest Independent Transmission System Operator, Inc. Docket No. ER09-411-005

ORDER DENYING REHEARING

(Issued April 21, 2016)

1. In 2009, Midwest Independent Transmission System Operator, Inc. (MISO)[1] proposed to revise its Open Access Transmission, Energy and Operating Reserve Markets Tariff (tariff) to exempt certain resources, including intermittent resources, from real-time Revenue Sufficiency Guarantee charges; to modify its determination of deviations subject to real-time Revenue Sufficiency Guarantee charges; and to change other miscellaneous tariff provisions. The Commission accepted and suspended the proposed tariff revisions, and made them effective subject to conditions that included two compliance filings.[2] After MISO had made those compliance filings, the Commission accepted in part and rejected in part MISO's proposed tariff revisions, subject to further compliance filings.[3] The Commission also granted in part and denied in part requests for rehearing of the Initial Order. In this order, we deny requests for rehearing of the Compliance Order.

[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.*, 128 FERC ¶ 61,142 (2009) (Initial Order).

[3] *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,184 (2010) (Compliance Order).

I. Background and Summary of Filings

2. Under section 40.2.19 of the MISO tariff, a generation or demand response resource receives real-time Revenue Sufficiency Guarantee credits if MISO commits the resource through the Reliability Assessment Commitment process[4] 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 revenues to cover its as-offered production costs.[5] To fund the Revenue Sufficiency Guarantee credits, market participants are charged a real-time Revenue Sufficiency Guarantee charge under section 40.3.3 of the tariff. The charge is based on market participants' virtual supply offers and real-time load, injection, export, and import deviations from day-ahead schedules.

3. In August 2007, three groups of utilities filed complaints under section 206(b) of the Federal Power Act (FPA),[6] alleging that the real-time Revenue Sufficiency Guarantee charge contained in the tariff unduly discriminated among classes of market participants. The Commission found that the complainants had shown that the rate in question may be unjust, unreasonable, or unduly discriminatory but that they had not shown that their proposed alternative rate was just and reasonable.[7] In order to develop a more complete record, the Commission set the complaints for paper hearing and investigation.[8]

4. On November 10, 2008, the Commission issued an order finding that the complainants had met their burden of proof under section 206(b) of the FPA by

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[4] The Reliability Assessment Commitment process ensures that sufficient resources will be available and online to meet load, operating reserve, and other demand requirements in the real-time market. The process occurs prior to the day-ahead energy and operating reserve markets, between the day-ahead and real-time markets, and during the real-time markets.

[5] Real-time Revenue Sufficiency Guarantee credits ensure that generation and demand response resources recover their production and operating reserve costs. MISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet Nos. 238 and 248, First Revised Sheet No. 1111.

[6] 16 U.S.C. § 824e (2012).

[7] *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶ 61,205 (2007), *order on reh'g*, 125 FERC ¶ 61,162 (2008).

[8] *Id.* P 94.

demonstrating that the Revenue Sufficiency Guarantee charge cost allocation in effect was unjust and unreasonable and that the proposed alternative cost allocations are just and reasonable.[9] The Commission found that the complainants' proposed alternative cost allocation (the Interim Rate) was just and reasonable and should replace the then-effective cost allocation. The Interim Rate went into effect on November 10, 2008. With regard to a second alternative (the Indicative Rate), the Commission found that the proposal formed the basis for a just and reasonable cost allocation, but needed further adjustments to conform to the then-nascent ancillary services market. The Commission therefore allowed MISO to file its Indicative Rate when it had a complete and final proposal. MISO did so on February 23, 2009, framing its filing as a compliance filing that responded to the directives of the Order on Paper Hearing. The Commission accepted the Redesign Proposal subject to further compliance filings not relevant here.[10]

5. On December 12, 2008, MISO filed in the instant proceeding a proposal to modify certain Revenue Sufficiency Guarantee charge provisions within the Interim Rate and to make other miscellaneous tariff revisions (December 12, 2008 Filing). MISO proposed to revise tariff section 40.3.3.a.ii(d) to clarify that only those resource deviations that are "not otherwise exempt from hourly [e]xcessive [e]nergy [c]alculations and Excessive/Deficient Energy Deployment Charges" are subject to Revenue Sufficiency Guarantee charges.[11] The exemption would apply to the following resources: (1) resources following MISO directives during emergencies; (2) resources in test mode, or start-up or shut-down mode; (3) resources that trip and go off-line; (4) resources involved in a contingency reserve deployment; (5) resources covered by the deactivation of the dispatch band option; (6) resources affected by other events or conditions beyond their control; and (7) intermittent resources.

6. On February 9, 2009, Commission staff notified MISO that the December 12, 2008 Filing was deficient and requested additional information, including: (1) a description of each exemption being proposed or otherwise clarified; (2) a justification for each exemption, including the policy basis and a cost-causation analysis for each exemption; and (3) a discussion of the RSG Task Force's findings regarding the

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[9] *Ameren Servs. co. v.Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,161 (2008) (Order on Paper Hearing), *order on reh'g*, 127 FERC ¶ 61,121 (2009) (Paper Hearing Rehearing Order).

[10] *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,186 (2010).

[11] December 12, 2008 Filing, MISO FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 1096.

exemptions, including any relevant meeting minutes or work papers. MISO filed a response on March 11, 2009.

7. On May 8, 2009, Commission staff notified MISO that its response was deficient. Staff requested further information, including: (1) a detailed description of how MISO forecasts, schedules, and dispatches intermittent and other resources that are exempt from real-time Revenue Sufficiency Guarantee charges under the proposal; and (2) a detailed description of how MISO determines the amount of headroom needed for intermittent and other resources that are exempt from real-time Revenue Sufficiency Guarantee charges under the proposal.[12] MISO filed a response on June 8, 2009.

8. In the Initial Order the Commission accepted, suspended, and made effective January 6, 2009 MISO's proposed tariff revisions regarding the exemptions, subject to refund and further order. The Commission found that the proposed exemptions had not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. The Commission required MISO to submit a compliance filing within 30 days to provide a proposed plan and timeline for the RSG Task Force to analyze how the deviations that are subject to the proposed exemptions may cause real-time Revenue Sufficiency Guarantee costs. The Commission also directed MISO to submit a compliance filing within 90 days to provide further support for its proposed exemptions or, as appropriate, to amend its proposal based on the RSG Task Force's findings and recommendations.[13]

9. MISO submitted its 30-day compliance filing on September 8, 2009. It consisted of a plan and timeline for conducting the RSG Task Force analysis and revised tariff sheets.

10. MISO submitted its 90-day compliance filing on December 7, 2009.[14] It consisted of the results of the RSG Task Force analysis and the recommendations of the RSG Task Force and MISO.

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[12] "Headroom" refers to the sum of the differences between the real-time economic maximum dispatch and dispatch targets for the energy of resources committed in Reliability Assessment Commitment processes conducted for the operating day, resulting from various factors including, but not limited to, intra-hour changes in demand.

[13] Initial Order, 128 FERC ¶ 61,142 at P 51.

[14] The Commission granted MISO's motion for extension of time to submit its 90-day compliance filing. *Midwest Indep. Transmission Sys. Operator, Inc.*, Notice of Extension of Time, Docket No. ER09-411-000 (Oct. 15, 2009).

11. MISO's Independent Market Monitor, Potomac Economics Ltd. (Market Monitor), performed the required analysis on behalf of the RSG Task Force.[15] The Market Monitor Study states that to varying degrees, all of the deviations that are exempted under the proposal cause real-time Revenue Sufficiency Guarantee costs. In particular, the study found that the exempted deviations jointly account for approximately seven percent (or $5.3 million) of real-time Revenue Sufficiency Guarantee costs between January 6, 2009 and September 30, 2009, with approximately $3.3 million and $1 million of that amount attributable to intermittent resources or to resources covered by deactivation of the dispatch band option, respectively.[16]

12. Based on these findings, the RSG Task Force voted to recommend eliminating the proposed exemptions for intermittent resources and for resources covered by deactivation of the dispatch band option. The RSG Task Force found that cost causation exists in both cases and that there is potential for material cost shifts and discriminatory treatment in the case of the intermittent resource exemption.[17] The RSG Task Force made several additional recommendations regarding the allocation of real-time Revenue Sufficiency Guarantee costs, the provision and auditing of operator logs, the implementation of a look-ahead tool, and further studies.[18]

13. MISO stated that it agreed with the recommendations of the RSG Task Force to eliminate two of the proposed exemptions, but it did not withdraw this aspect of its proposal. MISO noted that it has proposed tariff revisions to assign real-time Revenue Sufficiency Guarantee costs to intermittent resources on a prospective basis in a separate proceeding.[19] MISO also stated that it proposed to remove the dispatch band option from its tariff in a contemporaneous filing, which would render the associated exemption moot

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[15] MISO, December 7, 2009 Compliance Filing, Tab C, MISO Revenue Sufficiency Guarantee Cost Study (Market Monitor Study).

[16] *Id.* Tab C, Market Monitor Study at 7-8.

[17] *Id.* Transmittal Letter at 8-9.

[18] *Id.* Transmittal Letter at 9-10. The tariff proposal at issue does not address these recommendations, so we note that they are outside of the scope of this proceeding. In addition, we note that MISO does not propose to exempt virtual supply offers from real-time Revenue Sufficiency Guarantee charges, so this issue is also outside of the scope of this proceeding.

[19] *Id.* Transmittal Letter at 17. *See also* MISO February 23, 2009 Filing, Docket No. EL07-86-000, *et al.*

on a prospective basis.[20] In addition, MISO contended that the other five proposed exemptions should be retained because they are consistent with existing real-time Revenue Sufficiency Guarantee charge exemptions, because the deviations in question are non-discretionary and cause minimal Revenue Sufficiency Guarantee costs, and because the exemptions provide an incentive to follow MISO operating procedures and directives.[21] Finally, MISO argued that the Commission should deny the RSG Task Force's other recommendations.

14. In the Compliance Order, the Commission accepted in part and rejected in part the proposed Revenue Sufficiency Guarantee charge exemptions, and granted in part and denied in part the requests for rehearing of the Initial Order. Citing the Market Monitor Study, the Commission found that intermittent resources are causing the incurrence of real-time Revenue Sufficiency Guarantee costs.[22] The Commission therefore rejected MISO's proposal to exempt intermittent resources from real-time Revenue Sufficiency Guarantee charges.[23] The Commission applied this rejection on a prospective basis. The Commission found that ordering refunds would create substantial uncertainty and undermine faith in the Midwest ISO's markets. The Commission also declined to order refunds because market participants cannot revisit commercial decisions made based on the expected rate, and resettling real-time Revenue Sufficiency Guarantee charges to require refunds since January 6, 2009 would potentially render previous transactions uneconomic and would be an unfair and inequitable remedy.[24]

II. Requests for Rehearing

15. Northern Indiana Public Service Company (Northern Indiana); EPIC Merchant Energy, LP, SESCO Enterprises LLC, Jump Power, LLC, Solios Power, LLC, Big Bog Energy LP, and JPTC, LLC (collectively, Financial Marketers); American Wind Energy Association and Wind on the Wires (collectively, AWEA and WOW); E.ON Climate

[20] *Id.* The Commission has accepted MISO's proposal to remove the dispatch band option from its tariff. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 130 FERC ¶ 61,150 (2010).

[21] Transmittal Letter at 21-23.

[22] Compliance Order, 132 FERC ¶ 61,184, at P 88 (citing Market Monitor Study at 7).

[23] *Id.* P 88.

[24] *Id.* P 129.

& Renewables North America LLC and NextEra Energy Power Marketing, LLC (collectively, Intermittent Parties); Dynegy Power Marketing, Inc. (Dynegy); Detroit Edison Company (Detroit Edison); and Xcel Energy Services, Inc. (Xcel) filed requests for rehearing of the Compliance Order. Iberdrola Renewables, Inc., Invenergy Wind North America LLC, and Renewables, Inc. filed a joint request for rehearing that adopts and supports the same arguments as those of AWEA and WOW.

III. Discussion

A. Exemption of Intermittent Resources

1. Rehearing Requests

a. Cost Causation Analysis

16. The Intermittent Parties and AWEA and WOW point to a number of features of the Market Monitor Study that they say led the analysis to overestimate the costs associated with intermittent resources or rendered the study incomplete. They state that the Market Monitor Study likely inflated the costs associated with intermittent resources and other identified factors by failing to quantify indirect causes of Revenue Sufficiency Guarantee costs, such as carved-out grandfathered agreements and topology changes.[25] The Intermittent Parties also assert that MISO's analysis failed to consider and address "the types of and characteristics of all resources that contribute to [Revenue Sufficiency Guarantee] costs, as well as how such resources cause real-time [Revenue Sufficiency Guarantee] costs to be incurred," as required by the Commission, and that the Commission should have ensured that these additional items were considered. They add that the Commission ignored its own requirement that MISO consider the impact of its rules on wind resources.[26]

17. AWEA and WOW argue that the Commission rejected the Revenue Sufficiency Guarantee charge exemption for intermittent resources because the RSG Task Force concluded that intermittent resources cause more than 4 percent of Revenue Sufficiency Guarantee costs. They state that the Market Monitor Study only identified 62 percent of the deviations that were causing total Revenue Sufficiency Guarantee costs; that when this fact is considered, the 4 percent of Revenue Sufficiency Guarantee costs attributed to

[25] Intermittent Parties Request for Rehearing at 32-33; AWEA and WOW Request for Rehearing at 18-19.

[26] Intermittent Parties Request for Rehearing at 32-33 (quoting Initial Order, 128 FERC ¶ 61,142, at P 51).

intermittent resources is reduced to 2.48 percent; and that the contribution of wind resources is even smaller.[27] They also contend that the Market Monitor Study overstates intermittent resources' responsibility for Revenue Sufficiency Guarantee costs because it did not account for indirect causal factors like transmission derates, system topology and changes in loop flows. AWEA and WOW note that the contribution of wind resources to Revenue Sufficiency Guarantee costs may be overstated because Revenue Sufficiency Guarantee costs were attributed to deviations on a *pro rata* MW basis – i.e., as if deviations from day-ahead levels have the same impact on real-time commitments as deviations from MISO instructions in real-time.[28] Finally, AWEA and WOW argue that the Market Monitor Study did not segregate Revenue Sufficiency Guarantee costs that are caused by grandfathered agreement schedules, which are exempt from Revenue Sufficiency Guarantee charges. They conclude that the Commission's decision not to exempt intermittent resources inappropriately discriminates among resources that cause *de minimus* amounts of Revenue Sufficiency Guarantee costs. AWEA and WOW state that at a minimum, the Commission's rejection of the exemption was premature, as it was based on an incomplete picture of the causes of Revenue Sufficiency Guarantee causes.[29] The Intermittent Parties also contend that the Commission's decision to reject the exemption for intermittent resources was arbitrary and capricious and was not the result of reasoned decision-making.[30]

18. The Intermittent Parties argue that the Commission erred by finding that the proposed exemption for intermittent resources would improperly shift costs. They contend that intermittent resources by definition do not cause deviations that result in Revenue Sufficiency Guarantee costs, and that current MISO rules do not provide a means for intermittent resources to mitigate the incurrence of such costs. The Intermittent Parties assert that the Commission has previously accepted exemptions from Revenue Sufficiency Guarantee charges without determining that an inappropriate cost shift would occur. They further contend that the Commission departed without explanation from a "litany of cases and precedent in which it provided an exemption for intermittent resources and did not raise cost shift as an issue."[31]

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[27] *Id.* at 20-21.

[28] AWEA and WOW Request for Rehearing at 21-22.

[29] *Id.* at 18-24.

[30] Intermittent Parties Request for Rehearing at 31, 36; AWEA and WOW Request for Rehearing at 23-24.

[31] Intermittent Parties Request for Rehearing at 29-31.

b. Operating Characteristics of Intermittent Resources

19. The Intermittent Parties and AWEA and WOW argue that the Commission's decision to remove the exemption for intermittent resources will impose unduly discriminatory charges on intermittent resources. They explain that the characteristics of intermittent resources and existing MISO market rules prevent intermittent resources from avoiding or mitigating Revenue Sufficiency Guarantee costs. In particular, they explain that intermittent resources cannot be dispatched as part of MISO's real-time dispatch software and do not have the ability to set economic minimums or economic maximums, which are instead set at real-time output levels.[32] The Intermittent Parties also note that intermittent resources are unique in that they do not have a controllable fuel source. Thus, according to the Intermittent Parties and AWEA and WOW, unlike dispatchable generators, intermittent resources are unavoidably exposed to any Revenue Sufficiency Guarantee costs resulting from differences between any day-ahead forecasted schedule offer and their real-time output.[33] AWEA and WOW state that the increasing number of manual curtailments MISO has issued, and the lack of an exemption for these curtailments, has further exacerbated the exposure of wind resources to Revenue Sufficiency Guarantee charges.[34]

20. The Intermittent Parties and AWEA and WOW argue that the Commission's decision departs from prior Commission precedent recognizing that intermittent resources must be afforded an exemption for certain charges due to their special circumstances, and because penalties should be avoidable by customer action.[35] They state that the Commission previously supported an exemption for intermittent resources from charges based on commitment deviations.[36] They also note that the Commission has recognized

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[32] Intermittent Parties Request for Rehearing at 6-7; AWEA and WOW Request for Rehearing at 6-7.

[33] Intermittent Parties Request for Rehearing at 7-8; AWEA and WOW Request for Rehearing at 8-9.

[34] AWEA and WOW Request for Rehearing at 9-10.

[35] Intermittent Parties Request for Rehearing at 10-20.

[36] *Id.* at 10-11; AWEA and WOW Request for Rehearing at 16 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,318, at P 185 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,154, at P 32 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,053, at PP 220, 222 (2005); *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 535 (2004)).

that those resources have a limited ability to predict and control their output and that since deviations by wind generators are more driven by weather than by controllable factors, generator imbalance provisions may impede intermittent resources' transmission access in a way that is unduly discriminatory.[37] Moreover, the Intermittent Parties and AWEA and WOW state that the Commission recognized the special circumstances presented by intermittent generators in Order No. 890.[38] The Intermittent Parties also point to a number of other orders where they claim the Commission recognized the special circumstances of intermittent resources and the need to exempt them from charges that apply to other market participants.[39]

21. Xcel asks the Commission to grant rehearing to address whether any resource, especially intermittent resources, should be exempt from Revenue Sufficiency Guarantee charges when following MISO's dispatch instructions. Xcel argues that the Commission's decision discriminates against intermittent resources because they, unlike other resources, will be subject to Revenue Sufficiency Guarantee charges when responding to an instruction from MISO to curtail even when they are able to meet their day-ahead schedule in real time. For example, according to Xcel, if a wind farm is scheduled to run 150 MW in the day-ahead market and actually produces 150 MW in the real-time market, but MISO determines that the wind farm must decrease its output to 100 MW, the wind farm would have to pay Revenue Sufficiency Guarantee charges for each hour its output is curtailed. Xcel states that this is because MISO does not calculate the Economic Maximum Dispatch of such resources and assumes that the Economic

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[37] Intermittent Parties Request for Rehearing at 11-12 (citing *Imbalance Provisions for Intermittent Resources Assessing the State of Wind Energy in Wholesale Electricity Markets*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,581, at P 9-10 (2005) (Imbalance NOPR)); AWEA and WOW Request for Rehearing at 16-17.

[38] Intermittent Parties Request for Rehearing at 12-13 (quoting *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 663, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)); AWEA and WOW Request for Rehearing at 17 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 666).

[39] Intermittent Parties Request for Rehearing at 13, 15-16 (citing *Integration of Variable Energy Resources*, 130 FERC ¶ 61,053, at P 1 (2010); *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,161 (2008); *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (2008); *Cal. Indep. Sys. Operator. Corp.*, 116 FERC ¶ 61,274, at PP 555, 562 (2006)).

Maximum Dispatch is the dispatch target. Xcel states that imposing Revenue Sufficiency Guarantee charges on intermittent resources as a result of MISO's inability to calculate Economic Maximum Dispatch for such resources is contrary to cost causation principles, and that it creates an incentive for intermittent resources not to comply with MISO's dispatch instructions and wait for an emergency situation to arise, when Revenue Sufficiency Guarantee charges will not be assessed.[40] Xcel requests that the Commission exempt all resources that are following dispatch instructions from Revenue Sufficiency Guarantee charges or, in the alternative, direct MISO not to decrease the Economic Maximum Dispatch of an intermittent resource when it is following a request by MISO to decrease output. Xcel also asks the Commission to clarify that Revenue Sufficiency Guarantee costs will not be assessed to intermittent resources for the duration of the Interim Rate.[41]

c. Energy Deployment Charges

22. The Intermittent Parties claim that the Commission has previously recognized that resources that are exempt from uninstructed deviation penalties also should be exempt from Revenue Sufficiency Guarantee charges.[42] They state that the reasons that the Commission cited in support of finding that intermittent resources should be exempt from Energy Deployment charges support exempting such resources from Revenue Sufficiency Guarantee charges as well. They argue that the focus of the Commission's analysis should be the resource's ability to comply with dispatch instructions, which the record shows does not exist for intermittent resources.[43]

23. The Intermittent Parties state that the Commission's attempt to distinguish the nature of Energy Deployment charges from Revenue Sufficiency Guarantee charges, which the Commission characterized as a "general settlement charge," is misplaced and inappropriate. They argue that whether the specific function of the charge is a penalty rate or a general settlement charge is inconsequential for determining whether intermittent resources must be exempt from Revenue Sufficiency Guarantee charges. The Intermittent Parties contend that both charges result from a failure to comply with

[40] Xcel Request for Rehearing at 6-9.

[41] *Id.* 11-12.

[42] Intermittent Parties Request for Rehearing at 24-25. Uninstructed deviation penalties are now called Excessive/Deficient Energy Deployment (Energy Deployment) charges.

[43] *Id.* at 25.

MISO dispatch instructions in real-time and that the inapplicability of MISO dispatch instructions and deviations to intermittent resources supports an exemption from both types of charges.[44] They state that the Compliance Order imposes a penalty on intermittent generators that is not avoidable by customer actions and that imposes a competitive disadvantage on intermittent resources. The Intermittent Parties argue that the Commission ensured a level playing field when it exempted intermittent resources from Energy Deployment charges, but that subjecting intermittent resources to Revenue Sufficiency Guarantee charges creates an unlevel playing field between intermittent and non-intermittent resources.[45]

24. Similarly, AWEA and WOW assert that despite the Commission's attempt to draw a distinction between Revenue Sufficiency Guarantee charges and Energy Deployment charges, the Revenue Sufficiency Guarantee charge effectively functions as a penalty upon intermittent resources for their inherent inability to mitigate the Revenue Sufficiency Guarantee charge. AWEA and WOW argue that market rules on incentives and penalties should be based on incentives to perform. For this reason they argue that imposing a penalty on intermittent resources is arbitrary and capricious, as the imposition of Revenue Sufficiency Guarantee charges on such resources will not affect the behavior of intermittent resources.[46]

25. The Intermittent Parties also maintain that the Commission's decision is inconsistent with previous orders exempting manually redispatched generation resources and resources complying with MISO directives during emergency situations from Revenue Sufficiency Guarantee charges. The Intermittent Parties state that the Commission approved exemptions for such resources because it wanted to encourage certain behavior and not penalize such generators for their compliance. They maintain that by contrast, the Commission's decision to deny an exemption from Revenue Sufficiency Guarantee charges for intermittent resources, which are incapable of following real-time set-point instructions and of deviating from MISO instructions in ways that cause real-time Revenue Sufficiency Guarantee costs, will not give such

[44] *Id.* at 26.

[45] *Id.* 25-29.

[46] AWEA and WOW Request for Rehearing at 11-15.

resources an incentive to comply with MISO directives and will, instead, unfairly penalize them.[47]

2. Commission Determination

26. The sole issue addressed in the Compliance Order was whether it is just and reasonable and not unduly discriminatory to exempt intermittent resources from Revenue Sufficiency Guarantee charges.[48] The Commission considered an extensive record on this subject, including MISO's explanation 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 Revenue Sufficiency Guarantee costs."[49] Although "the inherent technical characteristics of intermittent resources, rather than their behavior or discretion, are generally the reason they cause real-time Revenue Sufficiency Guarantee costs,"[50] the Commission concluded that exempting intermittent resources from the Revenue Sufficiency Guarantee cost allocation would unfairly shift costs to other market participants, and this would be inconsistent with the Commission's application of cost causation principles in this proceeding.[51]

27. The requests for rehearing on this issue largely repeat arguments that the Commission addressed in the Compliance Order, and we will deny them. The arguments advanced in the rehearing requests do not persuade us that our prior conclusions were made in error. Instead, they confirm that the exemption for intermittent resources being sought here would amount to an undue preference for intermittent resources.

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[47] Intermittent Parties Request for Rehearing at 20-23 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,029, at PP 14-15 (2007); *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,325 (2006)).

[48] The Commission made it clear in the Compliance Order that the scope of this proceeding is limited to the proposed exemption only. *See* Compliance Order 132 FERC ¶ 61,184 at P 162 ("This proceeding is limited to considering whether a proposed modification to [MISO's] existing Interim Rate is just and reasonable; we will not consider whether the Commission-approved Interim Rate is just and reasonable or whether additional modifications to that rate are needed.").

[49] Compliance Order, 132 FERC ¶ 61,184, at P 88.

[50] *Id.* P 89.

[51] *Id.* P 88.

a. Cost Causation Analysis

28. We are not persuaded that intermittent resources do not cause Revenue Sufficiency Guarantee costs, or that cost shifting is irrelevant to determining whether intermittent resources should be allocated Revenue Sufficiency Guarantee charges.[52] The Market Monitor Study includes an extensive cost causation analysis that finds that intermittent resources cause Revenue Sufficiency Guarantee costs.[53] While the Intermittent Parties cite to a statement in MISO's first deficiency response asserting that there is no cost causation basis for assessing Revenue Sufficiency Guarantee charges to intermittent resources, MISO contradicts that statement in its last deficiency response, which was filed after the submittal of the Market Monitor Study. In that response, MISO agrees that intermittent resources cause Revenue Sufficiency Guarantee costs.[54] Both the RSG Task Force and MISO itself supported removing the exemption.[55] The Intermittent Parties contend that exempting intermittent resources will not produce an inappropriate cost shift because intermittent resources cannot control their deviations, but as further discussed *infra*, we do not agree that lack of ability to control deviations justifies an exemption from the charge.

29. We affirm that the scope of the Market Monitor Study met the compliance requirements of the Initial Order.[56] The Market Monitor Study included an assessment of the impacts of all resources, as indicated in the Resources and Exempted Resources cost attribution categories,[57] and the analysis included an explanation of how Revenue Sufficiency Guarantee costs are incurred.[58]

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[52] Intermittent Parties Request for Rehearing at 30.

[53] Compliance Order, 132 FERC ¶ 61,184, at PP 74-76.

[54] *Id.* P 76 ("The Exempted Deviation Discussion attached to the December 7, 2009 Compliance Filing indicates that exempting intermittent resources from [Revenue Sufficiency Guarantee] cost allocation has the highest impact of all the proposed exemptions and, given the growth and impact of these resources in recent years, a change in cost allocation is warranted." (Footnote omitted)).

[55] *Id.* PP 75-76.

[56] Intermittent Parties Request for Rehearing at 35.

[57] MISO December 7, 2009 Compliance Filing, Tab B at 14.

[58] *Id.* at 4.

30. We do not consider it reasonable to exempt intermittent resources from Revenue Sufficiency Guarantee costs, even if factors such as transmission de-rates, topology changes, loop flow changes and carved-out grandfathered transmission agreements may reduce costs attributable to intermittent resources, and even though the Market Monitor study did not analyze the impact of deviations or locational issues that AWEA and WOW recommend investigating. The record of this proceeding shows that intermittent resources cause the incurrence of Revenue Sufficiency Guarantee costs – and none of the factors cited by AWEA and WOW contradict this finding. This finding is a sufficient basis for not exempting intermittent resources.

31. AWEA and WOW's assertion that the Commission exempts grandfathered agreements from paying Revenue Sufficiency Guarantee charges – and that the Commission should similarly exempt intermittent resources – because they produce only *de minimus* amounts of Revenue Sufficiency Guarantee costs is incorrect. Carved-out grandfathered agreements are transmission contracts that pre-dated the MISO market, and that the contract parties elected to keep outside the framework of that market.[59] Because of the unique characteristics of these arrangements, and because the Commission found that it was proper to allow these contracts and transactions under them to remain outside the MISO framework, the Commission's action in permitting grandfathered status is distinguishable from its action with respect to intermittent resources, which transact in the MISO market. The amount of Revenue Sufficiency Guarantee charges that grandfathered agreements produce (*de minimus* amounts or otherwise) is irrelevant, and therefore does not form a basis for similar treatment of intermittent resources. Therefore, while grandfathered agreements and intermittent resources receive different treatment with regard to Revenue Sufficiency Guarantee cost responsibility, there is no undue discrimination or preference because we have identified appropriate reasons for it.

b. Operating Characteristics of Intermittent Resources

32. While we recognize, as the Commission has before, that there are differences between the operational characteristics of intermittent resources and thermal resources,[60] we do not find these differences form an appropriate basis for exempting intermittent resources from Revenue Sufficiency Guarantee charges. Load, like intermittent resources, is subject to deviations that are primarily a function of weather shifts, and

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[59] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 107 FERC ¶ 61,191, at P 15 (2004).

[60] *Integration of Variable Energy Resources*, Order No. 764, 139 FERC ¶ 61,246, at P 9 (2012) (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 665).

load-serving entities cannot control and avoid them.[61] Nonetheless, because these deviations cause Revenue Sufficiency Guarantee costs, Revenue Sufficiency Guarantee charges are assessed to load-serving entities based on load deviations.[62] The claim by Intermittent Parties and AWEA and WOW that intermittent resources need an exemption to avoid undue discrimination therefore has no basis in fact.

33. We do not consider Intermittent Parties and AWEA and WOW's arguments regarding the tariff treatment of other resources, including mechanisms to mitigate Revenue Sufficiency Guarantee cost exposure and the setting of operational parameters by intermittent resources, relevant to the Commission's findings in the Compliance Order. As noted above, the Compliance Order makes only one finding – intermittent resources should not be exempted from Revenue Sufficiency Guarantee costs. The record in this proceeding shows that exempting intermittent resources from Revenue Sufficiency Guarantee costs would be unduly discriminatory. None of the citations provided by Intermittent Parties and AWEA and WOW persuade us that this finding is in error.

34. To clarify further, statements by AWEA and WOW that intermittent resources are exposed to both negative and positive deviations from their day-ahead schedule have no foundation in the record of this proceeding. Likewise, Intermittent Parties provide no basis for their assertion that MISO has not provided intermittent resources with a mechanism to hedge against the incurrence of Revenue Sufficiency Guarantee costs.[63] There is no record in this proceeding on how Revenue Sufficiency Guarantee charges would be assessed to intermittent resources or how Revenue Sufficiency Guarantee charge mechanisms would impact intermittent resources.

35. We do not consider the Compliance Order to be inconsistent with previous Commission orders granting exemptions for manual redispatch and for following the

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[61] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,121, at PP 66-67, 114 (2009) (noting role of load deviations in causing Revenue Sufficiency Guarantee costs).

[62] *Id.* n.63 ("A correlation between load and Revenue Sufficiency Guarantee costs . . . is not a basis to exempt market participants from paying the Revenue Sufficiency Guarantee charge if they undertake other activities that can cause Revenue Sufficiency Guarantee costs.").

[63] *Id.* 19.

emergency directives of MISO.[64] The manual redispatch and emergency directives exemptions apply to rare and unusual actions that generators must take outside normal operating conditions. We do not consider this exemption, which is only applied infrequently under specified abnormal market conditions, to be a template for a permanent and complete exemption for intermittent resources. These Commission orders did not exempt generators from Revenue Sufficiency Guarantee charges during normal operating conditions, and therefore they are consistent with the Compliance Order requirement that intermittent resources also not be exempted from Revenue Sufficiency Guarantee charges.

36. We disagree with Intermittent Parties that it is unduly discriminatory to provide exemptions for manual redispatch or following emergency directives but not to provide an exemption for intermittent resources from Revenue Sufficiency Guarantee charges.[65] As discussed, the resources receiving the manual redispatch and emergency directives exemption are fundamentally different than intermittent resources. This difference – namely the ability of resource operators, and therefore the choice available to resource operators, to respond or not respond to MISO directives – is the reason such an exemption provides an incentive to non-intermittent resources and does not provide an incentive to intermittent resources. In this circumstance, different treatment for non-intermittent and intermittent resources does not constitute undue discrimination.

37. The issues that Xcel raises regarding the treatment of intermittent resources in the event of manual curtailments and in the setting of economic maximums during these events are beyond the scope of this proceeding. The Commission has addressed these issues elsewhere.[66]

c. Energy Deployment Charge

38. We reject Intermittent Parties' and AWEA and WOW's attempts to conflate the Revenue Sufficiency Guarantee charge and the Energy Deployment Charge. We disagree with Intermittent Parties' contention that resources that are exempt from the Energy

[64] Intermittent Parties Request for Rehearing at 23.

[65] *Id.* at 23.

[66] *Midwest Indep. Transmission Sys. Operator, Inc.*, 134 FERC ¶ 61,264, at P 74 (2011).

Deployment Charge on the basis that they cannot control their deviations necessarily must also be exempt from Revenue Sufficiency Guarantee charges.[67]

39. Intermittent Parties erroneously contend that there is no meaningful difference between the two charges in terms of categorizing them as a penalty rate or as a general settlement charge, because incurrence of both charges hinges on a deviation from MISO dispatch instructions.[68] But as the tariff indicates, the Revenue Sufficiency Guarantee charge serves a purpose that is separate and distinct from that of the Energy Deployment Charge. The Revenue Sufficiency Guarantee charge is a settlement charge that recovers real-time market costs not otherwise recovered in locational marginal prices.[69] Its purpose is to ensure that market participants pay the full cost of energy committed in the real-time market. The Energy Deployment Charge, which was originally called the uninstructed deviation charge, is a penalty charge that helps MISO maintain system reliability by discouraging deviations from generator dispatch instructions.[70] Its purpose is to provide an incentive for market participants to perform in real time within defined schedule and output limits.

40. We clarify for Intermittent Parties that the fundamental differences between the two charges are the reason the Commission considered cost shifts to be an unreasonable outcome for the Revenue Sufficiency Guarantee charge, whereas the Commission did not

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[67] In 2011, a new category of intermittent resources, Dispatchable Intermittent Resources was established. Among other attributes, such resources are subject to Excessive/Deficient Energy Deployment Charges and would be allocated real-time Revenue Sufficiency Guarantee charges in a manner similar to Generation Resources. *See Midwest Indep. Transmission Sys. Operator, Inc*., 134 FERC ¶ 61,141, at P 5 (2011). Most wind resources are now Dispatchable Intermittent Resources. *See* MISO presentation "April 2013 Wind Curtailments and DIR Update," May 15, 2013, https://www.misoenergy.org/Library/Repository/Meeting%20Material/Stakeholder/RSC/2013/20130514/20130514%20RSC%20Item%2011%20Wind%20Curtailment%20with%20RSC%20and%20OWG%20Recommendations.pdf.

[68] Intermittent Parties Request for Rehearing at 26.

[69] Revenue Sufficiency Guarantee charges are in the calculation subsection of the settlement of the real-time energy and operating reserve market in the MISO tariff. *See* MISO FERC Electric Tariff, Module C, Section 40.3.3, Real-Time Energy and Operating Reserve Market Settlement Calculations.

[70] *See generally Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at PP 529-536 (2008).

evaluate the cost shifting associated with the Energy Deployment Charge. Intermittent resources do not receive dispatch instructions, which is a necessary predicate to incurring Energy Deployment charges, and the Commission has found that this justifies an exemption from Energy Deployment charges.[71] But the lack of dispatch instructions does not preclude intermittent resources from causing Revenue Sufficiency Guarantee costs. The record demonstrates that they cause such costs via "increases and decreases in the real-time output of intermittent resources, as well as the reduced forecasts or unavailability of such resources."[72] The Commission has consistently held that entities that cause Revenue Sufficiency Guarantee costs must pay them. The very few exemptions to this rule are not applicable here.

41. We affirm that it is reasonable to evaluate cost shifting in a charge that is intended to ensure market participants pay for the full cost of energy in the real-time market.

42. For these reasons, we find no implications in the Imbalance NOPR for the Compliance Order. That NOPR was addressing generator imbalance provisions and the need to prevent those provisions, when applied to intermittent resources, from impeding access to transmission and from competing on an equal basis. The MISO exemption from the Excessive/Deficiency Charge for intermittent resources is consistent with the Imbalance NOPR since it reflects the need to treat intermittent resources differently than generators based on their different operating characteristics. However, as noted above, the Revenue Sufficiency Guarantee charge is not a penalty charge. In the words of the Imbalance NOPR, "penalties must be avoidable by customer actions, and should not limit market participation."[73] Since it is not a penalty charge, the Commission must look to other factors, such as cost causation, to determine if the allocation of the Revenue Sufficiency Guarantee charge among market participants is reasonable.

43. Likewise, we do not find the Compliance Order to be inconsistent with the Commission's acceptance of a California ISO exemption from hourly imbalance penalties for intermittent resources that Intermittent Parties cite.[74] Our acceptance of an exemption from imbalance penalties for intermittent resources does not provide support for an exemption from a settlement charge such as the Revenue Sufficiency Guarantee

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[71] *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 535 (2004).

[72] Compliance Order, 132 FERC ¶ 61,184 at P 88.

[73] Imbalance NOPR, FERC Stats. & Regs. ¶ 32,581 at P 57.

[74] Intermittent Parties at 16-17.

charge because these two charges serve different purposes. The fact that the Commission found an exemption from a penalty to be warranted in a particular case does not support an exemption from a settlement charge in another case because these two types of charges serve different purposes and are based on different justifications.

44. We find no relationship between this proceeding and the PJM proceeding that Intermittent Parties cite.[75] The PJM proceeding addresses the definition of economic minimum operating levels for generators, and it does not address the allocation of balancing operating reserve costs allocation charges, as Intermittent Parties claim.

45. Contrary to Intermittent Parties' assertion,[76] the Order on Paper Hearing[77] did not find an exemption from Revenue Sufficiency Guarantee charges based on an exemption from uninstructed deviation penalty charges to be just and reasonable. The Commission found the provision that Intermittent Parties cite to be outside the scope of the proceeding when MISO made its compliance filing, and it directed MISO to make exemption proposals in separate section 205 proceedings.[78] We also note that the cited provision only applies to Generation Resources. Generation Resources are defined as resources that can follow set-point instructions, something that intermittent resources cannot do,[79] and the provision therefore does not apply to intermittent resources.

46. We find that the rulemaking proceeding in Docket No. RM10-11, *Integration of Variable Energy Resources,* has no implications for the Commission's rulings in the Compliance Order. To ensure that jurisdictional rates are just and reasonable and not unduly discriminatory with respect to variable energy resources, that rulemaking

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[75] *Id.* at n.38.

[76] *Id.* at 15.

[77] *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,161 (2008).

[78] *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,186 at PP 40-41.

[79] *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,261, at P 43 (2009) ("[T]he definition of Generation Resource explicitly states that a Generation Resource must be capable of complying with set-point instructions. The definition of Intermittent Resource, in contrast, only applies to resources that cannot be scheduled or controlled or cannot follow set-point instructions. In other words, a Generation Resource cannot be an Intermittent Resource because an Intermittent Resource cannot follow set-point instructions.").

proceeding proposed tariff reforms for transmission scheduling practices, variable energy resource power production forecasts, and the recovery of capacity charges associated with generator imbalance service (i.e., generator regulation service).[80] The tariff reforms resulting from that proceeding do not encompass Revenue Sufficiency Guarantee charges or any additional revisions for settlement charges, such as Revenue Sufficiency Guarantee charges, to ensure jurisdictional rates are just and reasonable.

B. Exemptions for Test Mode, Start-Up or Shut-Down Mode, and for Resources That Trip and Go Offline

1. Rehearing Requests

47. Detroit Edison argues that the Commission should grant rehearing of the Compliance Order because the Commission failed to consider all relevant factors before rejecting the exemptions for resources in test mode, start-up or shut down mode, and for resources that trip and go offline. Detroit Edison contends that the Market Monitor Study demonstrates that "Testing" costs and "Startup/Shutdown" costs are not significant contributors to Revenue Sufficiency Guarantee costs. Detroit Edison argues that failing to exempt testing from Revenue Sufficiency Guarantee charges may eliminate the flexibility and efficiency that generators currently have to conduct generator testing to meet MISO requirements and to delay testing in order to accommodate system needs if generators are concerned that they will be assessed Revenue Sufficiency Guarantee charges if they do not test at the scheduled time. Detroit Edison maintains that, given the benefits associated with testing and the low dollar impact of testing, the Commission's decision not to exempt testing from Revenue Sufficiency Guarantee charges is arbitrary and capricious and does not constitute reasoned decision-making.

48. Detroit Edison argues that the Commission's decision to remove the exemption for start-up and shut-down periods will be counterproductive if generator owners choose to provide restrictive resource offer parameter information to MISO in order to minimize any impact through the allocation of Revenue Sufficiency Guarantee costs.[81] Detroit Edison states that the Commission's decision to reject the exemption for resources that trip and go offline adds to the costs associated with being offline, which are already substantial. Detroit Edison explains that this is because generation resources will incur Revenue Sufficiency Guarantee charges for a ten-minute period after a trip occurs due to

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[80] *Integration of Variable Energy Resources*, Order No. 764, FERC Stats. & Regs. ¶ 31,331, *order on reh'g and clarification*, Order No. 764-A, 141 FERC ¶ 61,232 (2012), *order on clarification and reh'g*, Order No. 764-B, 144 FERC ¶ 61,222 (2013).

[81] Detroit Edison Request for Rehearing at 4-6.

the fact that MISO's Unit Dispatch System lags by ten minutes and continues to send a base-point signal to a generator after a generator unit trips and goes offline.[82]

49. Dynegy argues that the Commission's failure to respond meaningfully to evidence supporting the exemptions for resources in test, start-up, or shutdown mode renders its decision arbitrary and capricious. Specifically, Dynegy argues that the Commission failed to address: (1) the Revenue Sufficiency Guarantee Task Force's findings supporting the retention of the exemption, including findings of appropriate differentiation and a lack of cost causation; (2) MISO's statement that it does not believe that an adequate basis exists to allocate Revenue Sufficiency Guarantee costs to deviations resulting from resources in test, start-up, or shutdown mode given their non-discretionary nature, incentives to follow operating procedures, magnitude of attributable costs, and the effectiveness with which these exemptions are administered through automated systems and established operating procedures; and (3) the additional support for the exemption provided by MISO in Tab H of the December 7, 2009 Compliance Filing.[83]

50. Dynegy also argues that it is improper to assign Revenue Sufficiency Guarantee costs to resources that run pursuant to a Day-Ahead or Reliability Assessment Commitment instruction from MISO while in start-up or shutdown mode. It contends that such generators would incur costs as a result of MISO's commitment decision, but would not derive any market-driven benefits from dispatch through the Reliability Assessment Commitment process. Dynegy adds that the rationale for accepting the exemption for resources responding to MISO directives during emergency or contingency reserve deployments – that deviations result from MISO instructions rather than the behavior or discretion of the resources involved – is equally applicable to resources in test, start-up, or shutdown mode. It states that much testing is non-discretionary and that Revenue Sufficiency Guarantee costs incurred when in start-up and shutdown mode are often the result of following MISO instructions.[84]

51. Dynegy further maintains that while the Commission may have rejected the exemption for resources that are following MISO directives in test, start-up, or shutdown mode based on the belief that testing is infrequent, voluntary, or short in duration, resource testing occurs more frequently than the Compliance Order suggests. Dynegy explains that generation resources are subject to testing requirements mandated by

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[82] *Id.* at 6-7.

[83] Dynegy Request for Rehearing at 3-4.

[84] *Id.* at 4-5.

various regulatory bodies and periodically conduct testing to ensure that units are operating as efficiently as possible. Dynegy contends that allocating Revenue Sufficiency Guarantee costs to generation resources for these tests will likely increase testing costs and may result in unintended consequences, such as the distortion of energy prices and competition in MISO.[85]

2. Commission Determination

52. We deny the requests for rehearing to the extent they argue that we should exempt from Revenue Sufficiency Guarantee charges deviations associated with testing, start-up and shut-down. While we understand that testing, start-up and shut-down deviations cannot be avoided in real-time operations, we consider it reasonable that these deviations be allocated Revenue Sufficiency Guarantee charges. We also affirm the Compliance Order ruling that deviations resulting from resources that trip and go offline should not be exempted.

53. As described *supra*, we do not consider a market participant's ability to avoid or reduce Revenue Sufficiency Guarantee costs to be the determining factor in deciding whether those costs should be allocated to a market activity. Unlike a performance penalty that is intended to provide an incentive, the Revenue Sufficiency Guarantee charge is assessed for the purpose of ensuring the payment of the full cost of real-time energy. For this reason the Commission has determined, and we affirm here, that the Revenue Sufficiency Guarantee charge should be based on cost causation rather than market participant discretion or the ability to avoid the charge. We note that the Commission has determined that it is reasonable to allocate Revenue Sufficiency Guarantee costs to other deviations and activities that market participants cannot avoid or lack the discretion to reduce, such as load deviations and intermittent resources.

54. We recognize that the Commission has exempted resources from Revenue Sufficiency Guarantee charges when they follow MISO directives during emergencies. Nonetheless, we do not consider this to be a basis for providing exemptions for any and all testing, start-up and shut-down deviations. Emergency events are unusual and infrequent. When they occur, all normal operating procedures are suspended and MISO undertakes out-of-market actions in real-time operations to ensure reliability.[86] As a consequence, prompt resource compliance with MISO's directives is of paramount

[85] *Id.* at 5-7.

[86] The emergency exemption only applies to deviations caused by or occurring as a result of Transmission Provider directives during an emergency. *See* MISO FERC Electric Tariff, Module C, Section 40.3.3.a.xi.

importance. In contrast, testing, start-up and shut-down decisions, as well as decisions to take a generator off-line, are made by the market participants that own the facilities, and therefore these resource owners have discretion as to how to time and manage these deviations. In these circumstances, as the Commission stated in the Compliance Order, if the resources that cause the costs are not assessed the corresponding charges, then other market participants must pay instead.[87] We affirm that this result would not be just and reasonable.

55. We disagree that the Compliance Order failed to satisfy cost causation principles because testing, start-up and shut-down deviations are not significant contributors of Revenue Sufficiency Guarantee costs. While the Market Monitor Study showed that these activities have a small impact, both MISO and the Market Monitor indicate that these activities caused the incurrence of Revenue Sufficiency Guarantee costs during the analysis period.[88] Based on these assessments, we affirm the finding in the Compliance Order that testing, start-up and shut-down deviations cause Revenue Sufficiency Guarantee costs.

C. Decision to Deny Refunds

1. Rehearing Requests

56. Northern Indiana argues that the Commission should grant rehearing of its decision to deny refunds. It states that the Commission failed to weigh properly the equitable factors that it typically weighs when deciding whether refunds should be excused. Northern Indiana further maintains that the Commission failed to discharge properly its obligation to protect consumers from excessive rates by failing even to mention consumer impacts, the amounts owed, whether the refunds would pass to consumers, or the fact that all market participants had notice that the rates were subject to change.[89] Northern Indiana challenges the idea that market participants reasonably relied on the MISO exemptions on the grounds that the extensive proceedings surrounding Revenue Sufficiency Guarantee charges show that every MISO market participant in the Midwest ISO has had reasonable notice that these charges are in dispute and subject to

[87] Compliance Order, 132 FERC ¶ 61,184 at P 109.

[88] *Id.*

[89] Northern Indiana Request for Rehearing at 10 (citing *Estate of L.D. French v. FERC*, 603 F.2d 1158, 1163 (5th Cir. 1979)).

potential revision. Northern Indiana also argues that there can be no justifiable reliance on exemptions that were never on file with the Commission.[90]

57. Northern Indiana maintains that the Commission has instead established a pattern of denying refunds for unlawful Revenue Sufficiency Guarantee charges, which fosters disrespect for the filed rate and compromises the Commission's authority to protect consumers, while providing only cursory and contradictory explanations of its reasoning. Northern Indiana claims that the Commission continued this pattern in the Compliance Order by finding that refunds were not appropriate because market participants had reasonably relied on MISO operating procedures, but then rejecting the proffered exemptions because market participants had no justifiable reliance expectation in exemptions that have never been on file with the Commission.[91]

58. Northern Indiana argues that the extensive proceedings concerning Revenue Sufficiency Guarantee calculations belies any notion that market participants reasonably relied on MISO's exemptions, a claim which Northern Indiana maintains is without evidentiary support. Northern Indiana also argues that this case can be distinguished from *Towns of Concord, Norwood & Wellesley v. FERC*,[92] which concerned equitable relief under section 206 of the FPA. It adds that there is a strong presumption that refunds will be paid because this case arises under section 205 of the FPA and involves a situation where all market participants have had ample notice of the Commission's January 6, 2009 refund effective date. Moreover, Northern Indiana argues that the courts have found that there is a strong equitable presumption that agency decisions should be given full retroactive effect to the refund effective date and that the Commission erred by neither mentioning the presumption nor pointing to record evidence to overcome it.[93]

59. Financial Marketers argue that the Commission should grant rehearing of its decision to deny refunds. They maintain that the Commission's "general practice is to order refunds when it concludes that a wholesaler with market power has been selling

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[90] *Id.* at 13.

[91] *Id.* at 8-12 (citing Compliance Order, 132 FERC ¶ 61,184 at P 38, 128).

[92] 955 F.2d 67, 76 (D.C. Cir. 1992).

[93] Northern Indiana Request for Rehearing at 13-15 (citing *National Fuel Gas Supply Corp. v. FERC*, 59 F.3d 1281, 1289 (D.C. Cir. 1995); *Transcontinental Gas Pipe Line Corp. v. FERC*, 54 F.3d 893, 899 (D.C. Cir. 1995); *Exxon Co., USA v. FERC*, 182 F.3d 30, 49 (D.C. Cir. 1999)).

energy at unjust or unreasonable rates."[94] They also maintain that that the Commission has a general policy of granting full refunds where it determines that a rate is unjust and unreasonable, and because the Compliance Order found that MISO's proposed tariff revisions were unjust and unreasonable, "the Commission must order refunds in this case."[95] Financial Marketers state that the entire basis for allowing a refund effective date prior to a final Commission determination is to protect customers from the adverse financial consequences caused if those rates are found to be excessive and unreasonable. Financial Marketers maintain that the prospective relief granted in the Compliance Order does nothing to remedy the harm that they and others have suffered. They claim that the Commission's decision to shift costs from transactions that actually caused Revenue Sufficiency Guarantee costs to transactions that did not had a disproportionately large and unduly discriminatory impact on virtual supply offers while enriching their competitors. Financial Marketers object to the notion that a decision to impose refund liability here would upset any settled expectations, as the Initial Order explicitly informed parties of the possibility of refunds. Accordingly, they argue that the Commission should direct MISO to issue refunds, plus interest, as of January 6, 2009, to all market participants who have been overcharged as a result of MISO's unlawful decision to exempt certain resources from Revenue Sufficiency Guarantee charges.[96]

2. Commission Determination

60. We deny the requests for rehearing of the Commission's decision in the Compliance Order to deny refunds. The Commission stated in that order that MISO's operating procedure had been to exempt all of the deviations discussed in the proposal since market start, and market participants reasonably structured their transactions based on MISO's practice. The Commission also stated that since market participants cannot revisit commercial decisions made based on the expected rate, resettling real-time Revenue Sufficiency Guarantee charges to require refunds since January 6, 2009, would potentially render previous transactions uneconomic and would be an unfair and inequitable remedy.[97] The arguments raised on rehearing do not show that the Commission erred in reaching this conclusion.

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[94] Financial Marketers Request for Rehearing at 5 (citing *Westar Energy, Inc. v. FERC*, 568 F.3d 985, 989 (D.C. Cir. 2009) (*Westar*)).

[95] *Id.* at 6.

[96] *Id.* at 5-11.

[97] Compliance Order, 132 FERC ¶ 61,184 at P 129.

61. Contrary to the assertions of Northern Indiana and Financial Marketers, there is no strong presumption that refunds will be paid because this case arises under FPA section 205 or that the Commission's general practice is to grant full refunds where it determines that a rate is unjust and unreasonable. The Commission has two lines of precedent on refunds, each dealing with a different situation. When a case involves a company over-collecting revenues to which it was not entitled, the Commission generally holds that the excess revenues should be refunded to customers.[98] By contrast, in a case where the company collected the proper level of revenues, but it is later determined that those revenues should have been allocated differently, the Commission traditionally has declined to order refunds.[99] These policies apply under both sections 205 and 206.[100]

62. This case, of course, involves the allocation of Revenue Sufficiency Guarantee costs, and as such it falls within the scope of the Commission cases denying refunds in such situations. The cases that Northern Indiana cites in support of its argument for refunds all involve utility over-collection of revenue, a situation in which the Commission generally awards refunds.[101] This point similarly applies to Northern

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[98] *See, e.g., Westar Energy, Inc. v. FERC*, 568 F.3d 985, 989 (D.C. Cir. 2009); *Consol. Edison Co. of N.Y. v. FERC*, 347 F.3d 964, 972 (D.C. Cir. 2003).

[99] *See, e.g., La. Pub. Serv. Comm'n v. Entergy Corp.*, 135 FERC ¶ 61,218 (2011); *Portland Gen. Elec. Co.*, 106 FERC ¶ 61,193, at P 5 (2004) (accepting rate design change on a prospective basis); *Consumers Energy Co.*, 89 FERC ¶ 61,138, at 61,397 (1999) (same); *Union Elec. Co.*, 58 FERC ¶ 61,247, at 61,818 (1992) (same); *Commonwealth Edison Co.*, 25 FERC ¶ 61,323, at 61,732 (1983); *accord Second Taxing Dist. v. FERC*, 683 F.2d 477, 490 (D.C. Cir. 1982) (affirming determination to make rate design changes prospective only); *Batavia v. FERC*, 672 F.2d 64 (D.C. Cir. 1982) (same).

[100] *See, e.g., Southern Co. Serv., Inc.*, 64 FERC ¶ 61,033 (1993) (finding that Southern had not met its burden under FPA section 205 of showing that a proposed cost classification was just and reasonable and denying refunds because there were no excess revenues to the Southern System and past operational decisions cannot be undone); *Occidental Chem. Corp*., 110 FERC ¶ 61,378, at P 10 (2005) (stating that "[t]he Commission's long-standing policy is that when a Commission action under section 206 of the FPA requires only a cost allocation change, or a rate design change, the Commission's order will take effect prospectively").

[101] *See* Northern Indiana Request for Rehearing at 9, n.28. Northern Indiana cites here to *Towns of Concord, Norwood & Wellesley v. FERC*, 955 F.2d 67, 76 (D.C. Cir. 1992), which dealt with over-recovery of costs through a fuel adjustment clause, although refunds were denied in this case on equitable grounds; and *Consol. Edison Co. of N.Y., Inc. v. FERC*, 347 F.3d 964, 972 (D.C. Cir. 2003) (quoting *Towns of Concord* and noting

(continued…)

Indiana's reference to the "complete, permanent and effective bond of protection from excessive rates and charges,"[102] which refers to protection of consumers from overcharges by utilities.[103] This protection does not implicate the Commission's practice of denying refunds in cost allocation cases, which involve overcharges to some customers and undercharges to others, and where refunds come not from utility revenues but rather from surcharges on customers.

63. Financial Marketers support their request for rehearing by citing *Westar* for the proposition that "'FERC's general practice is to order refunds when it concludes that a wholesaler with market power has been selling energy at unjust or unreasonable

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that the policy applies to "overcharges," i.e., over-recovery of the type dealt with in *Towns of Concord*. Northern Indiana also cites to *La. Pub. Serv. Comm'n v. Entergy Corp.*, 129 FERC ¶ 61,237, at P 15 (2009).

[102] Northern Indiana Request for Rehearing at 10 (quoting *Estate of L.D. French v. FERC*, 603 F.2d 1158, 1163 (5th Cir. 1979) (quoting *Atl. Refining Co. v. Pub. Serv. Comm'n*, 360 U.S. 378, 388 (1959) (*Atl. Refining*))).

[103] The Supreme Court stated in *Atl. Refining* that the Natural Gas Act (NGA) "was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges." *Atl. Refining Co. v. Pub. Serv. Comm'n*, 360 U.S. at 388. This statement represents a conclusion that the Court drew from its observation that

> As the original [section] 7(c) [of the NGA] provided, it was "the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest." 52 Stat. 825

The bond of protection was thus to protect consumers against utility over-collection, i.e., charges in excess of the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest. Even when a rate meets this criterion, issues may arise as to the allocation of costs among customers, and the language cited does not encompass that problem.

rates.'"[104] We are not, however, dealing with a situation in which some entity has exercised market power, and any such policy therefore does not apply here.

64. We did not, as Northern Indiana maintains, fail to weigh properly the equitable factors that the Commission typically weighs when ruling on refund requests. The factors that Northern Indiana cites are, in part, drawn from a case dealing with over-collection by a natural gas producer, not a case dealing with cost-allocation. However, the specific factors that Northern Indiana cites from that case are factors that the Commission identified in the course of determining whether individual natural gas producers would be required to make refunds for charges in excess of maximum area rates.[105] These cases therefore are not only not relevant to Commission practice in cost allocation cases, they do not address normal Commission practice in over-collection cases, where the Commission has a general policy of awarding refunds. Northern Indiana also refers to equitable factors the Commission considered in a case denying refunds in connection with a tariff violation involving auction-determined rates.[106] This case concerns rate levels rather than cost allocation and is likewise not on point here.[107]

65. The presence of notice that the rates were subject to change does not affect our decision. The presence of notice means that refunds will not violate the filed rate doctrine or the rule against retroactive ratemaking.[108] It is not itself an independent basis for granting refunds.

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[104] Financial Marketers Request for Rehearing at 5 (citing *Westar*, 568 F.3d at 989 (internal citations omitted)).

[105] Northern Indiana Request for Rehearing at 10 (citing *Estate of L.D. French v. FERC*, 603 F.2d 1158, 1163 (5th Cir. 1979) (*Estate of French*); *see also Rosario Production Co.*, Opinion No. 781, 56 FPC 2959 (1976); *Gillring Oil Co. v. FERC*, 566 F.2d 1323. 1326-27 (5th Cir. 1978). The court stated in *Estate of French* that the equitable factors in this class of cases "include the passage of time, the amounts owed, whether the sales are still jurisdictional, whether the refunds would pass to consumers who actually paid the money, the relative size of the producer, and whether on balance there is a benefit to the public interest." *Estate of French,* 603 F.2d at 1163.

[106] Northern Indiana Request for Rehearing at 10 (citing *Md. Pub. Serv. Comm'n, v. PJM Interconnection, L.L.C.*, 124 FERC ¶ 61,276, at P 32 (2008) (*Md. Pub. Serv. Comm'n*)).

[107] *Md. Pub. Serv. Comm'n*, 124 FERC ¶ 61,276 at P 32.

[108] *NSTAR Elec. & Gas Corp. v. FERC*, 481 F.3d 794, 801 (D.C. Cir. 2007).

66. We disagree with Northern Indiana's position that "the Commission's decision to deny refunds is at odds with the strong presumption that agency decisions will be given full retroactive effect to the refund effective date."[109] Northern Indiana cites two cases to support this contention, but neither of these cases is applicable to the facts of this proceeding.

67. The first case is *National Fuel*, which Northern Indiana describes as standing for the principle that the "'decision of a federal court must be given retroactive effect regardless of whether it is being applied by a court or an agency.'"[110] Northern Indiana maintains that this principle applies equally to agency decisions and that it is at odds with the Commission's decision to waive refunds in the Third Compliance Order on the grounds that such a waiver negates the required retroactive effect. The principle at issue derives from a series of Supreme Court cases that begins with *James B. Beam Distilling Co. v. Georgia.*[111]

68. The Supreme Court described this principle as follows:

> [w]hen [the Supreme] Court applies a rule of federal law to the parties before it, that rule is the controlling interpretation of federal law and must be given full retroactive effect in all cases still open on direct review and as to all events, regardless of whether such events predate or postdate our announcement of the rule.[112]

69. In *Beam Distilling*, the issue before the Court was whether it should apply retroactively its 1984 ruling that a Hawaii statute that imposed a discriminatory excise tax on intoxicating liquors imported into the state violated the commerce clause, to a separate open case in which an out-of-state bourbon manufacturer sought a refund from the State of Georgia of excise taxes that it paid for the years 1982-1984 under a similar Georgia statute. In other words, *Beam Distilling* addresses the question of whether a rule with retroactive application that the Court enunciates in one case should be applied in *other* open proceedings that commenced on the basis of the law as it existed prior to the

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[109] Northern Indiana Request for Rehearing at 14.

[110] *Id.* at 15 (citing *National Fuel*, 59 F.3d at 1289).

[111] 501 U.S. 529 (1991) (*Beam Distilling*); *see National Fuel*, 59 F.3d at 1285-88.

[112] *Harper v. Va. Dep't of Taxation*, 509 U.S. 86, 97 (1993).

enunciation of the rule – in short, "whether the court should apply the old rule or the new one."[113]

The Court's conclusion was that "[o]nce retroactive application *is chosen* for an assertedly new rule, it is chosen for all others who might seek its prospective application."[114] The Court chose retroactivity in *Beam Distilling* because it was the "normal rule" in civil cases. As the Court stated in *Harper*, the principle underlying the reasoning in *Beam Distilling* involved a "ban against 'selective application of new rules.'"[115] Northern Indiana states that the D.C. Circuit applied this principle to rate matters in *Transcontinental*, "where it discussed the 'norm . . . [that] the rate finally determined will be applied retroactively . . . as it means that the "right rate," i.e., whatever rate the Commission lawfully determines to be right, is applied throughout the period despite the Commission's initial uncertainty and delay.'"[116] This argument fails for several reasons.

70. First, the Supreme Court has held that retroactive application of a rule does not apply in cases where there is "a principle of law . . . that limits the principle of retroactivity itself."[117] Northern Indiana concedes that "the Commission has some equitable discretion to apply a rate determination retroactively,"[118] and given that this is the case, a principle of law that limits the principle of retroactivity is present here. Second, *Transcontinental*, which acknowledges that the Commission's refund authority is discretionary,[119] has no connection with the principle enunciated in *Beam Distilling*, which is not cited in that case.

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[113] *Beam Distilling*, 501 U.S. at 534.

[114] *Id.* at 543 (emphasis supplied).

[115] *Harper*, 509 U.S. at 97 (quoting *Griffith v. Kentucky*, 479 U.S. 314, 323 (1987)).

[116] Northern Indiana Rehearing Request at 15.

[117] *Reynoldsville Casket Co. v. Hyde*, 514 U.S. 749, 757 (1995).

[118] Northern Indiana Rehearing Request at 15 (quoting *Transcontinental*, 54 F.3d 893, 899).

[119] *Transcontinental*, 54 F.3d 893, 898.

71. The language in *Transcontinental* to which Northern Indiana refers concerns Commission practice where service on a natural gas pipeline begins under section 7 of the NGA[120] before final determination of rates for service has been established. Section 7(c)(1)(a) of the NGA prohibits the transportation or sale of natural gas, subject to the jurisdiction of the Commission without first acquiring a certificate of public convenience and necessity from the Commission. The court in *Transcontinental* was considering the Commission's authority to issue a section 7 certificate when it has not yet resolved the validity of proposed rates and instead has accepted those rates conditionally, subject to refund if it later finds the rates unreasonable. The court concluded that

> [t]he norm seemingly represented by these FERC decisions . . . is that where service starts under [section] 7 before final determination of the rates, the rate finally determined will be applied retroactively to the start of service. . . . The norm makes a good deal of sense, as it means that the "right rate", i.e., whatever rate the Commission lawfully determines to be right, is applied throughout the period despite the Commission's initial uncertainty and delay.[121]

72. Northern Indiana quotes this statement, but omits the reference to section 7[122] or the fact that that the norm in question expressly applies to situations where service begins on gas pipelines before a final determination of rates. Northern Indiana instead presents this language as establishing a general principle regarding refunds. *Transcontinental* does not support such a conclusion, which, among other things, contradicts the Commission's long-established practice of denying refunds in cost allocation and rate design cases. According to Northern Indiana's reading, once the Commission determines the "right rate" in such cases, it must be applied retroactively, and refunds must be ordered. There is no support for this conclusion, which, among other things, contradicts the Commission discretionary authority to order refunds.

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[120] 15 U.S.C. § 717f (2012).

[121] *Transcontinental*, 54 F.3d at 899.

[122] Northern Indiana states that the court discussed the "'norm . . . [that] the rate finally determined will be applied retroactively . . . as it means that the "right rate," i.e., whatever rate the Commission lawfully determines to be right, is applied throughout the period despite the Commission's initial uncertainty and delay.'" Northern Indiana Rehearing Request at 15 (quoting *Transcontinental*, 54 F.3d at 899).

73. Northern Indiana maintains that there is a contradiction between our finding in the Compliance Order that refunds were not appropriate because market participants had reasonably relied on MISO operating procedures and our rejection of the proffered exemptions because market participants had no justifiable reliance expectation in exemptions that have never been on file with the Commission. We disagree. These two rulings deal with separate and distinct issues. In stating that market participants reasonably relied on MISO operating procedures, the Commission was simply pointing to an equitable ground that justified not requiring those market participants to pay surcharges to fund refunds to other market participants. On the other hand, in finding that it had not "inappropriately invalidated market participants' past reliance on the exemptions" because "[t]hese exemptions have never been on file with the Commission," the Commission was stating that past reliance on exemptions that had not been on file was not in itself grounds for now accepting them for filing. The difference between these two findings is rooted the difference between the Commission's equitable power to grant refunds and the analysis it must make to determine whether a tariff rate, term, or condition is just and reasonable.

D. Exemption of Carved-Out Grandfathered Transmission Agreements

1. Rehearing Requests

74. Northern Indiana states that the Commission erred in exempting the impact of carved-out grandfathered agreements from cost causation analysis. Northern Indiana states that the Commission erroneously concluded that MISO provided aggregate data on the impacts of carved-out grandfathered agreements to the RSG Task Force. It states that no such data was provided, which was reflected in the fact that the Market Monitor specifically indicated that its study could not quantify these impacts. Northern Indiana thus maintains that the Commission is speculating and not acting based on record evidence when it concludes that evaluating the impact of these agreements on real-time Revenue Sufficiency Guarantee costs is unnecessary and would not change the study's ultimate finding. Northern Indiana states that the Commission's decision to interpret the Initial 2009 Order as not encompassing the impact of carved-out grandfathered agreements amounts to an improper post-hoc rationalization, as the Commission clearly directed MISO to study the impact of "issues pertinent to cost allocation" and it is impossible to determine whether the allocation of Revenue Sufficiency Guarantee charges should be changed without studying the impact of the grandfathered agreement exemption.[123]

[123] Northern Indiana Request for Rehearing at 15-17 (quoting Initial Order, 128 FERC ¶ 61,142, at P 51).

2. Commission Determination

75. We deny Northern Indiana's request that we grant rehearing to require MISO to study the impact of carved-out grandfathered transmission agreements on cost responsibility and to adjust rates accordingly. In the Compliance Order, the Commission granted rehearing on the scope of the Market Monitor analysis required by the Initial Order. The Commission did not require that the study consider other issues pertinent to cost allocation because MISO did not propose any changes to its Revenue Sufficiency Guarantee cost allocation other than the proposed exemptions.[124] Northern Indiana should have raised its concerns with respect to the scope of the Market Monitor analysis on rehearing of the Initial Order. Since the time for addressing this issue is past, we will not address the scope of the Market Monitor analysis again in this order. It is well established that the Commission does not allow rehearing of an order denying rehearing.[125]

E. Charges to Virtual Traders

1. Rehearing Request

76. The Financial Marketers argue that the Commission should grant rehearing and reject the existing Revenue Sufficiency Guarantee rate as unjust and unreasonable in light of what they describe as uncontroverted evidence showing that MISO is still grossly overcharging virtual market participants. They argue that the evidence clearly demonstrates that MISO's Revenue Sufficiency Guarantee rate shifts a substantial portion of Revenue Sufficiency Guarantee costs to non-exempt deviations and virtual supply offers even though they clearly do not cause these costs. The Financial Marketers maintain that the level of misallocation is extreme and that, according to the Market Monitor Study, virtual supply offers have been overcharged by approximately 86 percent (or by at least $0.60/MWh) and that other non-exempt deviations are similarly overcharged.[126]

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[124] Compliance Order, 132 FERC ¶ 61,184 at P 42.

[125] *E.g.*, *Midwest Indep. Transmission Sys. Operator Inc.*, 122 FERC ¶ 61,127, at P 26 (2008); *Bridgeport Energy, LLC*, 114 FERC ¶ 61,265, at P 8 (2006) (citing *Southern Co. Servs., Inc.*, 111 FERC ¶ 61,329 (2005); *AES Warrior Run, Inc. v. Potomac Edison Co.*, 106 FERC ¶ 61,181 (2004); *Southwestern Pub. Serv. Co.*, 65 FERC ¶ 61,088 (1993)).

[126] Financial Marketers Request for Rehearing at 11-12.

77. The Financial Marketers state that while the study concluded that a maximum of 13 percent of real-time Revenue Sufficiency Guarantee costs could potentially be attributed to virtual supply offers under MISO's interim method for allocating Revenue Sufficiency Guarantee costs, the actual percentage of costs attributable to virtual supply offers is much lower for the following reasons: (1) the figure given is based on a number of conservative assumptions that overstate the amount actually attributable to these transactions; (2) the figure includes amounts attributable to topology changes, such as changes in loop flows and transmission de-rates, and to carved-out grandfathered agreements and other deviations that were not subject to Revenue Sufficiency Guarantee charges; and (3) the figure includes charges attributable to indirect factors, such as peaking resources. The Financial Marketers also state that the study overestimated the contribution of virtual supply offers by assuming that all deviations affect the system comparably, when, in practice, virtual supply offers should bear no responsibility for any resources committed in the Intra-Day Reliability Assessment Commitment process because all resource commitments required as a result of virtual supply offers are made in the Forward Reliability Assessment Commitment process. The Financial Marketers add that the study also does not take into account the fact that virtual supply transactions actually reduce the amount of Revenue Sufficiency Guarantee costs incurred by MISO in hours where there is net virtual demand because net virtual demand means that MISO must commit less generation through the Reliability Assessment Commitment process. The Financial Marketers thus argue that the Market Monitor study demonstrates that the current allocation of 23 percent of Revenue Sufficiency Guarantee costs to virtual supply offers is more than double what these participants should be allocated, even under the most conservative assumptions.[127]

78. The Financial Marketers contend that the Commission arbitrarily and capriciously ignored evidence filed in this proceeding that shows that the existing Revenue Sufficiency Guarantee rate, even beyond the exempt deviations, is not cost-based and does not allocate costs fairly. They state that the Initial Order required MISO to evaluate not only the impact of the exempt deviations on unit commitment and Revenue Sufficiency Guarantee costs, but also to evaluate all other "issues pertinent to cost allocation."[128] Yet according to the Financial Marketers, the Compliance Order improperly ignored this directive and attempted to downplay evidence demonstrating that the Revenue Sufficiency Guarantee rate is not based on any cost causation principles. This, they contend, results in a disproportionate share of Revenue Sufficiency Guarantee costs being allocated to virtual supply offers by making the unsupported claim that the

[127] *Id.* at 12-15.

[128] *Id.* at 15 (quoting Initial Order, 128 FERC ¶ 61,142 at P 51).

Market Monitor Study was only to be based on the proposed exemptions and associated real-time Revenue Sufficiency Guarantee costs and that the allocation of real-time Revenue Sufficiency Guarantee costs is beyond the scope of this proceeding.[129]

2. Commission Determination

79. We do not consider the Compliance Order to be baseless or otherwise arbitrary and capricious because it did not evaluate aspects of the Market Monitor Study other than costs caused by the proposed exempted deviations. The Compliance Order appropriately evaluated those aspects of the Market Monitor Study that were relevant to MISO's section 205 filing proposing to exempt certain categories of deviations. The Commission made clear in the Compliance Order, when it granted rehearing on the scope of the Market Monitor analysis required by the Initial Order, that the study need not consider other issues related to cost allocation because MISO did not propose any changes to its Revenue Sufficiency Guarantee cost allocation other than the proposed exemptions.[130] In short, we see no basis to find that the Commission erred when it limited the evaluation of the Market Monitor analysis to matters that were relevant to MISO's filing.

80. We also find that the Commission did not need to evaluate the cost responsibility of virtual supply offers with respect to the intra-day Reliability Assessment Commitment process. To undertake additional analysis on the cost causation trends for other activities, as Financial Marketers recommend, would serve no purpose in evaluating the reasonableness of the MISO exemption proposal in this proceeding. Such an analysis would only be needed for an overall redesign of the Revenue Sufficiency Guarantee charge. Such an objective is well beyond the scope of this proceeding, and it would require the Commission to initiate a separate section 206 investigation to determine that the current Revenue Sufficiency Guarantee charge is unjust and unreasonable and set a new charge that is just and reasonable.

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[129] *Id.* at 17-18 (quoting Compliance Order, 132 FERC ¶ 61,184 at PP 42, 161).

[130] Compliance Order, 132 FERC ¶ 61,184 at P 42.

The Commission orders:

The requests for rehearing are denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.