155 FERC ¶ 61,075
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. ER11-2275-002

ORDER ON REHEARING

(Issued April 21, 2016)

1. On March 31, 2011, the Commission issued an order[1] conditionally accepting a proposal filed on December 1, 2010, and amended on February 15, 2011, by Midwest Independent Transmission System Operator, Inc. (MISO).[2] MISO proposed to revise provisions in its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) pertaining to the allocation of costs associated with the real-time Revenue Sufficiency Guarantee charge to market participants. In this order, we grant, in part, and deny, in part, the requests for rehearing of the March 31 Order, grant the requests for clarification of that order, and require a further compliance filing.

I. Background

2. On August 21, 2008, the Commission issued an order[3] commencing a paper hearing to address three complaints under section 206(b) of the Federal Power Act

[1] *Midwest Indep. Transmission Sys. Operator, Inc.*, 134 FERC ¶ 61,264 (2011) (March 31 Order).

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

[3] *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,173 (2008) (Order Commencing Paper Hearing), *reh'g denied*, 131 FERC ¶ 61,214 (2010).

(FPA).[4] The Complainants' position was that the real-time Revenue Sufficiency Guarantee charge[5] was unjust and unreasonable. The Commission noted that under section 206(b) of the FPA, Complainants carry the burden of proof and therefore must demonstrate, on the basis of substantial evidence, both that the rate in effect is unjust and unreasonable and that their proposed alternative rate is just and reasonable.[6]

3. Earlier in the proceeding, MISO had filed what it referred to as "indicative" Tariff revisions that reflect an alternative mechanism for allocating Revenue Sufficiency Guarantee charges and costs (Indicative Rate). MISO explained that these Tariff provisions represent a new real-time Revenue Sufficiency Guarantee cost allocation methodology that was developed based on principles agreed upon in stakeholder discussions, but which had not yet been conformed to incorporate MISO's new Ancillary Services Markets market design elements. MISO asked the Commission to determine whether the language in the Indicative Rate represented a just and reasonable basis for a subsequent filing that would replace the Revenue Sufficiency Guarantee cost allocation methodology for the Ancillary Services Markets. MISO stated that if the Commission determined that the proposed Indicative Rate is a just and reasonable basis for further developing provisions that would adapt the new Revenue Sufficiency Guarantee cost allocation methodology to the Ancillary Services Markets context, it would agree to file Ancillary Services Markets-specific Tariff provisions reflecting this suggested new

[4] 16 U.S.C. § 824e(b) (2012). The Complainants were Ameren Services Company and Northern Indiana Public Service Company; Great Lakes Utilities, Indiana Municipal Power Agency, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Prairie Power, Inc., Southern Minnesota Municipal Power Agency, and Wisconsin Public Power Inc.; and Wabash Valley Power Association, Inc.

[5] Under section 40.2.19 of the MISO Tariff, a generation or demand response resource receives a real-time Revenue Sufficiency Guarantee credit if MISO commits it through the Reliability Assessment Commitment process after the close of the day-ahead energy and operating reserve markets and if the resource then receives insufficient real-time energy and operating reserve revenues to cover its as-offered production costs. To fund the Revenue Sufficiency Guarantee credits, pursuant to section 40.3.3 of the Tariff, market participants are charged a real-time Revenue Sufficiency Guarantee charge based on their virtual supply offers and real-time load, injection, export, and import deviations from day-ahead schedules.

[6] Order Commencing Paper Hearing, 124 FERC ¶ 61,173 at P 9.

allocation methodology.[7] The Commission explained that it is not MISO's responsibility to propose and justify a new cost allocation because MISO is not the complainant but rather the party to which the complaints are directed.[8] The Commission acknowledged, however, that "[t]he only party with data that can illuminate the issue of what the rate can properly be, [MISO], has provided additional data and analysis in its March 3, 2008 filing and has made that information available to all parties."[9] The parties raised arguments about the Indicative Rate in their written briefs.

4. On November 10, 2008, the Commission issued an order on the paper hearing, in which it found that MISO's Indicative Rate provided a just and reasonable basis for future Revenue Sufficiency Guarantee cost allocations.[10] The Commission recognized that MISO could not implement the Indicative Rate before the start of the Ancillary Services Markets, and that further adjustments would be necessary to conform the indicative allocation to the Ancillary Services Markets. The Commission therefore allowed MISO to file its indicative allocation when it had a complete and final proposal. MISO did so on February 23, 2009 (Redesign Proposal), framing its filing as a compliance filing that responded to the directives of the Order on Paper Hearing.

5. In an order issued on August 30, 2010,[11] the Commission accepted in part and rejected in part the Redesign Proposal, subject to a further compliance filing. The Compliance Order rejected several provisions in the Redesign Proposal because they were revisions to the indicative cost allocation accepted by the Commission in the Order on Paper Hearing, and were therefore beyond the scope of the compliance proceeding. The Commission recommended that MISO file a revised proposal under section 205 of the FPA in the event it decides to seek Commission acceptance for its revised proposal.[12]

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[7] *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).

[8] Order Commencing Paper Hearing, 124 FERC ¶ 61,173 at P 9.

[9] *Id.* P 10.

[10] Order on Paper Hearing, 125 FERC ¶ 61,161.

[11] *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,186 (2010) (Compliance Order); *order on reh'g*, 135 FERC ¶ 61,007 (2011).

[12] *Id.* PP 34, 40, 45, 48.

6. On December 1, 2010, MISO submitted proposed Tariff amendments (December 2010 Proposal) that would incorporate into the Tariff elements of the Redesign Proposal that were rejected in the Compliance Order. These included the following Tariff revisions: (1) a proposal to combine the Indicative Rate's and the Redesign Proposal's Revenue Sufficiency Guarantee intra-hour demand change charge and the Revenue Sufficiency Guarantee day-ahead schedule deviation charge into a single charge, or allocation "bucket," for purposes of rate calculation; (2) a revised definition of headroom; (3) inclusion of self-schedules in the constraint management charge; and (4) revised definitions for economic maximum dispatch and economic minimum dispatch. MISO also proposed to allocate Revenue Sufficiency Guarantee costs to intermittent resources. This proposal was made in response to the Commission's rejection of an exemption of these resources from an allocation of Revenue Sufficiency Guarantee costs.[13] Finally, the December 2010 Proposal included several new provisions such as an allocation of Revenue Sufficiency Guarantee costs based on operating reserve deviations.

7. On February 15, 2011, MISO amended its proposal to move the effective date for its revised Tariff sheets from March 1, 2011 to April 1, 2011. MISO explained that its credit and settlement mechanisms required to implement the proposed revisions would not be in place by March 1, 2011 and instead these systems would be in place on April 1, 2011. According to MISO, without the new effective date, it would have to resettle Revenue Sufficiency Guarantee charges, causing undue uncertainty, and it would be exposed to credit risks.

8. On March 31, 2011, the Commission issued an order conditionally accepting MISO's proposal, as amended.[14]

II. Requests for Rehearing and Clarification

9. Big Bog Energy LP, JPTC, LLC, Jump Power, LLC, SESCO Enterprises LLC, Solios Power LLC and Pure Energy, Inc. (collectively, Financial Marketers) filed a timely request for rehearing of the March 31 Order. Midwest TDUs,[15] MISO, and Westar Energy, Inc. (Westar) filed timely requests for rehearing and/or clarification of

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[13] *Id.* PP 40-41.

[14] March 31 Order, 134 FERC ¶ 61,264.

[15] Great Lakes Utilities, Indiana Municipal Power Agency, Madison Gas & Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Prairie Power, Inc., Southern Minnesota Municipal Power Agency, and WPPI Energy.

the March 31 Order. E.ON Climate & Renewables North America LLC (E.ON) filed a timely request for clarification of the March 31 Order.

III. Discussion

A. Definition of Headroom

1. March 31 Order

10. In the March 31 Order, the Commission conditionally accepted MISO's proposal to include the headroom[16] of all committed resources – including resources committed in the day-ahead markets, in Reliability Assessment Commitment processes after the day-ahead market closes, or committed as must-run resources by market participants – subject to the requirement that the definition be revised so that headroom is restricted to headroom committed in the real-time market. The Commission explained that the real-time Revenue Sufficiency Guarantee charge is intended to recover costs for resources committed in the real-time markets; as such, real-time Revenue Sufficiency Guarantee credits recovered in the real-time Revenue Sufficiency Guarantee charge include only costs associated with resources committed in the real-time market. For this reason, the Commission determined that the definition of headroom that applies to the allocation of Revenue Sufficiency Guarantee costs should encompass only these resources.[17]

11. The Headroom Charge in the December 2010 Proposal, which the Commission accepted in the March 31 Order, was calculated based on the lesser of headroom or the aggregate of the hourly economic maximum dispatch amounts of all resources committed in any Reliability Assessment Commitment process.

12. The Commission also noted in the March 31 Order that the MISO proposal does not revise the allocation of headroom accepted in the Compliance Order.[18]

2. Requests for Rehearing and Clarification

13. Referring to the March 31 Order's directive to define headroom based on headroom committed in real-time,[19] MISO requests clarification that this directive

[16] Headroom is the difference between the real-time economic maximum dispatch and real-time dispatch targets for resources.

[17] March 31 Order, 134 FERC ¶ 61,264 at PP 38-39.

[18] *Id.* P 41.

[19] *Id.* P 39.

includes commitments made in the forward Reliability Assessment Commitment process, and is not limited to intra-day Reliability Assessment Commitments. MISO explains that commitments made during the pre-day-ahead and forward Reliability Assessment Commitment processes are also made for the Operating Day, that these commitments cause real-time Revenue Sufficiency Guarantee costs (unlike day-ahead headroom commitments), and that these resources are eligible for, and are paid, Real-Time Revenue Sufficiency Guarantee Credits.[20]

14. Midwest TDUs request clarification, or in the alternative rehearing, as to specific changes to the headroom definition to ensure that the revised definition conforms to the Commission's requirements. Specifically, Midwest TDUs recommend removing references to resources committed in the Day-Ahead Energy and Operating Reserve Market, and adding a specific reference to the "intra-Day Operating Day [Reliability Assessment Commitment] process" to avoid any ambiguity as to which of the three types of Reliability Assessment Commitment processes set forth in the Tariff constitutes real-time commitment. Also, Midwest TDUs recommend that reference to must-run commitments be narrowed to those commitments made in real-time during the operating day.[21]

15. Midwest TDUs assert that the headroom cap should be deleted or narrowed to include only megawatts of headroom contributed by resources committed in the intra-day Reliability Assessment Commitment process.[22] In this regard, Midwest TDUs argue that deleting or narrowing the headroom cap would protect load and exports from being allocated real-time Revenue Sufficiency Guarantee costs on a basis that is unrelated to the incurrence of headroom-related Revenue Sufficiency Guarantee costs.[23] Midwest TDUs explain that the cap based on the aggregate of the hourly economic maximum dispatch amounts of all resources committed in any Reliability Assessment Commitment processes would include resources committed in Reliability Assessment Commitment processes prior to the operating day, and the full capacity of all resources, rather than just their unloaded capacity that can be used as headroom.[24]

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[20] MISO May 2, 2011 Request for Rehearing at 3-4.

[21] Midwest TDUs May 2, 2011 Request for Rehearing at 3-4.

[22] *Id.* at 5.

[23] *Id.* at 5-6.

[24] *Id.* at 5.

16. Financial Marketers also criticize the Commission's decision to reject MISO's proposed definition of headroom, arguing that this would result in the allocation of Revenue Sufficiency Guarantee costs caused by headroom, topology changes, and loop flows to virtual offers and other non-exempt deviations. Financial Marketers argue that there is no cost causation basis or other lawful justification for requiring virtual offers and deviations to bear headroom costs, rather than allocating them to all participants proportionately based on market load ratio share because all load benefits proportionally from headroom.[25] Financial Marketers claim that the Commission did not provide reasoned decision making when it failed to adhere to its precedent of allocating headroom costs based on market load ratio share.[26] They further contend that there is no evidence to support directly assigning these costs to virtual supply offers and other non-exempt deviations.

3. <u>Commission Determination</u>

17. We clarify for MISO that the Commission directive in the March 31 Order to define headroom based on real-time commitments encompasses the forward Reliability Assessment Commitment process, and it is not limited to intra-day Reliability Assessment Commitments. Costs resulting from this process are recovered through real-time Revenue Sufficiency Guarantee charges, and therefore it is consistent with cost causation principles to include this process in the headroom definition. The Commission has previously relied on MISO's representations that the forward Reliability Assessment Commitment process is part of the real-time commitment process.[27]

18. We will not require that MISO incorporate the Midwest TDUs' specific Tariff revisions recommendations for the headroom definition into its Tariff. Midwest TDUs propose to restrict headroom to headroom committed in the intra-day process and to commitments occurring after the start of the operating day. Such a proposal does not encompass the forward Reliability Assessment Commitment process, which is part of the real-time commitment process, as discussed. While we agree that the Midwest TDUs' recommendation to delete references to the commitment of resources in the day-ahead markets is consistent with the March 31 Order, we will not require a revision in this order on rehearing. Such a determination would be redundant to the Commission's

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[25] Financial Marketers May 2, 1011 Request for Rehearing at 10-12.

[26] *Id.* at 10.

[27] *See Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,213, at P 77 (2007).

consideration of the revised definition in the pending compliance filing submitted on May 2, 2011.[28]

19. We agree with Midwest TDUs that the phrase "the aggregate of the hourly Economic Dispatch amounts of all Resources committed in any [Reliability Assessment Commitment] processes" in the Headroom Charge calculation is not consistent with the Commission's ruling in the March 31 Order. The March 31 Order found that Revenue Sufficiency Guarantee costs allocated through the Headroom Charge should be costs associated with headroom committed in real-time Reliability Assessment Commitment processes, in order to ensure that the charge follows cost causation principles. Therefore, to ensure the Headroom Charge definition is consistent with the March 31 Order and to avoid confusion, we require MISO to submit a revised Tariff provision, within 30 days of the date of this order, that deletes the alternative cap. We also agree that the word "and" should be deleted from line six of the Headroom Charge provision on Original Sheet No. 1101A and that this revision be included in the compliance filing.

20. We disagree with Financial Marketers' claim that the headroom definition required by the Commission in the March 31 Order will allocate Revenue Sufficiency Guarantee charge costs associated with headroom, topology changes and loop flow to virtual offers and non-exempt deviations. We understand Financial Marketers' concern to be that the Commission's required definition, based on real-time headroom, would reduce the allocation of costs to headroom and therefore more costs would be allocated to other rates, such as the deviation rate. The March 31 Order indicates that these costs are allocated to load in a market load ratio share allocation – even under the Commission's required revision to the headroom definition.[29] This allocation accurately reflects the causes of real-time Revenue Sufficiency Guarantee charge cost incurrence, and it is therefore just and reasonable. Accordingly, we affirm the Commission's determination to accept the cost allocation associated with headroom.

21. Finally, we disagree with Financial Marketers that there is an inconsistency between the Commission's findings in the March 31 Order and the Commission's precedent of allocating headroom costs based on market load ratio share. In prior cases the Commission accepted a market load ratio share allocation for the intra-hour demand charge, the precursor to the headroom charge in this proceeding. Since the headroom charge in this proceeding is allocated based on market load ratio share and the previous intra-hour demand charge is based on the same allocation, we find no inconsistency.

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[28] In a separate order issued concurrently with this order, we address the compliance filing filed in Docket No. ER11-2275-003. *Midwest Indep. Transmission Sys. Operator, Inc.*, 155 FERC ¶ 61,074 (2016).

[29] March 31 Order, 134 FERC ¶ 61,264 at PP 41, 130.

B. Exempted Deviations

1. March 31 Order

22. In the March 31 Order, the Commission determined that it is reasonable to allocate costs associated with exempted deviations to market participants that cause the incurrence of Revenue Sufficiency Guarantee charges and load. The Commission explained that the proposed allocation is reasonable since it broadly allocates these costs to market participants via the various Revenue Sufficiency Guarantee charges such as the Constraint Management Charge and Headroom and Deviation Charge, and thereby ensures these costs are paid by a wide range of market participants benefitting from the Reliability Assessment Commitment processes conducted by MISO.[30]

23. In the MISO Tariff, Revenue Sufficiency Guarantee costs are assigned first to the constraint management charge, then remaining costs are assigned to the Headroom and Deviation Charge, and then the remaining costs are assigned to a residual charge. The costs allocated to the Residual Charge are allocated based on market load ratio share.

2. Request for Rehearing and Clarification

24. Westar asserts that the Revenue Sufficiency Guarantee costs caused by exempted deviations must be part of the second pass or residual distribution, i.e., to exports and load based on load ratio share, in order to achieve the goal of allocating these costs broadly across the market and to be consistent with cost causation.[31] If these costs are allocated via the constraint management charge and day-ahead deviation charge, as the March 31 Order implies, Westar explains that exempted costs are incorporated into the numerator of these charges but the associated deviation quantities are not included in the denominator. As a result, claims Westar, MISO's proposal would allocate Revenue Sufficiency Guarantee costs to certain market participants without consideration of cost causation principles, as the majority of the costs are assessed to non-exempt market participants with day-ahead deviations.[32] Westar requests clarification or, in the alternative, rehearing as to the Commission's intent in the March 31 Order.

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[30] *Id.* P 94.

[31] Westar May 2, 2011 Request for Rehearing at 4-6.

[32] *Id.* at 2.

3. Commission Determination

25. We clarify for Westar that the Commission in the March 31 Order determined that the allocation of exempted deviations is reasonable because it broadly allocates these costs among market participants that cause the incurrence of Revenue Sufficiency Guarantee costs, and load. The Commission based its conclusion on the allocators for the Constraint Management Charge and combined Headroom and Day-Ahead Deviation charge, namely the activities that cause Revenue Sufficiency Guarantee charges such as deviations and virtual offers, and load. We disagree with Westar's position that the Constraint Management Charge and combined Headroom and Day-Ahead Deviation Charge do not broadly allocate costs. This allocation ensures that a broad range of activities that cause Revenue Sufficiency Guarantee costs share in the allocation. For this reason, we affirm the Commission's conclusion in the March 31 Order that an allocation to all market participants with activities that can cause the incurrence of Revenue Sufficiency Guarantee costs, and load, is an appropriately broad allocation. We would consider an allocation only to load, as Westar recommends, to be unreasonable since it would exclude certain market participants that cause the incurrence of Revenue Sufficiency Guarantee costs.

26. We interpret Westar's concern to be that in practice, too many costs are allocated to deviations rather than to load.[33] As the Commission has stated in previous Revenue Sufficiency Guarantee charge proceedings, there is no such thing as an ideal and static proportion of costs that should be allocated to any activity.[34] Rather, a reasonable allocation is one that reflects cost causation principles, such as the current allocation accepted by the Commission. While the proportion of costs allocated to an activity will shift each day as a function of the relative shifts among the quantities associated with deviations, virtual offers, and load, the cost allocation accepted by the Commission ensures that costs follow cost causation principles to the extent possible. For costs that cannot be allocated in this way, such as exempted activities, these costs are allocated as broadly as possible to market participants that benefit from Reliability Assessment Commitment.

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[33] According to Westar, the March 31 Order would result in a majority of the costs being allocated to deviations.

[34] Paper Hearing Rehearing Order, 127 FERC ¶ 61,121 at P 108.

C. Allocation of Revenue Sufficiency Guarantee Charges to Intermittent Resources

1. March 31 Order

27. In the March 31 Order, the Commission accepted MISO's proposal to allocate Revenue Sufficiency Guarantee costs to intermittent resources based on updated forecasts that are timely provided in the Reliability Assessment Commitment process. The Commission found that such an allocation bases the costs allocated to intermittent resources on the costs they cause in the commitment of units.

2. Request for Rehearing

28. Financial Marketers contend that the March 31 Order allows for a disproportionate shift in the allocation of Revenue Sufficiency Guarantee costs caused by intermittent resources, but reduced according to their adjustments of real-time forecasts, to virtual offers and other non-exempt deviations. Financial Marketers state that these costs should be allocated based on market load ratio share.[35]

29. Financial Marketers claim that virtual offers and other non-exempt deviations are being overcharged for Revenue Sufficiency Guarantee costs, based on analysis in the Market Monitor Study in Docket No. ER09-411, and therefore shifting additional costs such as occurs in the March 31 Order is unjust, unreasonable and unduly discriminatory.[36]

3. Commission Determination

30. Contrary to Financial Marketers' assumption, the allocation of Revenue Sufficiency Guarantee costs to intermittent resources based on their real-time forecast adjustments does not cause costs that are shifted to other market participants. Similar to the treatment of other resources whose deviations are based on updated forecasts, intermittent resources are allocated Revenue Sufficiency Guarantee costs based on deviations adjusted for forecasts provided in time for MISO to avoid the commitment of units in the real-time Reliability Assessment Process that would result in the incurrence

[35] Financial Marketers May 2, 2011 Request for Rehearing at 3.

[36] *Id.* at 15.

of Revenue Sufficiency Guarantee costs.[37] Accordingly, these adjusted deviations, which reflect the fact that timely forecasts can avoid the incurrence of Revenue Sufficiency Guarantee costs, do not result in any costs being shifted to other market participants.

31. We note that the notification deadline adjustment for resource deviations has been a feature of the Revenue Sufficiency Guarantee charge allocation since the Indicative Rate filing in 2008. Applying the same adjustment to intermittent resources only affords them the same treatment given to other resources. Financial Marketers' arguments regarding cost shifts associated with adjusted deviations are collateral attacks on the orders that accepted this treatment in Docket Nos. EL07-86, *et al.*[38]

D. Allocation of Headroom Costs

32. Westar claims that the December 2010 Proposal Tariff language is not clear regarding how MISO will determine which portion of Revenue Sufficiency Guarantee costs allocated to the Day-Ahead Deviation Charge will be considered headroom and allocated through the second-pass distribution. Westar notes that MISO has recently provided preliminary sample allocations that allocate only 1.65 percent of Revenue Sufficiency Guarantee costs through the second-pass distribution, whereas the Market Monitor study indicated that changes in topology and loop-flow and headroom requirements have historically caused approximately 20 percent of Revenue Sufficiency Guarantee costs. For these reasons, Westar asks the Commission to require MISO to file Tariff language that allocates all Revenue Sufficiency Guarantee costs caused by headroom – not only a small percentage of those costs – through the second-pass or residual distribution.

33. We affirm the Commission's determination in the March 31 Order that the combined Headroom and Day-ahead Deviation Charge does not allocate headroom costs to deviations.[39] The Tariff states that Revenue Sufficiency Guarantee costs are allocated to a separate headroom component – the Headroom Charge – based on headroom quantities, and therefore these costs cannot be allocated to deviations. Similar to the exempted deviations issues, we interpret Westar's position to be that fewer costs should be allocated to deviations and more costs should be allocated to headroom, based on the

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[37] MISO explained the purpose of the adjustment process associated with notification deadlines as part of its Indicative Rate filing. *See* September 22, 2008 Brief of Ameren Services Company and Northern Indiana Public Service Company, Attachment C at 7, 16, 19 and 20 in Docket Nos. EL07-86, *et al.*

[38] *See* Compliance Order, 132 FERC ¶ 61,186 at P 72.

[39] March 31 Order, 134 FERC ¶ 61,264 at P 57.

Market Monitor Study. As discussed, an ideal or static share of costs that should be allocated to an activity does not exist. The Tariff ensures that Revenue Sufficiency Guarantee costs are allocated to headroom based on headroom quantities, and this allocation is consistent with cost causation principles since it is not assigning these costs to other activities such as deviations.

E. Other Issues

34. Financial Marketers contend that the Commission's conclusion that MISO commits resources in the Reliability Assessment Commitment processes for deviations and headroom at the same time is only true for resources committed in the forward Reliability Assessment Commitment process and for certain non-exempt deviations in the intra-day Reliability Assessment Commitment process. They add, however, that this is not true for virtual offers in the intra-day Reliability Assessment Commitment process since MISO does not commit resources to address virtual offers in this process, and therefore virtual offers do not cause Revenue Sufficiency Guarantee costs incurred in the intra-day Reliability Assessment Commitment process. For this reason, Financial Marketers assert that virtual offers should not be allocated any costs incurred in the intra-day Reliability Assessment Commitment process.[40]

35. MISO's December 2010 Proposal made no changes to the allocation of Revenue Sufficiency Guarantee charge between the forward and intra-day Reliability Assessment Commitment processes, and therefore Financial Marketers' arguments on this issue are beyond the scope of this proceeding. We note that the Commission has previously addressed this issue,[41] and therefore the position of Financial Marketers is a collateral attack on that determination.

36. Financial Marketers fault the March 31 Order for failing to require compliance with section 35.13 of the Commission's regulations, which are designed to ensure that cost allocations are just and reasonable.[42] Financial Marketers assert that MISO is not relieved of this responsibility because certain market participants have obtained market-based rate authority, as the March 31 Order concludes.[43] Financial Marketers note that the March 31 Order did not cite to any regulation or Commission precedent that exempts

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[40] Financial Marketers May 2, 2011 Request for Rehearing at 2.

[41] Paper Hearing Rehearing Order, 127 FERC ¶ 61,121 at P 120.

[42] Financial Marketers May 2, 2011 Request for Rehearing at 18.

[43] *Id.* (citing March 31 Order, 134 FERC ¶ 61,264 at P 158).

ISOs from their requirements to justify their cost allocations under section 35 of the Commission's regulations.[44]

37. We disagree with Financial Marketers' position because the rates at issue here apply to energy market costs that are incurred in a market where rates are market-based rates. Inasmuch as section 35.13 specifies the cost of service data required for utility filings and details the individual cost categories that must be included in those filings, we find that it is clear on its face that section 35.13 is not applicable to energy market rates and charges.[45]

38. Financial Marketers contend that a hearing is appropriate and legally required in this proceeding since there are material issues of fact in dispute. As examples of material issue of fact in dispute, Financial Marketers cite to their disputes regarding the following: (1) MISO commits units for all deviations and headroom simultaneously; (2) 92 percent of Revenue Sufficiency Guarantee costs are attributable to non-exempt deviations; (3) intermittent resources do not cause Revenue Sufficiency Guarantee costs when they provide an updated forecast four hours before the operating hour; and (4) MISO's proposed definition of headroom would result in headroom being allocated 85-87 percent of Revenue Sufficiency Guarantee costs for reasons other than constraint management.[46]

39. The issues raised by Financial Marketers do not constitute material issues of fact in dispute in this proceeding, and for this reason we do not see the need for an evidentiary hearing. With respect Financial Marketers' first point, MISO's simultaneous commitment of units for deviations and headroom is based on MISO operating practices, as explained by MISO and discussed with stakeholders. There is no record in this proceeding that, in fact, MISO does not commit units in this manner, nor do Financial Marketers provide an argument disputing this practice. In response to Financial Marketers' second point, the fact that a cost allocation that MISO makes, such as the estimate of a 92 percent allocation to deviations, which as discussed changes daily and is the function of a variety of factors, differs from an allocation derived from a study such as the Market Monitor study, does not constitute a material issue of fact in dispute and is therefore not a basis for an evidentiary hearing. With regard to Financial Marketers' third point, as discussed above,[47] the cost causation argument for intermittent resources is an untimely challenge to previous Commission orders. Finally, with respect to Financial

[44] *Id.* at 19.

[45] March 31 Order, 134 FERC ¶ 61,264 at P 158.

[46] Financial Marketers May 2, 2011 Request for Rehearing at 20.

[47] *Supra* PP 32-33.

Marketers' fourth point, we can address the claim here that the Commission erred in determining that MISO's proposed definition of headroom would result in headroom being allocated 85-87 percent of Revenue Sufficiency Guarantee costs.[48] The Commission's finding is based on a calculation that divides the Total Headroom Limited by Reliability Assessment Commitment Capacity column by the Real-time Reliability Assessment Commitment Committed Capacity.[49] This calculation yields the following results: 86.7 percent (2008), 87.4 percent (2009) and 85.0 percent (2010 YTD). These are the calculations the Commission used to support its finding that the MISO proposed definition results in headroom being equal to 85-87 percent of capacity committed in real-time Reliability Assessment Commitment processes in the 2008-2010 period.[50] We consider this explanation of the calculation to provide a sufficient fact-basis for the Commission's statement, and therefore no evidentiary hearing is necessary to pursue this issue further.

40. Referring to the Commission determination in the March 31 Order to exempt intermittent resources from Revenue Sufficiency Guarantee charges that result from manual curtailments,[51] E.ON requests an April 1, 2011 effective date.[52] E.ON notes that this date would be consistent with Commission practice, in which the Commission ordered that intermittent resources no longer be exempted from Revenue Sufficiency Guarantee charges to be effective the day following the date of that order.[53]

41. We will not direct here an effective date requirement for the exemption of intermittent resources from Revenue Sufficiency Guarantee costs when they are manually curtailed. The effective date for Tariff sheets in a compliance filing is an issue that is properly addressed by the Commission in the compliance proceeding.[54]

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[48] March 31 Order, 134 FERC ¶ 61,264 at P 39.

[49] MISO December 2010 Proposal, Testimony of Kevin A. Vannoy, Tab A, Table 1.

[50] March 31 Order, 134 FERC ¶ 61,264 at P 39.

[51] *Id.* P 74.

[52] E.ON May 2, 2011 Request for Clarification at 2.

[53] *Id.* at 2-3 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,184, at P 130 (2010)).

[54] In a separate order issued concurrently with this order, we address the compliance filing filed in Docket No. ER11-2275-003. *Midwest Indep. Transmission Sys. Operator, Inc.*, 155 FERC ¶ 61,074.

<u>The Commission orders</u>:

(A) The requests for rehearing are hereby accepted in part and denied in part and the requests for clarification are granted, as discussed in the body of this order.

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.