

135 FERC ¶ 61,060
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER09-411-006

ORDER ACCEPTING IN PART AND REJECTING IN PART COMPLIANCE FILING
AND REQUIRING COMPLIANCE FILING

(Issued April 21, 2011)

1. On October 29, 2010, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff (tariff) in compliance with the Commission's RSG Exemption Order.¹ In this order, we accept in part and reject in part the Midwest ISO's compliance filing, subject to a further compliance filing.

I. Background

2. In its December 12, 2008 Filing in the instant proceeding, the Midwest ISO proposed to modify certain real-time Revenue Sufficiency Guarantee charge² provisions and to make other miscellaneous tariff revisions. The Midwest ISO proposed to revise

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,184 (2010) (RSG Exemption Order).

² Under section 40.2.19 of the Midwest ISO tariff, a generation or demand response resource receives a real-time Revenue Sufficiency Guarantee credit if the Midwest ISO 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.

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.³ The exemption would apply to the following resources:

(1) resources following Midwest ISO directives during emergencies; (2) resources in test mode, or in 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.

3. On February 9, 2009, Commission staff notified the Midwest ISO that the December 12, 2008 Filing was deficient and requested additional information. The Midwest ISO filed a response on March 11, 2009.

4. On May 8, 2009, Commission staff notified the Midwest ISO that its response was deficient and requested further information. The Midwest ISO filed a response on June 8, 2009.

5. On August 7, 2009, the Commission accepted, suspended, and made effective January 6, 2009, the Midwest ISO’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 the Midwest ISO to submit a 30-day compliance filing to provide miscellaneous tariff revisions and a proposed plan and timeline for its RSG Task Force⁴ to analyze how the deviations that are subject to the proposed exemptions may cause real-time Revenue Sufficiency Guarantee costs. The Commission also directed the Midwest ISO to submit a 90-day compliance filing 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. The Midwest ISO submitted its 30-day compliance filing on September 8, 2009, and its 90-day compliance filing on December 7, 2009.

6. On August 30, 2010, the Commission accepted in part and rejected in part the proposed real-time Revenue Sufficiency Guarantee charge exemptions that were submitted in the December 12, 2008 Filing, conditionally accepted the September 8, 2009 Compliance Filing, and accepted the December 7, 2009 Compliance Filing. The Commission required the Midwest ISO to submit a compliance filing to revise the tariff

³ Midwest ISO, December 12, 2008 Filing, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 1096.

⁴ The Revenue Sufficiency Guarantee Task Force (RSG Task Force) is comprised of the Midwest ISO and its stakeholders and addresses issues relating to the Revenue Sufficiency Guarantee charge.

to detail the exemptions that the Commission accepted, and to remove the exemptions that the Commission rejected, including: (1) remove from the tariff the proposed exemption for intermittent resources;⁵ (2) remove from the tariff the proposed exemptions for resources in test, start-up or shut-down mode, and for resources that trip and go offline;⁶ and (3) limit the proposed exemption for resources affected by events or conditions beyond their control to those deviations that result directly from the failures or malfunctions of the Midwest ISO's software and hardware systems.⁷ The Commission also required the Midwest ISO to correct the designation of one tariff sheet.⁸

7. On October 29, 2010, the Midwest ISO submitted its compliance filing.

II. Notice of Filing and Responsive Pleadings

8. Notice of the October 29, 2010 Compliance Filing was published in the *Federal Register*, 75 Fed. Reg. 70,733 (2010), with interventions and protests due on or before November 19, 2010. American Municipal Power, Inc. filed a motion to intervene. Comments or protests were filed by American Wind Energy Association and Wind on the Wires (jointly, AWEA-WOW); Big Bog Energy LP, EPIC Merchant Energy, LP, JPTC, LLC, Jump Power, LLC, SESCO Enterprises LLC, and Solios Power, LLC (collectively, Financial Marketers); E.ON Climate & Renewables North America LLC and NextEra Energy Power Marketing, LLC (jointly, E.ON C&R-NextEra); Iberdrola Renewables, Inc. and Invenergy Wind Development LLC (jointly, Iberdrola-Invenergy); and Northern Indiana Public Service Company (NIPSCO). Financial Marketers filed an errata to their protest on November 29, 2010. On December 6, 2010, the Midwest ISO filed an answer to the comments and protests. On December 21, 2010, E.ON C&R-NextEra filed an answer to the Midwest ISO's answer.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motion to intervene serves to make American Municipal Power, Inc. a party to this proceeding.

⁵ RSG Exemption Order, 132 FERC ¶ 61,184 at P 88.

⁶ *Id.* P 109.

⁷ *Id.* P 112.

⁸ Midwest ISO, FERC Electric Tariff, Third Revised Vol. No. 1, Second Revised Sheet No. 530.278.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We will accept the Midwest ISO's answer and E.ON C&R-NextEra's answer because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

11. We will conditionally accept in part and reject in part the Midwest ISO's compliance filing, subject to a further compliance filing due within 30 days from the date of this order. We will reject the proposed revisions to the definition of Economic Minimum Dispatch and Economic Maximum Dispatch, as these modifications were not required by the RSG Exemption Order. We will conditionally accept the proposed revisions to exempt deviations that result from the failures or malfunctions of the Midwest ISO's software and hardware systems. However, we will require the Midwest ISO to submit, in its compliance filing, tariff revisions to remove the exemption for deviations that result from maintenance activities.

1. Exemptions for Intermittent Resources and Other Resources

a. Midwest ISO Compliance Filing

12. The Midwest ISO proposes tariff revisions to section 40.3.3.a.ii(d) to exempt from real-time Revenue Sufficiency Guarantee charges resource deviations: (1) during the hours when a resource is deployed for contingency reserves; (2) caused by Midwest ISO directives during an emergency; and (3) during abnormal operating conditions caused directly and exclusively by the failures or malfunctions of the Midwest ISO's software or hardware systems or the unavailability thereof during maintenance activities. The Midwest ISO argues that the exemption relating to the failure or malfunction of the Midwest ISO's software or hardware systems also includes situations where those systems are unavailable during maintenance, repair, replacement, upgrade, or similar activities. The Midwest ISO submits that the inclusion of such circumstances is consistent with the underlying cost causation rationale for the Revenue Sufficiency Guarantee exemption based on software or hardware system failures or malfunctions.⁹

b. Protest

13. Financial Marketers argue that the Midwest ISO seeks to expand the scope of the real-time Revenue Sufficiency Guarantee charge exemption proposed in the August 30 Order by proposing to exempt deviations occurring when the Midwest ISO's systems are unavailable during maintenance, repair, replacement, upgrade, or other similar activities.

⁹ The Midwest ISO's compliance filing also includes revisions to Second Revised Sheet No. 530.278.

Financial Marketers argue that the Commission required the Midwest ISO to submit tariff revisions “to limit the proposed exemption to include *only* those deviations that result *directly* from the failures or malfunctions of the Midwest ISO’s systems and hardware systems.”¹⁰ They maintain that the Midwest ISO’s proposal to broaden this exemption would shift substantial costs to customers that did not cause those costs to be incurred, including virtual suppliers that, they claim, are allocated excessive costs.¹¹ They also contend that expanding the proposed exemption on compliance would violate the Commission’s policy that compliance filings must be limited to the specific directives ordered by the Commission.¹² Financial Marketers add that the Commission is not permitted to ignore the directives of its own orders, as all parties have a right to rely on the Commission’s determinations. They also argue that, if the Midwest ISO disagrees with the Commission’s directives, it should have sought rehearing of the RSG Exemption Order.

14. To address their concerns, Financial Marketers ask the Commission to reject the proposed tariff language and to require the Midwest ISO to submit tariff revisions to limit the exemption to only those deviations that result directly from the failure or malfunction of the Midwest ISO’s software and hardware systems.

c. Answer

15. The Midwest ISO argues that exempting resources from Revenue Sufficiency Guarantee charges based on system unavailability during maintenance activities is within the scope of the RSG Exemption Order’s approval of the exemption based on failures or malfunctions of the Midwest ISO’s software and hardware systems. It asserts that the Commission accepted the exemption for failures and malfunctions because they are “beyond the control” of the affected resources.¹³ The Midwest ISO asserts that the maintenance, repair, replacement, or upgrade of the Midwest ISO’s systems “are also essentially beyond” resources’ control.¹⁴ The Midwest ISO adds that the Commission did not distinguish situations where the system failure or malfunction may be due to causes within the Midwest ISO’s control. The Midwest ISO also claims that contentions against the application of the Commission’s ruling to system unavailability due to system

¹⁰ Financial Marketers Protest at 3 (citing RSG Exemption Order, 132 FERC ¶ 61,184 at P 112 (emphasis added)).

¹¹ *Id.* at 5-6.

¹² *Id.* at 3-4 (citing, *e.g.*, *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,156, at P 57 n.51 (2008) (November 7 Order)).

¹³ Midwest ISO Answer at 7.

¹⁴ *Id.* at 8.

maintenance are in the nature of rehearing-type arguments that should be rejected as outside of the scope of this proceeding. The Midwest ISO reiterates that the Commission considers tariff provisions implementing tariff interpretations based on the Commission's rulings to be within a compliance filing's scope.¹⁵

16. The Midwest ISO maintains that there is no valid policy reason to penalize resources with Revenue Sufficiency Guarantee costs whenever the Midwest ISO performs maintenance activities that render the system unavailable. The Midwest ISO contends that any cost shift resulting from a Revenue Sufficiency Guarantee charge exemption during maintenance activities would be insignificant.¹⁶

d. Commission Determination

17. We will conditionally accept the proposed revisions to section 40.3.3.a.ii(d), subject to further compliance. The proposed revisions to exempt resource deviations during contingency reserve deployments and emergencies and due to failures or malfunctions of the Midwest ISO's systems are consistent with the Commission's directives in the RSG Exemption Order.¹⁷ Among other things, the Commission required the Midwest ISO to submit tariff revisions to exempt "deviations that result directly from the *failures or malfunctions* of the Midwest ISO's software and hardware systems."¹⁸ We find that the Midwest ISO's tariff revision to exempt from real-time Revenue Sufficiency Guarantee charges "[r]esource deviations during abnormal operating conditions caused directly and exclusively by the failures or malfunctions of the [Midwest ISO's] system and hardware systems" is consistent with the Commission's directive.

18. The Midwest ISO's inclusion of an additional clause to also exempt resources due to "the unavailability [of Midwest ISO's software and hardware systems] during maintenance activities" is beyond the scope of the Commission's requirements. In the RSG Exemption Order, the Commission considered whether resources should be exempt due to failures or malfunctions such as unit dispatch failure, computer system hardware failure, inter-control center communication protocol data failure, and automatic

¹⁵ *Id.* at 6 (citing November 7 Order, 125 FERC ¶ 61,156 at P 51; *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,185, at P 68-69 (2010) (RSG Compliance Order)).

¹⁶ It states that the Midwest ISO implemented such an exemption four times in 2009 through 2010 due to routine transitions to updated commercial models and estimates that the resulting costs shifted to other deviations would have totaled only \$1,300. *Id.*

¹⁷ RSG Exemption Order, 132 FERC ¶ 61,184 at P 112, 130.

¹⁸ *Id.* P 112 (emphasis added).

generation control failure.¹⁹ While maintenance activities may cause the Midwest ISO systems to be unavailable, maintenance activities generally should not cause failures or malfunctions of the Midwest ISO system and, as such, were not contemplated by the Commission. We will require the Midwest ISO to submit, in the compliance filing ordered below, tariff revisions to remove “or the unavailability thereof during maintenance activities” from section 40.3.3.a.ii(d).

2. Cost Allocation

a. Midwest ISO Compliance Filing

19. The Midwest ISO proposes to revise the definitions of Economic Minimum Dispatch in tariff section 1.168a and Economic Maximum Dispatch in tariff section 1.168b to provide that the Economic Minimum and Maximum Dispatch of intermittent resources or resources incapable of following setpoint instructions will equal the actual energy injections. The Midwest ISO states that these revisions are needed to correctly assess real-time Revenue Sufficiency Guarantee charges to intermittent resources. It states that Economic Minimum Dispatch and Economic Maximum Dispatch for such resources are currently excluded from the calculation of Revenue Sufficiency Guarantee charges for resource deviations. The Midwest ISO states that the proposed language clarifies the calculation of those two inputs to determine deviations for intermittent resources for purposes of subjecting them to Revenue Sufficiency Guarantee charges.

b. Comments and Protests

20. E.ON C&R-NextEra request that the Commission reject as procedurally improper the Midwest ISO’s proposal to assess Revenue Sufficiency Guarantee charges to intermittent resources when the Midwest ISO curtails their output. E.ON C&R-NextEra maintain that the proposal is outside of the scope of this proceeding because, in the August 30 Order, the Commission did not address the curtailment of intermittent resources, nor did it order such revisions. They add that neither the Midwest ISO’s December 7, 2009 Filing nor the RSG Task Force study considered such intermittent resource curtailments. E.ON C&R-NextEra claim that the Commission has never been apprised that intermittent resource curtailments could be subject to Revenue Sufficiency Guarantee charges, and as a result, the Commission should reject the proposal, consistent with previous Commission orders.²⁰

¹⁹ *Id.* n.100.

²⁰ E.ON C&R-NextEra Protest at 3-4 (citing RSG Exemption Order, 132 FERC ¶ 61,184 at P 36; *Midwest Indep Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,186, at P 28, 34 (2010)).

21. AWEA-WOW, E.ON C&R-NextEra, and Iberdrola-Invenergy argue that allocating Revenue Sufficiency Guarantee costs to intermittent resources during curtailments is unjust and unreasonable. E.ON C&R-NextEra assert that exempting intermittent resources from Revenue Sufficiency Guarantee charges during curtailments would preserve system reliability and provide an incentive for intermittent resources to obey Midwest ISO's instructions, consistent with the Commission's acceptance of other exemptions during emergencies, contingency reserve deployments, and manual redispatch events.²¹ E.ON C&R-NextEra argue that not exempting intermittent resources from Revenue Sufficiency Guarantee charges during curtailments, consistent with the treatment of similarly-situated resources, would be unduly discriminatory and preferential. They also maintain that exempting intermittent resources from Revenue Sufficiency Guarantee charges during curtailments would be consistent with the exemption for deviations caused by events or conditions beyond a resource's control due solely to the failure of the Midwest ISO's systems. E.ON C&R-NextEra argue that the limitations of the Midwest ISO's systems and protocols prevent intermittent resources from controlling their deviations,²² and therefore, the Commission should find that real-time deviations due to curtailment events are beyond intermittent resources' control, such that they should not be held liable for the resulting costs.²³

22. AWEA-WOW contend that, given the increasing frequency of manual curtailments, subjecting intermittent resources to Revenue Sufficiency Guarantee charges during these curtailments would cause significant financial harm. AWEA-WOW argue that the manual curtailment of intermittent resources is similar to the manual redispatch of other resources, and to avoid undue discrimination, intermittent resources should be exempt from real-time Revenue Sufficiency Guarantee charges during manual curtailments, consistent with the existing exemption for other resources during manual redispatch events.²⁴ They contend that imposing Revenue Sufficiency Guarantee charges during manual curtailments would unfairly impose costs for curtailments that are beyond their control, would provide a disincentive for intermittent resources to follow curtailment instructions, and would risk penalizing intermittent resources by eroding their

²¹ *Id.* at 4-5 (citing RSG Exemption Order, 132 FERC ¶ 61,184 at P 110).

²² *Id.* at 8-9 (citing Midwest ISO November 1, 2010 Filing, Docket No. ER11-1991-000, at 5-6).

²³ *Id.* at 9 (citing RSG Exemption Order, 132 FERC ¶ 61,184 at P 110).

²⁴ AWEA-WOW Protest at 9-10 (citing Midwest ISO, FERC Electric Tariff (0.0.0), section 33.8.2.b.iii.a).

day-ahead margins.²⁵ AWEA-WOW also argue that exempting intermittent resources from real-time Revenue Sufficiency Guarantee Charges would be consistent with their treatment in other markets, such as PJM Interconnection, L.L.C. and Electric Reliability Council of Texas, Inc. (ERCOT).²⁶ To address their concerns, AWEA-WOW request that the Commission clarify that the August 30 Order was not intended to require the application of Revenue Sufficiency Guarantee charges to intermittent resources during the Midwest ISO's manual curtailment of the resources. AWEA-WOW also ask the Commission to direct the Midwest ISO to submit a further compliance filing to reflect this clarification and to require refunds, with interest, back to September 1, 2010. They argue that the Commission should act expeditiously to reduce any further market uncertainty regarding this issue.

23. Iberdrola-Invenergy support the arguments presented by AWEA-WOW and adopt those arguments as their own. They request that the Commission clarify that the August 30 Order was not intended to include the application of Revenue Sufficiency Guarantee charges to intermittent resources during the Midwest ISO's manual curtailment of such resources. They further request that the Commission direct the Midwest ISO submit a compliance filing consistent with this clarification prior to taking any actions in this proceeding.²⁷

24. In addition, NIPSCO requests that the Commission direct the Midwest ISO to clarify the purpose and effect of the proposed revisions to the definitions of Economic Maximum Dispatch and Economic Minimum Dispatch and to permit NIPSCO an opportunity to comment after the Midwest ISO provides such clarification. NIPSCO claims that the Midwest ISO's compliance filing provides only a brief discussion of these revisions. It is concerned that the Midwest ISO may be seeking to account for deviations

²⁵ AWEA-WOW claims that, if intermittent resources are asked to generate at energy levels below the resource's day-ahead schedule for energy, their day-ahead margins would be eroded during the curtailment period. They note that, while other resources are eligible for make-whole payments during manual redispatch events, intermittent resources do not receive similar compensation. *Id.* at 10 (citing Midwest ISO, FERC Electric Tariff (0.0.0), section 3.3.8.2).

²⁶ *Id.* at 11 (citing Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., section 3.2.3(o), *available at* <http://www.pjm.com/documents/agreements.aspx>; ERCOT Protocols, Section 6: Ancillary Services, section 6.10.6 (Sep. 1, 2010), *available at* <http://www.ercot.com/mktrules/protocols/current>).

²⁷ Iberdrola-Invenergy Protest at 3-4.

by intermittent resources through “socialized headroom commitments,” rather than by allocating costs directly to intermittent resources, as contemplated by the Commission.²⁸

c. Answers

25. The Midwest ISO argues that its interpretation of the RSG Exemption Order as not exempting curtailed intermittent resources from Revenue Sufficiency Guarantee charges is consistent with the Commission’s rejection of the proposed exemption for intermittent resources and the Commission requirement that any Revenue Sufficiency Guarantee exemption be anchored in the tariff.²⁹ The Midwest ISO argues that it was, therefore, within the scope of this proceeding for the Midwest ISO to articulate its interpretation that the tariff currently does not contain a Revenue Sufficiency Guarantee exemption for curtailed intermittent resources. It argues that the Commission has previously ruled that, in a compliance filing, it is “proper for the Midwest ISO to provide tariff sheets that attempt to implement the Commission’s interpretation of specific tariff provisions”³⁰ and “to conform the filed rate, its operational practice, and the Commission’s findings.”³¹

26. The Midwest ISO argues that the justness and reasonableness of not exempting intermittent resources from Revenue Sufficiency Guarantee charges need not be demonstrated, and cannot be contested, in this proceeding. The Midwest ISO argues that AWEA-WOW concede that section 33.8 of the tariff regarding manual redispach events, and the associated Revenue Sufficiency Guarantee charge exemption, do not apply to intermittent resources. Therefore, the Midwest ISO argues that the current rate does not provide a Revenue Sufficiency Guarantee exemption for intermittent resources in the same manner provided for manually redispached resources. The Midwest ISO claims that the exclusion of intermittent resources from the existing exemption cannot be collaterally attacked in this proceeding, and the addition of a similar exemption for intermittent resources is beyond the scope of this proceeding.

27. In response to NIPSCO, the Midwest ISO clarifies that the proposed definitions of Economic Minimum Dispatch and Economic Maximum Dispatch provide a means to directly account for intermittent resources deviations from the volumes specified in their day-ahead schedules by using their real-time Actual Energy Injections as the input into the Revenue Sufficiency Guarantee rate and allocation. The Midwest ISO contends that

²⁸ NIPSCO Comments at 2-3.

²⁹ Midwest ISO Answer at 3 (citing RSG Exemption Order, 132 FERC ¶ 61,184 at P 56, 88).

³⁰ *Id.* (citing November 7 Order, 125 FERC ¶ 61,156 at P 51).

³¹ *Id.* (citing RSG Compliance Order, 132 FERC ¶ 61,185 at P 68).

this measure would accomplish the Commission's directive to allocate to intermittent resources the Revenue Sufficiency Guarantee costs that they cause.³²

28. In its answer, E.ON C&R-NextEra reiterate their argument that, in the RSG Exemption Order, the Commission did not address whether curtailed intermittent resources should be allocated Revenue Sufficiency Guarantee charges, and therefore, the Midwest ISO may not assess such charges via its compliance filing. E.ON C&R-NextEra argue that, consistent with Commission precedent,³³ the Commission should reject the Midwest ISO's attempt to include its interpretation of what it believes is within the scope of the RSG Exemption Order. They contend that the Midwest ISO never proposed to allocate Revenue Sufficiency Guarantee charges to curtailed intermittent resources, and therefore, the Commission did not find this allocation to be just and reasonable, and arguments opposing such an allocation do not constitute collateral attacks on any prior Commission orders. They argue that the Midwest ISO must submit such an allocation via a new filing under section 205 of the Federal Power Act. E.ON C&R-NextEra reiterate that allocating Revenue Sufficiency Guarantee charges to curtailed intermittent resources would unfairly penalize such resources for events beyond their control.³⁴

d. Commission Determination

29. We will reject the proposed revisions to the definitions of Economic Maximum Dispatch and Economic Minimum Dispatch in section 1.168a and 1.168b, respectively,³⁵ because modifications to the Interim Rate³⁶ in order to correctly apply Revenue Sufficiency Guarantee charges to intermittent resources are outside of the scope of this proceeding. Contrary to the Midwest ISO's argument that the proposed revisions are

³² *Id.* at 11 (citing RSG Exemption Order, 132 FERC ¶ 61,184 at P 88).

³³ E.ON C&R-NextEra Answer at 4-5 (citing November 7 Order, 125 FERC ¶ 61,156 at P 39, 51-2, 57). E.ON C&R-NextEra argue that the RSG Compliance Order does not support the Midwest ISO's proposed treatment of curtailed intermittent resources because, in that proceeding, the Commission accepted language allowing the Midwest ISO to implement what the Commission had previously found several times in prior orders. *Id.* at 6-7 (citing RSG Compliance Order, 132 FERC ¶ 61,185 at P 67-9).

³⁴ *Id.* at 10-12.

³⁵ Midwest ISO Filing, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 130.

³⁶ The Interim Rate was a Revenue Sufficiency Guarantee charge cost allocation that was accepted in 2008. *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,161 (2008), *order on reh'g*, 127 FERC ¶ 61,121 (2009), *reh'g pending*.

needed to implement the Commission's finding that intermittent resources should not be exempt from Revenue Sufficiency Guarantee charges, we find that the revisions would modify the treatment of intermittent resources under the Interim Rate in violation of the Commission's directives in the RSG Exemption Order. In that order, the Commission stated that it would not consider whether the Commission-approved Interim Rate is just and reasonable or whether additional modifications to that rate are needed as part of this proceeding, stating that:

[t]o the extent that this order rejects the proposed exemptions from charges under the Interim Rate, the Midwest ISO should allocate real-time Revenue Sufficiency Guarantee costs to deviations that are no longer exempt from the associated charges in accordance with the existing tariff provisions regarding the Interim Rate. In the event that the Midwest ISO determines that the existing rate should be modified, the Midwest ISO may choose to submit the associated tariff revisions to the Commission in a subsequent filing under section 205 of the FPA."³⁷

Therefore, to the extent that revisions to sections 1.168a and 1.168b are needed in order to "correctly charge" intermittent resources, as the Midwest ISO asserts, such revisions should be submitted in a separate filing under section 205 of the FPA.³⁸

30. Similarly, we find that arguments regarding whether the Interim Rate should be modified to exempt intermittent resources from Revenue Sufficiency Guarantee charges during manual curtailments are outside of the scope of this proceeding. The existing exemption during manual redispatch events in section 33.8 of the tariff does not apply to intermittent resources. The Midwest ISO has not proposed such an exemption as part of this proceeding, and we will not address whether such an exemption would be just and reasonable here.

³⁷ RSG Exemption Order, 132 FERC ¶ 61,184 at P 161-62.

³⁸ In Docket No. ER11-2275, the Midwest ISO proposed, under section 205, revisions to incorporate elements of the Redesign Proposal that were rejected in the August 30, 2010 order in Docket No. EL07-86, *et al.* Among those were revisions to the definitions of Economic Maximum Dispatch and Economic Minimum Dispatch with definitions specific to Intermittent Resources and other resources not capable of following set-point instructions. These revisions were accepted by the Commission, effective April 1, 2011. *Midwest Indep. Transmission Sys. Operator, Inc.*, 134 FERC ¶ 61,264 at P 82 (2011).

The Commission orders:

(A) The Midwest ISO's compliance filing is hereby accepted in part and rejected in part, as discussed in the body of this order.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.