

143 FERC ¶ 61,145
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc.	Docket Nos. ER12-1265-002 ER12-1265-003
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Midwest Independent Transmission System Operator, Inc	ER09-1049-006
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ORDER ON REHEARING AND COMPLIANCE

(Issued May 16, 2013)

1. On August 21, 2012, the Midwest Independent Transmission System Operator (MISO) submitted a filing as a part of its Order No. 719¹ compliance, proposing revisions to its Open Access Transmission, Energy and Operating Reserves Tariff (Tariff)² in order to comply with the Commission's July 19, 2012 Order on Rehearing and Compliance.³ Midwest TDUs⁴ timely sought rehearing of the July 19 Order. In this order, we deny

¹ *Wholesale Competition in Regions with Organized Electric Markets*, Order No. 719, FERC Stats. & Regs. ¶ 31,281 (2008), *order on reh'g*, Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 (2009), *order on reh'g*, Order No. 719-B, 129 FERC ¶ 61,252 (2009).

² MISO August 21, 2012 Compliance Filing, Docket No. ER12-1265-003 (August 2012 Compliance Filing). On the same day, in Docket No. ER12-1266-003, MISO submitted a filing in compliance with Order No. 745. *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, FERC Stats. & Regs. ¶ 31,322 (Order No. 745), *order on reh'g*, Order No. 745-A, 137 FERC ¶ 61,215 (2011) (Order No. 745-A), *reh'g denied*, Order No. 745-B, 138 FERC ¶ 61,148 (2012) (Order No. 745-B). Together these compliance filings are referred to as "August 2012 Compliance Filings."

³ *Midwest Indep. Trans. Sys. Operator, Inc.*, 140 FERC ¶ 61,060 (2012) (July 19 Order).

⁴ Midwest TDUs, for purposes of this proceeding, include: Great Lakes Utilities, Madison Gas & Electric Company, Missouri River Energy Service, Missouri Joint Municipal Electric Utility Commission and WPPI Energy.

rehearing and conditionally accept MISO's August 2012 Compliance Filing, subject to a further compliance filing to be filed 45 days after issuance of this order, as discussed below.

I. Background

A. Order Nos. 719 and 719-A

2. In Order No. 719, the Commission established reforms to improve the operation of organized wholesale electric power markets and amended its regulations under the Federal Power Act (FPA), pertinent to this order, in the areas of: (1) demand response, including pricing during periods of operating reserve shortage; and (2) market-monitoring policies.⁵

3. In the area of demand response, the Commission required Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) to, among other things: (1) accept bids from demand response resources in the RTOs' or ISOs' markets for certain ancillary services on a basis comparable to other resources; (2) in certain circumstances, permit an Aggregator of Retail Customers (ARC)⁶ to bid demand response on behalf of retail customers directly into the organized energy market; and (3) modify their market rules, as necessary, to allow the market-clearing price, during periods of operating reserve shortage, to reach a level that rebalances supply and demand, so as to maintain reliability, while providing sufficient provisions for mitigating market power.⁷ The Commission also took several steps to improve market monitoring, including: (1) modifying market monitoring unit participation in tariff administration and market mitigation; and (2) expanding the dissemination of market monitoring unit market information. The Commission required each RTO or ISO to consult with its stakeholders and make a compliance filing to explain how the RTO's or ISO's existing practices comply with Order No. 719's reforms, or describe the entity's plans to attain compliance.⁸

4. On July 16, 2009, the Commission issued Order No. 719-A, which, in response to requests for rehearing, revised and clarified certain of the findings in Order No. 719 and, as relevant here, directed MISO to make a compliance filing related to aspects of demand response and market monitoring. In Order No. 719-A, the Commission required RTOs and ISOs to develop mechanisms for sharing information about demand response resources with affected load-serving entities, as well as develop and implement protocols

⁵ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 1.

⁶ The term "ARC," refers to an entity that aggregates demand response bids (which are mostly from retail loads). *Id.* P 3 n.3.

⁷ *Id.* PP 3, 15.

⁸ *Id.* PP 8, 578-583.

allowing ARCs to operate in organized markets, addressing concerns such as double-counting, deviations, underscheduling in the day-ahead market, metering, billing, settlement, information sharing, and verification measures.⁹

B. December 2011 Order on Compliance

5. In the December 2011 Order on Compliance,¹⁰ the Commission conditionally accepted MISO's April 2009 Compliance Filing¹¹ and certain proposals set forth in MISO's October 2009 Compliance Filing,¹² with certain modifications, as compliant with Order No. 719.¹³

6. Significantly, among other actions, the Commission rejected MISO's proposed compensation for ARCs of Locational Marginal Price (LMP) minus the Marginal Foregone Retail Rate (MFRR),¹⁴ finding that the MFRR component of the formula lacked the specificity required for ratemaking purposes and that the MFRR component was not tied to any objectively identifiable criteria. The Commission stated that MISO's proposal would permit "relevant electric retail regulatory authorities to set (or revise if they do not set) the MFRR at/to any value they deem appropriate, depending on the policy objectives of the relevant electric retail regulatory authority."¹⁵ The Commission stated that allowing such discretion in setting a critical rate component is contrary to the Commission's obligation to set Commission-jurisdictional rates. Accordingly, the Commission directed MISO to submit a just and reasonable ARC compensation proposal.¹⁶ In addition, the Commission accepted MISO's proposal to allocate the costs associated with ARC

⁹ Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at PP 67, 69-70.

¹⁰ *Midwest Indep. Trans. Sys. Operator, Inc.*, 137 FERC ¶ 61,214 (2011) (December 2011 Order on Compliance).

¹¹ MISO April 28, 2009 Compliance Filing, Docket No. ER09-1049 (April 2009 Compliance Filing).

¹² MISO October 2, 2009 Compliance Filing, Docket No. ER09-1049 (October 2009 Compliance Filing).

¹³ December 2011 Order on Compliance, 137 FERC ¶ 61,214 at P 1.

¹⁴ MISO described the MFRR as "a proxy for the price that the retail customers would have paid under their current retail tariff for the energy they did not consume and for which the ARC received compensation from the [MISO]." October 2009 Compliance Filing at 17-18.

¹⁵ December 2011 Order on Compliance, 137 FERC ¶ 61,214 at P 176.

¹⁶ *Id.*

compensation to the load-serving entity from which the demand response originates because it was consistent with the then-current allocation of other demand response costs, noting that the cost allocation requirements of Order No. 745 would apply to the appropriate time periods.¹⁷ The Commission also required MISO to revise its determination of the LMP used for recovering ARC costs from load-serving entities.¹⁸

C. July 19 Order

7. On March 14, 2012, as amended March 23, 2012,¹⁹ MISO submitted its filing to comply with the December 2011 Order on Compliance, as discussed below. MISO proposed to remove Tariff language regarding the MFRR and proposed to compensate demand response provided by ARCs at the LMP.²⁰

8. In the July 19 Order, the Commission denied the requests for rehearing and clarification of the December 2011 Order on Compliance and conditionally accepted MISO's proposed tariff revisions as set forth in its March 2012 Filings, subject to a further compliance filing.²¹

9. The Commission also found the proposal in MISO's compliance filing to compensate ARCs at the LMP to be just and reasonable because MISO will compensate

¹⁷ *Id.* P 177. The issue of compensation and cost allocation for ARC-provided and other demand response in time periods when demand response is cost-effective at the LMP is addressed in the MISO Order No. 745 compliance proceeding. The compensation and cost allocation requirements of Order No. 745 will apply to these time periods. *Id.* n.243.

¹⁸ *Id.* P 193.

¹⁹ MISO March 14, 2012 Compliance Filing, Docket No. ER12-1265-000 (March 2012 Compliance Filing); MISO March 23, 2012 Amended Compliance Filing, Docket No. ER12-1265-001 (proposing errata corrections to address minor errors in its procedures for sharing certain demand response resource information) (March 2012 Amended Filing) (together, March 2012 Filings).

²⁰ March 2012 Compliance Filing at 7-16.

²¹ Certain Parties requested rehearing and/or clarification of the following determinations in the December 2011 Order on Compliance: (1) rejection of MISO's proposal to include the MFRR as part of its ARC compensation proposal; (2) acceptance of MISO's proposal to allocate the costs associated with demand response hosted by ARCs (i.e., the LMP) to the load-serving entity from which the demand response originates; and (3) lack of clarification that parties would have an opportunity to protest MISO's subsequent compliance filing. *See* July 19 Order, 140 FERC ¶ 61,060 at PP 24-37 (MFRR), PP 38-46 (cost allocation to load-serving entity), PP 47-49 (right to protest).

demand response resources hosted by ARCs the same as it compensates other demand response resources.²² The Commission explained that, prior to Order No. 745, the Commission found it just and reasonable for MISO to compensate demand response resources at the LMP during all hours, and Order No. 745 did not change those findings.²³ The Commission reiterated its determination from the December 2011 Order on Compliance that its action under section 206 of the FPA²⁴ in the Order No. 745 rulemaking proceeding “did not extend to situations where the LMP is not greater than or equal to the threshold prices, and as a result, compensation of demand response resources in those situations is beyond the scope of the compliance proceedings.”²⁵ Consequently, the Commission concluded *on procedural grounds* that MISO’s existing compensation practices in hours when the net benefits test is not satisfied would remain unchanged by Order No. 745.²⁶ The Commission noted that its focus in this proceeding is compliance with Order No. 719, and repeated its declaration in the Order No. 745 Compliance Order that its action “does not preclude MISO from subsequently proposing Tariff modifications, pursuant to section 205 of the FPA, or other entities from making challenges under section 206 of the FPA.”²⁷

²² July 19 Order, 140 FERC ¶ 61,060 at PP 126-127. In determining whether MISO’s proposal complied with the ARC compensation requirements of the December 2011 Order on Compliance, the Commission explained that it only needed to consider compensation and corresponding cost allocation when the net benefits test, which establishes a price threshold above which demand response resource bids are deemed to be cost effective, is not satisfied. This is because in the concurrently-issued Order No. 745 Rehearing and Compliance Order, the Commission conditionally accepted Tariff revisions regarding compensation for demand response resources, including ARCs, when the net benefits test is satisfied. *Id.* P 126 & n.223 (citing *Midwest Indep. Trans. Sys. Operator, Inc.*, 140 FERC ¶ 61,059, at P 74 (2012) (Order No. 745 Rehearing and Compliance Order)).

²³ *Id.* P 127 & n.224 (citing *Midwest Indep. Trans. Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (2008)).

²⁴ 16 U.S.C. § 824e (2006).

²⁵ *Id.* P 127 & n.225 (citing *Midwest Indep. Trans. Sys. Operator, Inc.*, 137 FERC ¶ 61,212 at P 37 (2011) (Order No. 745 Compliance Order)).

²⁶ *Id.* P 127 & n.226 (citing Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 38).

²⁷ *Id.* P 127 & n.227 (citing, as an example, Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 37).

10. Additionally, the Commission addressed Midwest TDUs' argument that demand response hosted by ARCs should not receive LMP compensation when the net benefits test is not satisfied, as follows:

We disagree with Midwest TDUs' argument that compensating ARCs at the LMP when the net benefit test is not satisfied is contrary to Order No. 745 or has been proven unjust and unreasonable as a result of the Commission's findings regarding whether customers suffer a net loss when the net benefits test is not satisfied. As the Commission explained in Order No. 745-A, '[t]he Commission's section 206 action in Order No. 745 did not extend, however, to situations where the LMP is not greater than or equal to the threshold price.' Moreover, in the Order No. 745 Compliance Order, the Commission specifically rejected as beyond the scope of Order No. 745 a compensation proposal *identical* to Midwest TDUs' (i.e., to not provide compensation) that applied to all demand response resources, including ARCs.^[28]

D. August 2012 Compliance Filing

11. On August 21, 2012, MISO submitted its filing to comply with the July 19 Order, which is described below.

II. Request for Rehearing, Notice of Filings, and Responsive Pleading

12. On August 20, 2012, Midwest TDUs filed a timely request for rehearing of the July 19 Order, seeking rehearing of the Commission's determination that it is just and reasonable for MISO to compensate demand response hosted by ARCs at the LMP during hours when the net benefits test is not satisfied.²⁹

13. Notice of MISO's August 2012 Compliance Filing was published in the *Federal Register*, 77 Fed. Reg. 51,991 (2012), with comments due on or before September 11, 2012.

14. A timely protest was filed by Demand Response Supporters.³⁰ This protest was also filed in Docket No. ER12-1266-003, the Order No. 745 compliance proceeding. As

²⁸ July 19 Order, 140 FERC ¶ 61,060 at P 128 (citations omitted).

²⁹ Midwest TDUs August 20, 2012 Request for Rehearing, Docket No. ER12-1265-002, at 2-3 (Rehearing Request).

³⁰ Demand Response Supporters August 20, 2012 Protest, Docket Nos. ER12-1265-003 and ER12-1266-003 (Protest). Demand Response Supporters include Coalition of Midwest Transmission Customers, Comverge, Inc., EnergyConnect by Johnson Controls, EnerNOC, Inc., the Minnesota Large Industrial Group and Wisconsin Industrial Energy Group and Wal-Mart Stores Inc. (collectively, "Demand Response Supporters").

the issues Demand Response Supporters raise are more germane to Order No. 745, we address them in the order in that compliance proceeding, which is being issued concurrently with this order.³¹

III. Discussion

A. Request for Rehearing

15. Midwest TDUs argue that the Commission should grant rehearing and reject its acceptance of MISO's proposal to compensate ARCs for demand response during non-net benefits hours at the LMP, arguing that such LMP compensation: (1) is inconsistent with the principles and findings of Order No. 745; (2) cannot be reconciled with the Commission's contemporaneous determination in *PJM Interconnection, L.L.C.*,³² that zero compensation for demand response in non-net benefits hours is just and reasonable; and (3) is incompatible with the approved cost allocation for demand response in MISO.³³ Specifically, Midwest TDUs acknowledge that Order No. 745 only required compensation at LMP in those hours when the net benefits test is satisfied.³⁴ However, they argue that the Commission's reasoning in Order No. 745 makes clear that compensating demand response resources at LMP when the demand response is not cost-effective per the net benefits test is unjust and unreasonable because customers will suffer a net economic loss as a result of the LMP payments.³⁵

16. Midwest TDUs also assert that the Commission erred by approving demand response compensation at LMP for non-net benefits hours because, in their view, this ruling cannot be reconciled with the contemporaneous finding that zero compensation for demand response in such hours is also just and reasonable. In particular, Midwest TDUs

³¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,146 (2013).

³² 139 FERC ¶ 61,257, at P 18 (2012) (*PJM*).

³³ Rehearing Request at 2-3. We note that while Midwest TDUs list four specifications of error, they discuss three categories of issues.

³⁴ *Id.* at 5.

³⁵ *Id.* (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 48 (“[I]t is appropriate to require compensation at the LMP for the service provided by demand response resources participating in the organized wholesale energy markets only when ... the payment of LMP for the provision of the service by the demand response resource [is] cost-effective, as determined by the net benefits test described herein.”) (emphasis added). *Id.* P 50 (“when wholesale energy market customers pay a reduced price attributable to demand response that does not reduce total costs to customers more than the costs of paying LMP to the demand response dispatched, customers suffer a net loss.”)).

point to the Commission's recent acceptance of PJM's proposed compensation of zero for demand response during non-net benefits hours.³⁶ Midwest TDUs argue that the Commission cannot find in nearly contemporaneous orders that compensation at LMP and at zero for demand response resources during non-net benefits hours are both just and reasonable. They insist that the Commission has not articulated any relevant distinction between PJM and MISO that would justify such a vast disparity in compensation for demand response during non-net benefits hours.

17. Midwest TDUs further state that the Commission erred by refusing to consider their arguments that the combination of demand response compensation at LMP during non-net benefits hours, along with direct assignment of that cost to the host load-serving entity, is unjust and unreasonable. Midwest TDUs state that, because the Commission erroneously refused to consider their arguments on procedural grounds, the Commission needs to address the merits of approving demand response compensation at LMP during non-net benefits hours, plus direct assignment of that cost to the host load-serving entity, which, Midwest TDUs assert, is unjust and unreasonable.³⁷

B. Commission Determination

18. We deny rehearing. Midwest TDUs disregard the procedural posture of the Order No. 719 compliance proceeding. As the Commission has explained, Order No. 745 requires LMP compensation when the net benefits test is met; Order No. 745 does not address the appropriate level of compensation for demand response resources, including ARCs, when the net benefits test is not met.³⁸ Consequently, the Commission determined, and has consistently held, that the level of compensation for demand response resources, including ARCs, during hours when the LMP is below the net benefits test threshold price is beyond the scope of compliance with Order No. 745.³⁹ Under MISO's existing Tariff provisions, demand response resources receive LMP compensation for providing demand

³⁶ *Id.* at 6 (citing *PJM*, 139 FERC ¶ 61,257 at P 18).

³⁷ *Id.* at 9-12.

³⁸ *See, e.g.*, Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 37. *See also Cal. Indep. Sys. Operator Corp.*, 137 FERC ¶ 61,216, at P 32 (2011); *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,216, at P 16 & n.8 (2011) (citing Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 133).

³⁹ *See, e.g.*, Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at PP 71-72; *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,216 at P 16 (finding PJM's proposal to eliminate its existing compensation program when the net benefits test is not met is beyond the scope of the Commission's directives).

response in all hours.⁴⁰ The Tariff provisions that the Commission approved in the July 19 Order provide that ARCs will be compensated like all other demand response resources.⁴¹

19. We also disagree with Midwest TDUs' contention that LMP compensation for ARCs during hours when the net benefits test is not met is inconsistent with Order No. 745.⁴² Midwest TDUs assert that "[t]he limitation of the scope of Order No. 745's compliance obligation to hours when the net benefits test is satisfied does not give the Commission 'free rein' to ignore Order No. 745's principles and findings of fact in setting compensation for ARCs that provide [demand response] during non-net benefits hours."⁴³ To support their position, Midwest TDUs cite a portion of paragraph 48 of Order No. 745:

[I]t is appropriate to require compensation at the LMP for the service provided by demand response resources participating in the organized wholesale energy markets *only* when . . . *the payment of LMP for the provision of the service by the demand response resource [is] cost-effective*, as determined by the net benefits test described herein.^[44]

Midwest TDUs essentially argue that paragraph 48 means that the requirements of Order No. 745 apply when the net benefits test is not met. We disagree. Rather, the excerpt from paragraph 48 of Order No. 745 establishes that LMP compensation is *only required* when the net benefits test is met. As the Commission clarified in Order No. 745-A:

[P]ursuant to this section 206 directive, each RTO and ISO must revise its tariff to provide that when the LMP is greater than or equal to the threshold price, all demand response resources that qualify for compensation will receive the LMP Payment. The Commission's section 206 action in Order No. 745 did not extend, however, to situations where the LMP is not greater than or equal to the threshold price. Thus, if LMP is less than the threshold price, the Final Rule does not apply to determine the payment to a demand response resource, and any payment will be governed by the existing RTO or ISO tariff.^[45]

⁴⁰ See July 19 Order, 140 FERC ¶ 61,060 at P 127 & n.224 (citing *Midwest Indep. Trans. Sys. Operator, Inc.*, 122 FERC ¶ 61,172 (2008)).

⁴¹ See *id.*

⁴² See Rehearing Request at 3-6.

⁴³ *Id.* at 6.

⁴⁴ *Id.* at 5 (quoting Order No. 745, FERC Stats. & Regs. ¶ 31,322 at P 48 (emphasis added)).

⁴⁵ Order No. 745-A, 137 FERC ¶ 61,215 at P 131.

Hence, if Midwest TDUs seek to modify MISO's demand response resource compensation during hours when the net benefits test is not met, the appropriate process is through a section 205 or 206 proceeding.⁴⁶

20. Nor is the Commission's ruling in this MISO compliance proceeding "irreconcilable" with the Commission's determination in *PJM*, as Midwest TDUs allege.⁴⁷ On the contrary, these two proceedings are distinguishable by their distinct procedural postures. This proceeding arises from MISO's filing in compliance with Order No. 719; it is therefore a compliance proceeding. Conversely, *PJM* is a proceeding under section 205 of the FPA.⁴⁸ As Midwest TDUs acknowledge, in the *PJM* case, PJM submitted a *section 205 filing* proposing to eliminate the compensation that it had been paying demand response sold into wholesale energy markets during hours when the net benefits test is not met.⁴⁹ Prior to submitting the section 205 filing, PJM had been paying such resources LMP minus Generation and Transmission Charges.⁵⁰ In its section 205 filing, PJM proposed, and the Commission accepted PJM's proposal, to eliminate such compensation for demand response during hours when the net benefits test is not met.⁵¹ Significantly, in its compliance filing with Order No. 745, which preceded its subsequent section 205 filing, PJM previously proposed, and the Commission rejected, PJM's proposal to eliminate compensation for demand response resources during hours when the net benefits test is not met, as beyond the scope of compliance with Order No. 745.⁵² In rejecting PJM's proposal, the Commission stated that "[i]f PJM wishes to propose changes with respect to circumstances that were not addressed by the Commission's section 206 action in Order No. 745, the appropriate forum for such a proposal would be a separate section 205 filing."⁵³ PJM subsequently submitted its section 205 filing, proposing to eliminate demand response compensation during hours when the net benefits test is not met.

⁴⁶ See, e.g., *Mobil Oil Exploration v. United Distrib. Cos.*, 498 U.S. 211, 239 (1991) ("An agency employs broad discretion in determining how to handle related, yet discrete, issues in terms of procedures [.]").

⁴⁷ See Rehearing Request at 6-9.

⁴⁸ 16 U.S.C. § 824d (2006).

⁴⁹ Rehearing Request at 6-7; *PJM*, 139 FERC ¶ 61,257 at P 4.

⁵⁰ *PJM*, 139 FERC ¶ 61,257 at P 3.

⁵¹ *Id.* PP 1, 18-19.

⁵² *Id.*; see also *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,216 at P 16.

⁵³ *PJM Interconnection, L.L.C.*, 137 FERC ¶ 61,216 at P 16; see also *PJM*, 139 FERC ¶ 61,257 at n.3.

21. MISO also previously proposed in its original compliance filing with Order No. 745 to eliminate compensation for demand response during hours when the net benefits test is not met, which the Commission also rejected as beyond the scope of compliance with Order No. 745.⁵⁴ In rejecting MISO's original proposal, the Commission stated that its action in the compliance proceeding did not "preclude MISO from subsequently proposing Tariff modifications, pursuant to section 205 of the FPA, or other entities from making challenges under section 206 of the FPA."⁵⁵ We reiterate that the appropriate procedural avenue for revising MISO's existing demand response resource compensation during hours when the LMP is below the net benefits test threshold price is through a section 205 or 206 proceeding.

22. We also disagree with Midwest TDUs' assertion that the Commission erred by refusing to consider in the MISO Order No. 719 compliance proceeding Midwest TDUs' arguments that the combination of demand response compensation at LMP during hours when the net benefits Test is not met, along with direct assignment of cost during hours when the net benefits test is not met to the host load-serving entity during those hours, is unjust and unreasonable. The compensation and allocation of costs for demand response hosted by ARCs in MISO during hours when the net benefits test is not met simply mirror the compensation and allocation of such costs for all demand response resources during such hours. Indeed, in the December 2011 Order on Compliance, the Commission accepted MISO's proposal to allocate the costs associated with ARC-hosted demand response to the load-serving entity from which the demand response originated, because the proposed allocation of the LMP as a charge to the load-serving entity is consistent with the current allocation of other demand response costs on the MISO system.⁵⁶ When subsequently accepting MISO's proposed compensation for ARCs at the LMP in the July 19 Order, the Commission determined:

As the Commission's acceptance of MISO's proposal to allocate the costs associated with compensating ARCs was subject to further compliance by MISO, we are ready to consider any arguments made regarding specific adjustment to this cost allocation, in light of MISO's compensation proposal in this order. However, no party has presented arguments of this sort, and we are not convinced that MISO's ARC compensation proposal renders the allocation of costs to load-serving entities unjust and unreasonable or otherwise necessitates adjustment to MISO's cost allocation proposal.^[57]

⁵⁴ Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 37.

⁵⁵ *Id.*; *see also* July 19 Order, 140 FERC ¶ 61,060 at P 127 & n.227 (citing, as an example, Order No. 745 Compliance Order, 137 FERC ¶ 61,212 at P 37).

⁵⁶ December 2011 Order on Compliance, 137 FERC ¶ 61,214 at P 177.

⁵⁷ July 19 Order, 140 FERC ¶ 61,060 at P 130.

23. Midwest TDUs have not provided sufficient basis to change these conclusions. Notwithstanding the above, we also note that, outside this compliance proceeding, Midwest TDUs may file a section 206 complaint raising their concerns.

C. August 21 Filing in Docket Nos. ER12-1265-000 and ER12-1265-001

1. Demand Response and Pricing During Periods of Operating Reserve Shortages in Organized Markets

a. General Comparability in Accepting Bids and Bidding Parameters

i. Background

24. In Order No. 719, among other things, the Commission required each RTO and ISO to establish policies and procedures to ensure that demand response resources are treated comparably to supply-side resources.⁵⁸ The Commission required each RTO and ISO to allow demand response resources to limit the duration, frequency and amount of their service in their ancillary service bids or in their joint energy-ancillary services market bids. Such limits that are to be allowed in bids include a maximum duration in hours that demand response resources may be dispatched, a maximum number of times that they may be dispatched during a day, and a maximum amount of electric energy reduction that they may be required to provide either daily or weekly.⁵⁹

25. In its April 2009 Compliance Filing, MISO explained that demand response resources can participate in its markets as either Demand Response Resources – Type I, which are capable of supplying a specific quantity of energy or contingency reserve through physical load interruption, or Demand Response Resources – Type II, which can supply energy and/or operating reserves over a dispatchable range through controllable load or behind-the-meter generation.⁶⁰ MISO asserted that its offer parameters for Demand Response Resources – Type II satisfy the requirements of Order No. 719 because those resources can specify a maximum run time, a maximum start-up limit, and a maximum daily energy limit.⁶¹

26. In the December 2011 Order on Compliance, among other things, the Commission required MISO to explain whether system requirements will allow implementation of new

⁵⁸ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 50.

⁵⁹ *Id.* P 81.

⁶⁰ April 2009 Compliance Filing at 8-9.

⁶¹ *Id.* at 11-12.

offer parameters for Demand Response Resources – Type I, and, if not, to provide a timeline for implementation.⁶² The Commission also found that MISO had not provided sufficient information to address the concern that Demand Response Resources – Type II should be able to submit offer curves, instead of just a single price and quantity value, for operating reserves, and required MISO to address this concern in its compliance filing.⁶³ The Commission further required MISO to address whether its offer parameters are sufficiently flexible, as well as the concern that the combination of offer parameters, and especially the maximum daily energy limit, will not sufficiently address the risk that demand response resources are called upon too frequently.⁶⁴ The Commission also directed MISO to revise section 40.3.4.a.vii and 40.3.4.a.x of the Tariff as MISO had agreed to do.⁶⁵

27. In its March 2012 Compliance Filing, MISO maintained that allowing Demand Response Resources – Type II to provide up to ten price/quantity pairs for energy and a single price/quantity availability offer for operating reserves provides a complete representation of the resources' costs because simultaneous co-optimization of the energy and operating reserve markets considers resources' opportunity costs when clearing all products, and resources may reflect any additional costs to provide operating reserves via their single availability offer. MISO argued that, to extent that there is a resource with costs of providing operating reserves that are proportional to the quantity of reserves being provided, the costs would exceed any potential benefits of changing its market structure to allow Demand Response Resources – Type II to submit operating reserves offer curves.⁶⁶

28. With regard to whether demand response resources may be called upon too frequently, MISO did not believe that changes were needed. MISO stated that it deploys resources for contingency reserves for each reserve sharing event on a *pro rata* basis that considers MISO's total cleared contingency reserves and the size of the reserve sharing event. MISO stated that, if a resource is incapable of providing contingency reserves after such an event, it may modify its subsequent offers accordingly.⁶⁷ In addition, MISO

⁶² December 2011 Order on Compliance, 137 FERC ¶ 61,214 at P 52.

⁶³ *Id.* P 55.

⁶⁴ *Id.* P 53.

⁶⁵ *Id.* P 41. MISO in its December 15, 2009 Answer agreed to insert the following phrase into sections 40.3.4.a.vii and 40.3.4.a.x of the Tariff: "If the Demand Response Resource-Type II has not been committed for Energy for that Hour, the Calculated DRR-Type II output shall be equal to zero (0) MW." MISO December 15, 2009 Answer, Docket No. ER09-1049-002, at 24.

⁶⁶ March 2012 Compliance Filing, Transmittal Letter at 4-5.

⁶⁷ *Id.* at 4.

clarified that system requirements now permit Demand Response Resources – Type I to specify certain operational limits in their offers.⁶⁸

29. MISO indicated that it had made the required modifications to the Tariff definitions of Demand Response Resources – Types I and II and to sections 40.3.4.a.vii and 40.3.4.a.x.⁶⁹

ii. July 19 Order

30. In the July 19 Order, the Commission found that MISO did not fully comply with the December 2011 Order on Compliance’s requirements regarding offer parameters for demand response resources.⁷⁰ MISO allowed Demand Response Resources – Type II to submit only a single price/quantity availability offer for operating reserves. The Commission expressed concern that this could prevent Demand Response Resources – Type II from fully recovering their costs since these “costs are not proportional to the quantity of reserves being provided.”⁷¹ The Commission found MISO’s contention – that the costs associated with making modifications to the offer parameters (to accommodate demand resources that need more than a single price/quantity availability offer for operating reserves) would outweigh associated benefits – to be unsupported and unresponsive to the December 2011 Order on Compliance.⁷² The Commission therefore required MISO to allow demand response resources to submit multi-part offers to better reflect the non-linear relationship between their costs and the quantity of available operating reserves.⁷³

31. To ensure that demand response resources are not called upon too frequently, the Commission required additional compliance from MISO regarding the flexibility of its existing offer parameters.⁷⁴ In response to MISO’s statement that demand response resources could modify future offers if they were unable to provide contingency reserve after a qualifying event, the Commission found that this would subject such resources to deviation charges and that MISO’s argument failed to address the issue of these resources

⁶⁸ *Id.* at 3-4.

⁶⁹ *Id.* at 2-3.

⁷⁰ July 19 Order, 140 FERC ¶ 61,060 at P 63.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.* P 64.

being called upon too frequently during an event.⁷⁵ Accordingly, the Commission required MISO to allow demand response resources to submit additional offer parameters, such as maximum daily contingency reserve limits, that would address this and associated issues.⁷⁶

32. The Commission also ordered MISO to insert additional language into section 40.3.4.a.x. Specifically, it found that MISO had not inserted the phrase “[i]f the Demand Response Resource – Type II has not been committed for Energy for that Hour, the Calculated DRR – Type II output shall be equal to zero (0) MW,” as required by the December 2011 Order on Compliance.⁷⁷

iii. August 2012 Compliance Filing

33. MISO proposes to allow multi-part operating reserve offer curves from demand response resources in order to permit demand response providers to better reflect the cost of providing operating reserves. MISO proposes to integrate those offer curves into the Security-Constrained Unit Commitment and the Security-Constrained Economic Dispatch algorithms. The demand response providers will be able to provide up to three price-quantity pairs for each operating reserve product (regulating reserve, spinning reserve, and supplemental reserve). Demand response providers can choose between having these price-quantity pairs interpreted as a stepped function, or as a piecewise linear function.⁷⁸ MISO states that these Tariff amendments will modify demand response resource offer parameters to address the issues initially raised by the July 19 Order.⁷⁹

34. For operating reserves, MISO proposes that a demand response provider may only provide up to three price-quantity pairs for a demand response resource as opposed to the up to ten price-quantity pairs for a resource’s energy offer curve, partly because the range of operations covered by the operating reserve offer curve is smaller than the corresponding operating range covered by the energy offer curve. MISO states that the energy offer curve must describe the entire range between emergency minimum limit and

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.* (citing December 2011 Order on Compliance, 137 FERC ¶ 61,214 at PP 37, 41).

⁷⁸ MISO, FERC Electric Tariff, [39.2.5, Generation Offer and Demand Response Resource-Type II Offer, 2.5.0](#), § 39.2.5. A piecewise linear function is a continuous linear curved or function composed of a finite number of linear pieces of potentially varying slopes.

⁷⁹ MISO August 2012 Compliance Filing, Transmittal Letter at 3.

emergency maximum limit, whereas the applicable range for operating reserves is the rampable range of the resource over five minutes (for regulating reserve), or the rampable range of the resource over ten minutes (for contingency reserve). MISO also maintains that the addition of price-quantity pairs has a negative impact on the operational performance of the Security-Constrained Unit Commitment and the Security-Constrained Economic Dispatch algorithms. MISO concludes that three is a just and reasonable number of price-quantity pairs for operating reserve offer curves by demand response resources.⁸⁰

35. MISO proposes to modify the offer parameters for demand response resources to permit maximum daily contingency reserve and regulating reserve limits to be offered into the real-time market. MISO proposes to use the new terms “Maximum Daily Contingency Reserve,” in sections 40.2.5.b(xxxvi) and 40.2.6.b(xix), and “Maximum Daily Regulation Up Deployment” and “Maximum Daily Regulation Down Deployment” in Section 40.2.5.b(xxxiv)-(xxxv) of the Tariff to implement such offer parameters.⁸¹

36. MISO states that the proposed demand response resource offer parameters will function as limitations to the amount of contingency reserve or regulating reserve that can be provided by a demand response resource during a given operating day in the real-time energy and operating reserve market. For example, if a market participant has a 100 MW demand response resource that is able to provide a Maximum Daily Contingency Reserve of 250 MW, then the real-time energy and operating reserve market may clear the demand response resource for up to 100 MW of contingency reserves for any dispatch interval during the operating day. MISO could then dispatch the resource again at 100 MW and a third time at 50 MW, for example, for a daily total of 250 MW. Thus, the offer parameters and the number of deployments in a day determine the amount of resources dispatched each time.⁸²

37. In a similar fashion, MISO states that the Maximum Daily Regulation Up Deployment and the Maximum Daily Regulation Down Deployment, the cumulative amount of MWs that a Demand Response Resource can be deployed up or down for regulation purposes in a given day, (for Demand Response Resources – Type II) will be

⁸⁰ August 2012 Compliance Filing, Transmittal at 3.

⁸¹ Section 40.2.5 addresses real-time offer parameters of Demand Response Resources – Type II, and section 40.2.6 addresses real-time offer parameters for Demand Response Resources – Type I. Demand Response Resources – Type I do not provide regulation service, and thus the other two offer parameters are not applicable to these resources. MISO explains that because these three phrases are defined in this subsection and are not used elsewhere in the Tariff, the definitions have not been included in Module A of the Tariff.

⁸² August 2012 Compliance Filing, Transmittal Letter at 3-4.

employed in a similar fashion. MISO will track the actual deployed regulation in MWh on an ongoing basis throughout the operating day. As soon as the net regulation deployed equals or exceeds the offered Maximum Daily Regulation Up Deployment or Maximum Daily Regulation Down Deployment, then the demand response resource will no longer be capable of providing regulating reserves for the given operating day.⁸³

38. MISO also proposes to modify section 40.3.4.a.x to insert the phrase required by the Commission in the December 2011 Order on Compliance and the July 19 Order.

iv. Commission Determination

39. We conditionally accept as compliant with the July 19 Order MISO's proposed Tariff revisions to allow demand response providers to provide additional offer parameters. The proposed revisions will enable demand response providers to ensure that they will not be called upon too frequently. We also find reasonable MISO's justification that the range of operations covered by the operating reserve offer curve is smaller than the corresponding operating range covered by the energy offer curve. MISO's proposal strikes a reasonable balance between allowing demand response resources the flexibility to express their willingness to participate in the market, on the one hand, and the practical need to solve the dispatch problem, on the other hand. In addition, we find that MISO has revised section 40.3.4.a.x, as directed by the Commission in the December 2011 Order on Compliance, that is, MISO has inserted the phrase, "[i]f the Demand Response Resource – Type II has not been committed for Energy for that Hour, the Calculated DRR – Type II output shall be equal to zero (0) MW," and we accept this revision as compliant with our directive. However, we require MISO to define the terms "Maximum Daily Regulation Up Deployment" and "Maximum Daily Regulation Down Deployment" in Module A of the Tariff.

b. Customer Baselines and Measurements

i. Measurement and Verification Protocols

(a) Background

40. In Order No. 719, the Commission required RTOs and ISOs to describe their efforts to develop customer baselines in order to measure demand response resource output and to file a proposed mechanism for measuring and verifying any demand reduction by demand response resources.⁸⁴

⁸³ *Id.* at 4.

⁸⁴ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at PP 57, 61.

41. In the December 2011 Order on Compliance, the Commission required MISO to submit Tariff revisions to remove references to the measurement and verification protocols being in the Business Practices Manuals and to include the measurement and verification protocols and metering guidelines for demand response resources in its Tariff. The Commission deferred judgment as to whether the proposed protocols were just and reasonable.⁸⁵

42. In its March 2012 Compliance Filing, MISO submitted its proposed measurement and verification protocols in a new Attachment TT to the Tariff.⁸⁶ MISO submitted these same protocols in the Order No. 745 compliance proceeding. According to MISO, Attachment TT was developed based on North American Energy Standards Board (NAESB) standards and was designed so that consumption baselines remain accurate over time.⁸⁷ In particular, for each demand response resource providing energy, MISO proposed four potential methods of determining its consumption baseline and demand reduction: use of (1) direct load control; (2) metered generation; (3) calculated baselines; or (4) Custom Baselines.⁸⁸ MISO proposed that for Custom Baselines, the consumption baseline will be developed by the market participant sponsoring a demand response resource and must be approved by MISO. To determine the demand reduction, metered amounts will be subtracted from the consumption baseline. MISO also proposed that Custom Baselines may be used only if none of the other consumption baseline methodologies would produce reasonable estimates of a resource's demand reductions. For a Demand Response Resource – Type II that is qualified to provide regulating reserves (i.e., is regulation-qualified) or has Inter-Control Center Communications Protocol (ICCP) telemetry capabilities, MISO proposed that its consumption baseline equal the resource's forecasted demand for the resource's Host Load Zone submitted via telemetry for each five-minute dispatch interval (i.e., the Dispatch Interval Demand Forecast).

43. For contingency reserves provided by a Demand Response Resource – Type II that is qualified to provide regulating reserves or has ICCP telemetry capabilities, MISO proposed that its consumption baseline equal its telemetered average demand in the 10-second period just prior to the start of the contingency event.⁸⁹

⁸⁵ December 2011 Order on Compliance, 137 FERC ¶ 61,214 at PP 79-80.

⁸⁶ MISO, FERC Electric Tariff, [ATTACHMENT TT, Measurement and Verification \("M and V"\) Criteria, 2.0.0](#).

⁸⁷ March 2012 Compliance Filing, Transmittal Letter at 15.

⁸⁸ MISO, FERC Electric Tariff, [ATTACHMENT TT, Measurement and Verification \("M and V"\) Criteria, 2.0.0](#), §§ 4(a)-(d).

⁸⁹ *Id.*, [ATTACHMENT TT, Measurement and Verification \("M and V"\) Criteria, 1.0.0](#), § 5.

44. MISO also proposed Tariff provisions in Attachment TT describing in detail the event timeline, settlement and dispute process, and meter data that demand response resources must submit. In particular, section 6 of proposed Attachment TT provided an event timeline, including the submission of meter data and settlement process. Proposed section 7 described the meter data that demand response resources must submit, and sections 7 and 8 specified the file format for daily and interval data. Proposed section 9 described the meter data types that can be submitted (e.g., hourly load data).⁹⁰

(b) July 19 Order

45. The Commission placed a number of compliance requirements upon MISO related to measurement and verification protocols. First, to ensure that accepted Custom Baselines are appropriately disclosed, the Commission required MISO to amend its Tariff to require that this information be posted on the Open Access Same-Time Information System (OASIS) after MISO replaces proprietary information with hypothetical data.⁹¹

46. Second, the Commission found that Attachment TT was unclear with regard to MISO's consumption baselines and demand reduction measures for regulation-qualified Demand Response Resources – Type II when those resources are providing energy.⁹² While Attachment TT stated the consumption baselines for regulation-qualified Demand Response Resources – Type II using Dispatch Interval Demand Forecasts, it failed to specify whether these baselines apply to Demand Response Resources – Type II providing regulating reserves alone, or also to regulation-qualified Demand Response Resources – Type II providing energy and contingency reserves.⁹³ The Commission therefore required MISO to submit either:

(1) Tariff provisions to make clear that section 4(e) applies only to Demand Response Resources – Type II that are providing regulating reserves (as opposed to those that are *qualified to provide* regulating reserves); or (2) a justification for applying section 4(e) to regulation-qualified Demand Response Resources – Type II when they are providing contingency reserves and/or energy, and corresponding Tariff provisions to make clear that section 4(e) applies to regulation-qualified Demand Response Resources – Type II when they provide regulating reserves, energy, and/or contingency reserves.^[94]

⁹⁰ *Id.* §§ 6-9.

⁹¹ July 19 Order, 140 FERC ¶ 61,060 at P 80.

⁹² *Id.* P 83.

⁹³ *Id.*

⁹⁴ *Id.* (footnote omitted).

47. Third, the Commission required MISO to ensure consistency between Attachment TT and existing sections of the Tariff with respect to the types of demand response resources that are required to provide telemetered data output when providing contingency reserves. In particular, section 5 of Attachment TT provided that non-regulation qualified Demand Response Resources – Type II are not required to provide telemetered output data for contingency reserves, whereas sections 40.2.4.b and 40.2.4.c of the Tariff would require those same resources to provide telemetered output data for contingency reserves because they provide that only Demand Response Resources – Type I are exempt from submitting this data.⁹⁵ Thus, the Commission required MISO to submit revisions to make sections 40.2.4.b and 40.2.4.c consistent with the provisions of Attachment TT.⁹⁶

48. Fourth, section 4(e) of Attachment TT provides that the Dispatch Interval Demand Forecasts may not exceed the Dispatch Interval Demand Forecast Cap and stated that this cap can be “periodically updated at the request of the Market Participant but not more frequently than each quarter.”⁹⁷ The Commission found that this was not consistent with existing section 40.2.5.i, which provides that “Market Participants may request updates to the Dispatch Interval Demand Forecast Cap on a quarterly basis, in conjunction with the update of the Network Model.”⁹⁸ It required MISO to submit revisions to make section 40.2.5.i consistent with the provisions of Attachment TT.⁹⁹

49. Fifth, the Commission expressed concern that the Tariff’s description of demand response resource settlements may not reflect the measurement and verification protocols in Attachment TT. Specifically, it noted that several sections of the existing Tariff do not distinguish among various types of demand response resources. The Commission required MISO to review its Tariff and to provide an explanation of how Attachment TT affects its settlements for all of the relevant types of demand response resources and to submit corresponding Tariff revisions to ensure that the Tariff appropriately reflects the measurement and verification protocols for all types of demand response resources. It

⁹⁵ *Id.* P 84 & n.158 (citing [40.2.4, Resource Requirements for Operating Reserve, 4.0.0](#), §§ 40.2.4.b-c).

⁹⁶ *Id.* P 84.

⁹⁷ *Id.* P 84 & n.159 (citing [ATTACHMENT TT, Measurement and Verification \("M and V"\) Criteria, 1.0.0](#), § 4(e)).

⁹⁸ *Id.* P 84 & n.160 (citing [40.2.5, Generation Offer and DRR II Offer Rules in RT EORM, 4.0.0](#), § 40.2.5.i).

⁹⁹ *Id.* P 84.

cited potential problems or inconsistencies with sections 1.1a, 1.61, 40.3.3.c.i, and 40.3.4.¹⁰⁰

50. Sixth, the Commission required MISO to revise sections 1.411 and 40.2.4.a to remove references to the measurement and verification protocols being located in the Business Practices Manuals.¹⁰¹ Seventh, the Commission also required MISO to submit Tariff revisions that consistently describe the term “event day,”¹⁰² noting discrepancies in its use in sections 4(b) and 6 of Attachment TT. Finally, the Commission directed MISO to revise sections 7 and 8 of Attachment TT by removing the precise file formats for submitting daily and interval data, which do not substantively impact rates, terms or conditions of service.¹⁰³

(c) August 2012 Compliance Filing

51. In response to the Commission’s first requirement, regarding appropriate disclosure of accepted Custom Baselines, MISO proposes to revise section 3(d) of Attachment TT to provide the obligation that MISO post on OASIS any accepted methodologies for determining Custom Baselines after MISO replaces any proprietary information with hypothetical data.¹⁰⁴

52. Second, to address the Commission’s concern that Attachment TT was unclear regarding MISO’s consumption baselines and demand reduction measures for certain resources, MISO states that it proposes revisions to what was section 4(e) of Attachment TT to provide that consumption baselines and demand reduction measures for regulation-qualified Demand Response Resources – Type II apply to those resources when they provide regulating reserves, energy, and/or contingency reserves (and not just when they provide regulation). MISO explains that a Demand Response Resources – Type II is not obligated to invest in metering and telemetry equipment to become qualified to provide regulating reserves; however, if it does elect to invest in such equipment and training, then the resource will be able to provide MISO better quality data and information. MISO states that, in its view, only in such instances is it just and reasonable to require, via Attachment TT, such a Demand Response Resource – Type II to use metering and

¹⁰⁰ *Id.* P 85.

¹⁰¹ *Id.* P 86.

¹⁰² *Id.* P 87.

¹⁰³ *Id.* P 88.

¹⁰⁴ MISO August 2012 Compliance Filing, Transmittal Letter at 6.

telemetry equipment and provide enhanced data and information for calculating consumption baselines.¹⁰⁵

53. In response to the Commission's third requirement, ensuring consistency between Attachment TT and certain existing sections of the Tariff with respect to the types of demand response resources that are required to provide telemetered data output when providing contingency reserves, MISO states that it proposes to make appropriate revisions to Attachment TT to reflect this directive, as well as changes to sections 40.2.4.b and 40.2.4.c, to make these Tariff provisions consistent with revised Attachment TT.¹⁰⁶ Specifically, MISO proposes modifications to section 40.2.4.b and 40.2.4.c to remove the language on interval demand data submissions required for the spin-qualified and supplemental-qualified Demand Response Resources – Type I that are deployed to provide contingency reserves and to simply provide that these specific resources must provide data consistent with the provisions of Attachment TT. MISO also proposes to state in these sections that these specific resources must provide metered data consistent with Attachment TT.

54. The Commission's fourth directive required MISO to rectify discrepancies between section 4(e) of Attachment TT and section 40.2.5.i. In response, MISO proposes to delete entirely section 40.2.5.i, consistent with MISO's proposed removal of Host Load Zone from the Tariff.¹⁰⁷

55. In response to the Commission's fifth directive, which required MISO to: (1) explain how Attachment TT affects MISO's settlement for all of the relevant types of demand response resources; and (2) propose Tariff provisions to ensure that the Tariff reflects the measurement and verification procedures for all types of demand response resources, MISO states that it has revised Attachment TT to provide, among other things, "appropriately measured" quantities for Actual Energy Injections by [demand response resources]."¹⁰⁸ MISO has removed references to "Host Load Zone" and "Dispatch Interval Demand Forecasts" from sections 1.1a, 1.61, and 40.3.3.c.i of the Tariff. MISO

¹⁰⁵ *Id.* at 7, 9.

¹⁰⁶ *Id.* at 7.

¹⁰⁷ *Id.* at 7, 9. Since MISO proposes to eliminate from the Tariff the last vestige of the Host Load Zone concept, i.e., the one-to-one relationship between Host Load Zones and Demand Response Resources –Type II that are qualified to provide regulating reserves, MISO proposes to eliminate the term Host Load Zone from the Tariff. *See* Transmittal Letter at 7, 9. MISO's proposal to eliminate the Host Load Zone concept from the Tariff is discussed *infra* PP 72-85.

¹⁰⁸ *Id.*

removed the term “Type – I” from section 40.3.3.c.i, such that the charges and credits language for real-time markets apply to withdrawals of demand response resources generally (rather than to withdrawals associated with a Host Load Zone or with a Demand Response Resource – Type I), stating that it did so to indicate that this section is intended to apply to both types of demand response resources.

56. In addition, in section 40.3.4 (Charge for Excessive Energy and Reserve Deployment), MISO proposes to remove the term “Host Load Zone” and “made corresponding amendments to clarify this calculation.”¹⁰⁹

57. MISO also proposes revisions to section 40.3.4 to differentiate between those Demand Response Resources – Type II that are regulation qualified and those that are not regulation qualified with respect to the assessment of excessive/deficient energy deployment charges, by proposing that the former equal the average telemetered output and the latter the average dispatch target. MISO proposes to revise section 40.3.4 to consistently refer to “average” and not “net” telemetered output. MISO proposes to define “Calculated DRR Type-II Output” for a Dispatch Interval for a Demand Response Resource – Type II that is a regulation-qualified resource as the average telemetered output of the Demand Response Resource – Type II, expressed in MW and scaled by Actual Energy Injections (i.e., adjust each 5-minute value to account for differences between the real-time estimated values and after-the-fact settlement quality metered data for Actual Energy Injections).

58. MISO also proposes revisions to section 40.3.4 to define “Calculated [Demand Response Resource] Type – II Output” for a Dispatch Interval for a Demand Response Resource – Type I that is *not* a regulation-qualified resource as the average Dispatch Target for Energy for the Demand Response Resources – Type II, expressed in MW and scaled by Actual Energy Injections. MISO explains that for Demand Response Resources – Type II that are not regulation qualified-resources, MISO also proposes to scale¹¹⁰ the Average Dispatch Target for Energy, stating that such scaled value is representative of the expected five-minute actual output. For Demand Response Resources – Type II that are regulation-

¹⁰⁹ *Id.* at 8. These corresponding amendments appear to be the removal from section 40.3.4 of language associated with the Host Load Zone methodology. For example, MISO proposes to remove the entire phrase “minus the host Load Zone average net telemetered demand (withdrawal positive, injection negative)” from section 40.3.4.a.x.

¹¹⁰ In this context, scaling means that MISO will adjust each 5-minute value of the Average Dispatch Target for Energy to account for differences between the real-time estimated values and after-the-fact settlement quality metered data for Actual Energy Injections. *Id.*

qualified resources, MISO will continue to use telemetry data, as provided in section 40.3.4.a of the Tariff.¹¹¹

59. In response to the Commission's sixth requirement, concerning references to the measurement and verification protocols being located in the Business Practices Manuals, MISO proposes to revise section 1.411 to state that such procedures are found in Attachment TT.¹¹² MISO further proposes to update section 40.2.4.a to remove a reference to the provision of telemetered data "in accordance with the Business Practice Manuals," as required by the Commission.

60. MISO also addresses the Commission's seventh concern, the use in section 4(b) and in section 6 of the Tariff of the terms "event day" and an "event," explaining that they are two separate concepts. MISO explains that "events" occur on Operating Days and do not include emergency deployments, whereas "event days" occur whenever there is an energy or ancillary services dispatch, emergency deployment, or outage.¹¹³ Finally, MISO proposes to remove sections 7 (Meter Data and Calculated Baseline Load) and 8 (Interval File Format) from Attachment TT and to replicate such information in the MISO Business Practices Manual for Demand Response, as directed by the Commission.¹¹⁴

(d) Commission Determination

61. We conditionally accept MISO's revisions to the measurement and verification protocols, subject to the submission of a further compliance filing.

62. We find that MISO has complied with our first directive to appropriately disclose Custom Baselines by posting on OASIS any methodologies that MISO accepts. With regard to the second directive relating to consumption baselines and demand reduction measures for regulation-qualified Demand Response Resources – Type II, MISO chose to provide additional explanation. We find that MISO has provided sufficient justification for applying consumption baselines and demand reduction measures to regulation-qualified Demand Response Resources – Type II when these resources are providing contingency reserves and/or energy. A Demand Response Resource – Type II that already has the capability to provide better quality data and information to MISO through the use of metering and telemetry can improve the calculation of the consumption baselines, and therefore it is reasonable to require such resources to use their metering and telemetry

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.* at 9.

¹¹⁴ *Id.* at 8.

equipment to provide MISO with enhanced data and information for calculating consumption baselines.

63. However, although MISO explains in its Transmittal Letter that Demand Response Resources – Type II are not obligated to invest in metering and telemetry equipment to become qualified to provide regulating reserves, the proposed Tariff provisions in section 4(e) of Attachment TT indicate that telemetry is mandatory for Demand Response Resources that are regulation qualified or describe an alternative methodology for determining their consumption baselines. MISO proposes in former section 4(e) of Attachment TT:

The Contingency Reserve consumption baseline that **must** be used by [Demand Response Resources – Type II] that are Regulation Qualified Resources is the “Meter Before – Meter After” baseline method. The “Meter Before” measurement shall be the ICCP-telemetered actual output value in the 120-second interval just prior to the Event; the Meter After measurement shall be its ICCP-telemetered actual output value in the 10-second interval occurring exactly 10 minutes after the start of the Contingency reserve Event.¹¹⁵

MISO does not explain the reason for this inconsistency between the transmittal letter and section 4(e) of Attachment TT.

64. Accordingly, we direct MISO, in its compliance filing, to include Tariff revisions stating that Demand Response Resources – Type II that are regulation-qualified may, but do not have to, use telemetry and describe how such consumption baselines would be developed without telemetry. Alternatively, MISO may explain why telemetry is necessary for such resources.

65. In addition, despite its representations to the contrary, MISO has not made Tariff revisions clarifying that section 4(e) of Attachment TT applies to Demand Response Resources – Type II that are regulation qualified when they are actually providing regulating reserves. Section 4(e) still refers to baselines for resources that are “Regulation Qualified” when it should refer to baselines for resources that are “providing regulation services.” Accordingly, we direct MISO in the compliance filing ordered below to revise section 4(e) of Attachment TT to make this clarification.¹¹⁶

66. We accept MISO’s revisions to sections 40.2.4.b and 40.2.4.c as compliant with the Commission’s third directive, to ensure consistency between these sections of the Tariff

¹¹⁵ MISO, FERC Electric Tariff, ATTACHMENT TT, Measurement and Verification (M and V) Criteria, 3.0.0. (emphasis added).

¹¹⁶ We note that, under the proposed tariff revisions, the numbering has changed and there is no longer a provision 4(e) of Attachment TT.

and the measurement and verification protocols in Attachment TT. We find MISO's specification in sections 40.2.4.b and 40.2.4.c, that all spin-qualified and supplemental qualified resources providing such services must provide telemetered data consistent with Attachment TT, to be consistent with Commission directives.

67. We also accept, as compliant with our fourth directive, MISO's deletion of section 40.2.5.i because it pertains to the Host Load Zone Dispatch Interval Demand Forecast, and MISO has removed the Host Load Zone concept from the Tariff. We find that, by deleting section 40.2.5.i, MISO has complied with the Commission's fourth requirement, rectifying discrepancies between section 4(e) of Attachment TT and section 40.2.5.i regarding how often the Dispatch Interval Demand Forecast Cap may be updated. Furthermore, since MISO has removed Host Load Zone from its Tariff, deletion of section 40.2.5.i helps ensure that the MISO Tariff remains consistent and coherent.

68. With respect to the Commission's fifth requirement, that MISO submit an explanation of how Attachment TT affects MISO's settlements for all of the relevant types of demand response resources and to propose Tariff revisions to ensure that the Tariff reflects the measurement and verification procedures for all types of demand response resources, we find MISO's explanation that Attachment TT "provides MISO, among other things, with appropriately measured quantities of Actual Energy Injections by [Demand Response Resources]" to be insufficient. MISO also lists other changes to sections 40.2.4.b and 40.2.4.c.¹¹⁷ MISO has provided little explanation apart from recapping its proposed Tariff revisions, which are not relevant to providing the required explanation. We direct MISO, in its compliance filing, to provide a full and detailed narrative description of how Attachment TT affects MISO's settlements for each of the following: (1) Demand Response Resources Type I; (2) Demand Response Resources – Type II that are not qualified to provide regulating reserves; (3) regulation-qualified Demand Response Resources – Type II that are providing contingency reserves and/or energy; and (4) regulation-qualified Demand Response Resources – Type II that are providing regulating reserves.

69. Notwithstanding this, we accept MISO's proposed revisions to sections 1.1 and 1.61 of the Tariff to revise the definitions of "Actual Energy Withdrawal" and "Calculated [Demand Response Resource] – Type II Output" by removing "Host Load Zone" and related obligations from those sections. These revisions address the Commission's stated concern about the appropriateness of requiring the use of Dispatch Interval Demand Forecasts for demand response resources that are not providing regulating reserves.¹¹⁸ We also conditionally accept MISO's proposed revisions to section 40.3.3.c(i) as addressing the Commission's stated concern regarding the references to "Host Load Zone."

¹¹⁷ See August 2012 Compliance Filing, Transmittal Letter at 7.

¹¹⁸ See July 19 Order, 140 FERC ¶ 61,060 at P 85.

However, we direct MISO to delete the errant “or” following the first removed “Host Load Zone” in section 40.3.3.c(i) in its compliance filing directed below.

70. We conditionally accept as compliant with the Commission’s directives MISO’s proposed revision to section 40.3.4, in which it removes references to “Host Load Zones” and “Dispatch Interval Demand Forecast.” However, we direct MISO to revise the following sentence in section 40.3.4(a)(vii): “The calculated DRR-Type II Output for a Dispatch Interval, for a DRR-Type II Resource that is a Regulation Qualified Resource the average telemetered output of the DRR-Type II Resource, expressed in MW and scaled by Actual Energy Injection.” We direct MISO to add the word “equals” between the words “Regulation Qualified Resource” and “the average telemetered output.” We conditionally accept as compliant with the Commission’s directives MISO’s proposed revisions to section 40.3.4 of the Tariff to: (1) differentiate between those Demand Response Resources – Type II that are regulation qualified and those that are not regulation qualified; and (2) to consistently refer to “average” and not “net” telemetered output because the former is applicable to the Host Load Zone methodology and the latter is applicable to telemetry. However, we note that MISO has not included in the Tariff its explanation from its Transmittal Letter that for Demand Response Resources – Type II that are not regulation-qualified resources, MISO also proposes to scale the Average Dispatch Target for Energy, because such scaled value is representative of the expected five-minute actual output.¹¹⁹ Because such scaling could significantly affect rates, terms or conditions of service, we direct MISO to add such detail to section 40.3.4 of its Tariff in its compliance filing.¹²⁰

71. We find that MISO has complied with the Commission’s sixth requirement, concerning the placement of MISO’s measurement and verification protocols. With regard to our seventh directive, we accept MISO’s description of the distinction between “event” and an “event day” and we will not require further action on this matter. Finally, we accept as compliant with our directives MISO’s removal of sections 7 and 8 from Attachment TT to the Tariff and replication of this information in the Business Practice Manual for Demand Response.

¹¹⁹ *Id.* at 8. We note that, for Demand Response Resources – Type II that are regulation-qualified resources, MISO will continue to use telemetry data, as provided in section 40.3.4.a of the Tariff. *See id.*

¹²⁰ *See generally City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (utilities must file “those practices that affect rates and service significantly, that are reasonably susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous.”).

ii. Host Load Zones**(a) Background**

72. The MISO Tariff included a requirement for a one-to-one relationship between Host Load Zones and demand response resources, which was used for modeling purposes for measuring demand response.¹²¹ In its April 2009 Compliance Filing and October 2009 Compliance Filing, MISO proposed to relax the requirement for a one-to-one relationship between Host Load Zones, and (1) Demand Response Resources – Type I and (2) Demand Response Resources – Type II that are not qualified to provide regulating reserves (regulation-qualified Response Resources – Type II). MISO explained that, given the rigorous requirements necessary for assets to provide regulating reserves, including Automatic Generation Control, and MISO’s need, as the reliability coordinator, to meet the North American Electric Reliability Corporation’s (NERC) standards, MISO considered it important for reliability reasons to monitor closely assets providing regulation, and proposed to continue the one-to-one relationship between Host Load Zones and Demand Response Resources – Type II that are qualified to provide regulating reserves.¹²²

73. In the December 2011 Order on Compliance, the Commission directed MISO to provide sufficient justification of its decision to maintain the one-to-one relationship between a regulation-qualified Demand Response Resource – Type II and the Host Load Zone. In addition, the Commission required MISO to provide a definition of Host Load Zone that is not simply stating the equivalence to another term, but rather defines the term.¹²³ In its March 2012 Compliance Filing, MISO attempted to explain its assertion that a one-to-one relationship between a Host Load Zone and regulation-qualified Demand Response Resource – Type II was necessary to model correctly the output of Demand Response Resources – Type II.¹²⁴

¹²¹ For the definition of Host Load Zone, *see supra* footnote 107.

¹²² MISO October 2009 Compliance Filing, Transmittal Letter at 20, Robinson Test. at 22-23.

¹²³ *See* December 2011 Order on Compliance, 137 FERC ¶ 61,214 at P 81.

¹²⁴ In defending the use of the Host Load Zone methodology, MISO described the calculation of consumption baselines for regulation-qualified Demand Response Resources – Type II in Attachment TT, as discussed above. MISO stated that such a relationship was needed because these resources are load-based resources that require a forecast of actual load conditions to be properly dispatched, and that the use of Host Load Zones was necessary for modeling purposes. March 2012 Compliance Filing, Transmittal Letter at 5-6.

(b) July 19 Order

74. In the July 19 Order, the Commission found that MISO still had not provided sufficient justification in its March 2012 Compliance Filing for its proposal to maintain the one-to-one relationship between a regulation-qualified Demand Response Resource – Type II and the Host Load Zone, and that MISO did not explain why this relationship is necessary for maintaining system reliability.¹²⁵ The Commission therefore required MISO to submit either of the following: (1) a more detailed explanation of its reliability justification for maintaining a one-to-one relationship between Host Load Zones and regulation-qualified Demand Response Resources – Type II, including why it is necessary to meet NERC reliability standards; or (2) Tariff revisions to remove the Host Load Zone requirement and instead rely on an alternative consumption baseline methodology for such resources.¹²⁶

(c) August 2012 Compliance Filing

75. MISO proposes to remove the requirement for a Host Load Zone to be associated with a Demand Response Resource – Type II.¹²⁷ MISO also proposes modifications throughout the Tariff to remove the term “Host Load Zone.” MISO also removes the related terms “Dispatch Interval Demand Forecast” and “Dispatch Interval Demand Forecast Cap” from the Tariff, because these defined terms support the phrase “Host Load Zone.” In addition, MISO also proposes to modify the definition of “Calculated DRR-Type II Output,” such that it is the hourly average actual energy injection for the hour for the purposes of assessing excessive/deficient energy deployment charges, rather than being the Host Load Zone dispatch interval demand forecast minus the Host Load Zone net telemetered demand. Because a Demand Response Resource – Type II will no longer be associated with a Host Load Zone at which it can provide a load forecast or an actual Load, MISO proposes to change the manner in which a regulation-qualified Demand Response Resource – Type II communicates its output to MISO. MISO further proposes to revise section 4(e) of Attachment TT such that each regulation-qualified Demand Response Resource – Type II will submit its output via telemetry in real-time.

(d) Commission Determination

76. We accept, as compliant with our directives, MISO’s proposed removal of the requirement for a one-to-one link between a regulation-qualified Demand Response Resource – Type II and a Host Load Zone, as well as the associated Tariff revisions necessary to eliminate use of the Host Load Zone concept. Under MISO’s proposed

¹²⁵ July 19 Order, 140 FERC ¶ 61,060 at P 94.

¹²⁶ *Id.*

¹²⁷ August 2012 Compliance Filing, Transmittal Letter at 9.

telemetry approach, MISO will receive an actual real-time value of the level of demand response participation by regulation-qualified Demand Response Resources – Type II, rather than a forecasted value, as would have occurred under the Host Load Zone methodology for those resources. Real-time telemetry will provide more accurate measures of demand response than the forecasted approach. Furthermore, MISO also uses telemetry to determine the level of participation of generation resources. We therefore accept this replacement methodology (i.e., telemetry) as reasonable. We note that, as discussed in paragraph 64 above, we require MISO to describe how such resources could be measured without telemetry or explain why telemetry is necessary for such resources.

2. Aggregation of Retail Customers

a. ARC Registration and Certification

77. Order No. 719 required RTOs and ISOs to amend their market rules as necessary to permit an ARC to bid demand response on behalf of retail customers directly into the RTO's or ISO's organized markets, unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate.¹²⁸ In Order No. 719-A, to address the concerns of small utilities, the Commission directed RTOs and ISOs to amend their market rules to require affirmative permission from the relevant electric retail regulatory authority before accepting bids from ARCs that aggregate the demand response of small electric utilities (i.e., utilities distributing less than four million MWh per year).¹²⁹

78. In Order No. 719, the Commission provided, among other things, that any “RTO or ISO may specify requirements for ARCs, such as registration with the RTO or ISO, creditworthiness requirements, and certification that participation is not precluded by the relevant electric retail regulatory authority.”¹³⁰

i. Background

79. In its October 2009 Compliance Filing, MISO, to comply with Orders 719 and 719-A, proposed registration and certification requirements for ARCs, including specific components that must be included in each registration request. MISO proposed to accept offers from an ARC unless and until it receives a notification from the relevant electric retail regulatory authority either: (1) contesting the certification of the ARC's retail load; or (2) claiming that the customer is no longer eligible to participate. MISO set forth the process for contesting a certification in section 38.6 of the Tariff. MISO proposed that, in

¹²⁸ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at PP 154-155.

¹²⁹ Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 51.

¹³⁰ See Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 159.

cases where a certification has been contested, it will inform the ARC and the ARC will be required to limit its offers to only those retail demand response resources that are uncontested. In cases where a resource has been disqualified, MISO proposed to allow the ARC to make an offer only if the relevant electric retail regulatory authority were to notify MISO that the ARC and relevant retail customers are again eligible to participate.¹³¹ Additionally, MISO proposed that where the relevant utility distributed four million MWh or less in the previous fiscal year, its retail customers will not be deemed eligible to be aggregated unless the relevant electric retail regulatory authority permits their demand to be offered by an ARC into an organized market. However, according to MISO's proposal, if the pertinent utility distributed more than four million MWh in the previous fiscal year, their retail customers will be deemed eligible to be aggregated unless they are prohibited from doing so by the relevant electric retail regulatory authority.¹³²

80. In the December 2011 Order on Compliance, the Commission required MISO to submit several modifications to the ARC registration requirements in proposed section 38.6. Among other things, the Commission found that the Tariff did not establish a timeline for MISO to provide notification of an ARC's registration request to the relevant electric retail regulatory authority and/or relevant load-serving entity or to complete the registration. The Commission found that MISO did not address what would happen should a relevant electric retail regulatory authority and/or load-serving entity challenge a registration request and required MISO to address these issues with additional Tariff language on compliance.¹³³ In addition, the Commission found a particular phrase in section 38.6(3) (involving notification by the relevant electric retail regulatory authority) to be unclear and required MISO to revise that provision to read, in pertinent part, "unless and until the Transmission Provider receives a notification from the [relevant electric retail regulatory authority] that either (a) contests the certification provided by the ARC under sub-paragraph (1) of this section or (b) claims loss of eligibility of resources registered with the ARC."¹³⁴ In addition, the Commission directed MISO to label the notice and challenge provision located on Original Sheet No. 655F as subsection (3) and to renumber any subsequent subsections as needed.¹³⁵

81. In the March 2012 Compliance Filing, MISO proposed to revise its ARC registration and certification requirements in section 38.6 and its demand response resources registration requirements in section 38.7.2 by, among other things, proposing

¹³¹ MISO October 2009 Compliance Filing, Transmittal Letter at 10-12.

¹³² *Id.* at 6.

¹³³ December 2011 Order on Compliance, 137 FERC ¶ 61,214 at P 153.

¹³⁴ *Id.* P 154.

¹³⁵ *Id.* P 158.

Tariff language describing the process for load-serving entities and local balancing authorities to review and approve demand response registration requests. In section 38.7.2.1, MISO proposed giving load-serving entities and local balancing authorities ten days to review any new tasks, take any necessary actions, and/or approve or deny requests, or at the end of that period, requests will be approved by default. MISO stated that demand response resources would be unable to participate in MISO's markets pending approval.¹³⁶ MISO also proposed to revise section 38.6(3) to provide, in part, that the Transmission Provider will continue to accept offers from the ARC "unless and until the Transmission Provider receives a notification from the [relevant electric retail regulatory authority] that either (a) contests the certification provided by the ARC under subparagraph (1) of this section or (b) claims loss of eligibility of resources registered with the ARC."¹³⁷

ii. July 19 Order

82. The Commission conditionally accepted MISO's revisions to ARC registration and certification requirements.¹³⁸ It found, however, that MISO had not sufficiently addressed, as required by the December 2011 Order on Compliance, what would happen should a challenge to the certification of an ARC occur.¹³⁹ Specifically, the Commission found that section 38.7.2 of the Tariff specified what happens if a load-serving entity or local balancing authority confirms or takes no action regarding a registration request, but did not specify what occurs if those entities challenge such a request. The Commission also found that MISO's revisions did not address the treatment of relevant electric retail regulatory authorities making a challenge to the certification of an ARC, including the timeline for providing them with notification of an ARC registration or what occurs if a relevant electric retail regulatory authority contests a registration, as required in the Order No. 719 Compliance Order.¹⁴⁰

83. The Commission directed MISO to submit Tariff revisions to specify what would happen should a challenge to the certification occur and to ensure that its proposed Tariff provisions address the treatment of relevant electric retail regulatory authorities making such a challenge.¹⁴¹ The Commission also required MISO to submit revisions to section

¹³⁶ See March 2012 Compliance Filing, MISO, FERC Electric Tariff, [38.7.2, Demand Response Resource Procedures, 2.0.0](#), § 38.7.2.1.

¹³⁷ *Id.*, [38.6, Aggregators of Retail Customers, 1.0.0](#), § 38.6(3).

¹³⁸ July 19 Order, 140 FERC ¶ 61,060 at P 109.

¹³⁹ *Id.* P 110.

¹⁴⁰ *Id.* (citing December 2011 Order on Compliance, 137 FERC ¶ 61,214 at P 153).

¹⁴¹ *Id.* P 110.

38.6(3) to correct the first sentence to read, in part, “unless and until the Transmission Provider receives a notification from the [relevant electric retail regulatory authority] that either (a) contests the certification provided by the ARC under sub-paragraph (1) of this section or (b) claims loss of eligibility of resources registered with the ARC.” Finally, the Commission directed MISO to include in its compliance filing Tariff revisions to make certain corrections to section 38.7.2.3.¹⁴²

iii. August 2012 Compliance Filing

84. MISO proposes to amend sections 38.6 and 38.7.2.5 of the Tariff to state that if a relevant electric retail regulatory authority challenges the certification of an ARC, then such ARC shall not be eligible to participate in the MISO market until such challenge is resolved under state law. MISO proposes a timeline in section 38.7.2.5 of the Tariff that describes the process for providing the relevant electric retail regulatory authority with notification of an ARC registration. According to MISO, a relevant electric retail regulatory authority will be sent an email upon the submission of demand response resource registration. MISO will wait up to ten days before approving a demand response resource registration, to allow an opportunity for a relevant retail regulatory authority to contest the registration; provided, however, that a relevant electric retail regulatory authority will be able to contest the registration at any time. Furthermore, MISO proposes to include provisions in sections 38.7.2.1 and 38.7.2.5 on what occurs if and when such registration is challenged. MISO proposes not allowing an ARC to use a demand response resource whose registration has been contested by a relevant electric retail regulatory authority, until the relevant electric retail regulatory authority notifies MISO that it no longer contests the registration.¹⁴³ MISO proposes Tariff language stating that, if the challenge is by a load serving entity (LSE) or a local balancing authority, the ARC and the challenging party will work with the denying entity to resolve the issue or use alternative dispute resolution processes.

iv. Commission Determination

85. We find that MISO’s proposed revisions to sections 38.6 and 38.7.2.5 are appropriate. We also accept MISO’s proposed revisions to section 38.6(3) as compliant with the Commission directive that MISO specify what happens if the relevant electric

¹⁴² *Id.* PP 111-112. The Commission referenced the comments of American Municipal Power, Inc. (AMP), which identified two instances where the Tariff incorrectly refers to a “contract” person instead of a “contact” person. AMP was also concerned that the Tariff states, in part, that “the addition of or change to a [demand response resource] will be approved by denied,” and suggests eliminating the words “approved by.” AMP Comments at 4-5 (citing MISO, FERC Electric Tariff, [38.7.2, Demand Response Resource Procedures, 2.0.0](#), § 38.7.2.3).

¹⁴³ MISO August 2012 Compliance Filing, Transmittal Letter at 11.

retail regulatory authority challenges an ARC registration. We find it reasonable that MISO would not allow an ARC to use a resource whose registration has been contested by the relevant electric retail regulatory authority until the relevant electric retail regulatory authority notifies MISO that it no longer contests the registration. This proposed provision is consistent with Order No. 719, which specifically requires an RTO or ISO to accept a bid from an ARC, unless the laws or regulations of the relevant electric retail regulatory authority do not permit the customers aggregated in the bid to participate.¹⁴⁴

86. We accept MISO's proposed revisions to what is now section 38.7.2.3 of the Tariff as compliant with the Commission's directive to change the first sentence of that section.¹⁴⁵ MISO has also complied with the Commission's directive to make certain minor corrections to section 38.7.2.3 that were identified by AMP.

b. ARC Compensation and Settlement Procedures

i. Background

87. In the December 2011 Order on Compliance, the Commission rejected MISO's proposal to compensate ARCs for energy at the LMP minus MFRR. The Commission found that the MFRR component of the ARC compensation formula lacked the specificity required for ratemaking purposes and that it was not tied to any objectively identifiable criteria. The Commission directed MISO to submit a just and reasonable ARC compensation proposal that addresses the issues regarding the MFRR.¹⁴⁶

88. In its March 2012 Compliance Filings, MISO proposed to remove Tariff language regarding the MFRR, so that ARCs would be compensated at the LMP (rather than the LMP minus the MFRR) and load-serving entities would be allocated costs at the LMP (without receiving corresponding credits at the MFRR).¹⁴⁷

¹⁴⁴ See Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 158; Order No. 719-A, FERC Stats. & Regs. ¶ 31,292 at P 51 n.85. See also December 2011 Order on Compliance, 137 FERC ¶ 61,214 at P 156 & n.217.

¹⁴⁵ MISO modified the section to state in part "unless and until the Transmission Provider receives a notification from the [relevant electric retail regulatory authority] that either (a) contests the certification provided by the ARC under sub-paragraph (1) of this section or (b) claims loss of eligibility of resources registered with the ARC." MISO Electric Tariff, section 38.7.2.3.

¹⁴⁶ December 2011 Order on Compliance, 137 FERC ¶ 61,214 at P 176.

¹⁴⁷ MISO, FERC Electric Tariff, [38.6, Aggregators of Retail Customers, 1.0.0.](#)

ii. July 19 Order

89. The Commission found that MISO complied with the ARC compensation requirement of the December 2011 Order on Compliance, and conditionally accepted the associated Tariff revisions.¹⁴⁸ However, the Commission found that the Tariff revisions proposed by MISO in section 38.6(2) providing that ARCs will receive credits for Emergency Demand Response resources did not ensure that ARCs receive appropriate compensation for demand response associated with Emergency Demand Response resources. The Commission noted that the language in section 38.6(2)a providing that ARCs will receive credits for Emergency Demand Response resources created an inappropriate distinction between relevant utilities that distribute four million MWh or less in the prior fiscal year which receive credits, as opposed to those that distribute more than four million MWh in the prior fiscal year for which the language on credits was eliminated. The Commission directed revisions such that appropriate compensation occurs for the utilities that distribute more than four million MWh in the previous year.¹⁴⁹

iii. August 2012 Compliance Filing

90. MISO proposes to amend what is now section 38.6(3) of the Tariff so that, where the relevant utility has distributed four million MWh or less in the prior year, upon receipt of the requisite certification from the relevant electric retail regulatory authority, MISO will credit the ARC for actual energy injections or energy provision of an Emergency Demand Response resource.

91. MISO also provides un-redlined language changes in section 38.6(2), which provide that, for purposes of billing and settlement associated with utilities distributing more than four million MWh in the prior year, the transmission provider will “*charge the ARC, and credit the LSE, for Actual Energy Injections.*” This provision replaces the language in MISO’s March 2012 Compliance Filing that the Commission conditionally accepted in the July 19 Order,¹⁵⁰ wherein MISO proposed to modify section 38.6(2)a to provide that “[t]he Transmission Provider will *credit* the ARC for Actual Energy Injections or energy provision of an [Emergency Demand Response resource].”¹⁵¹

¹⁴⁸ July 19 Order, 140 FERC ¶ 61,060 at PP 126-127.

¹⁴⁹ *Id.* P 131.

¹⁵⁰ *Id.* P 126.

¹⁵¹ *See* March 2012 Filing, MISO proposed Tariff section 38.6.2 (emphasis added).

iv. Commission Determination

92. We conditionally accept MISO's proposed revisions to section 38.6. Specifically, we accept proposed revisions to amend what is now section 38.6(3) of the Tariff, so that appropriately certified ARCs receive compensation for demand response associated with providing energy or Emergency Demand Response services, regardless of whether the relevant utilities in which the demand response resources reside distributed more than four million MWh or less in the prior year.

93. However, we find that MISO has not demonstrated that the highlighted un-redlined changes to section 38.6(2) – that changed language accepted in the July 19 Order that provides that the transmission provider would charge the ARC and credit the LSE for Actual Energy Injections – are just and reasonable. Not only was this language change not properly documented, it would incorrectly charge ARCs and credit the LSEs.¹⁵² MISO has also proposed to eliminate the phrase “or energy provisions from an EDR resource” from the end of the same sentence. MISO has not explained the basis for the elimination of this phrase, which contradicts statements in MISO's Transmittal Letter.¹⁵³ Accordingly, we direct MISO, in its compliance filing, to propose the following language to conclude section 38.6(2): “...the Transmission Provider will credit the ARC, and charge the LSE, for Actual Energy Injections or energy provision of an EDR resource.”

3. Market Monitoring Policies

a. Background

94. In Order No. 719, among other things, the Commission expanded Market Monitoring Unit referral obligations and adopted protocols at 18 C.F.R. § 35.28(g)(3)(iv)-(v) for referrals by Market Monitoring Units to the Commission of suspected market violations and perceived market design flaws.¹⁵⁴ In addition, the Commission required RTOs and ISOs to release offer and bid data within a certain specified time frame.¹⁵⁵

95. In its April 2009 Compliance Filing, among other things, MISO proposed to revise section 53.3 of the Tariff to require its Independent Market Monitor to follow the

¹⁵² In its August 2012 Compliance Filing, MISO shows highlighted deleted language in 36.2(2)b. This language however, had already been deleted and replaced in the March 2012 Compliance Filing, with that change accepted in the July 19 Order.

¹⁵³ See MISO August 2012 Compliance Filing, Transmittal Letter at 12.

¹⁵⁴ Order No. 719, FERC Stats. & Regs. ¶ 31,281 at P 311.

¹⁵⁵ *Id.* P 424.

Commission's protocol for referrals of market violations to the Commission.¹⁵⁶ The third sentence of MISO's proposed revision to section 53.3, however, would have allowed MISO to avoid referring objectively identifiable violations to the Commission.¹⁵⁷ Additionally, MISO proposed Tariff revisions to reduce the lag-time for releasing bid and offer data.¹⁵⁸

96. In the December 2011 Order on Compliance, the Commission expressed concern that the third sentence of section 53.3.1.a, which would have allowed MISO rather than the Commission to determine if a violation could be excluded from referral to the Commission, was not consistent with Commission policy.¹⁵⁹ Thus, the Commission required MISO to remove this sentence.¹⁶⁰ The Commission stated that, consistent with *NYISO*, MISO may add a new provision in that section or elsewhere in its Tariff that lists the specific existing provisions in its Tariff that it believes meet the three requirements for exclusion from referral to the Commission: (1) activity that is expressly set forth in the tariff; (2) activity that involves objectively identifiable behavior; and (3) activity that does not subject the actor to sanctions or consequences other than those expressly approved by the Commission and set forth in the Tariff.¹⁶¹

97. Additionally, the Commission stated that there was some ambiguity in the proposed Tariff language as to whether MISO would provide data on all bids and offers.¹⁶² Thus,

¹⁵⁶ April 2009 Compliance Filing, Transmittal Letter at 38.

¹⁵⁷ The third sentence of proposed Tariff section 53.3 provided: "The foregoing notwithstanding, a clear, objectively identifiable violation of the Transmission Provider's Market Rules, where such rules provide for an explicit remedy that has been accepted by the Commission and can be administered by the Transmission Provider, shall not be subject to the provisions for referral under this Section 53.3.1." April 2009 Compliance Filing, MISO, FERC Electric Tariff, Fourth Revised Volume No. 1, Second Revised Sheet No. 1347.

¹⁵⁸ April 2009 Compliance Filing, Transmittal Letter at 36.

¹⁵⁹ December 2011 Order on Compliance, 137 FERC ¶ 61,214 at P 325 & n.426 (citing *New York Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,164, at P 99 (2009) (rejecting language similar to MISO's that would have allowed NYISO, not the Commission, to determine what could be excluded from the referral protocol) (*NYISO*)).

¹⁶⁰ *Id.* P 326.

¹⁶¹ *Id.* See also *NYISO*, 129 FERC ¶ 61,164 at P 98 (listing the three "traffic ticket" type behaviors that may be sanctioned by NYISO without referral to the Commission).

¹⁶² This directive was in response to DC Energy Midwest LLC's protest that MISO only published cleared bid and offer data, and its request that, to provide greater

the Commission required MISO on compliance to clearly state in its Tariff that all bid and offer data will be provided rather than only cleared bids and offers.¹⁶³ The Commission noted that sections 38.9.4.5(d) and (e) did not provide market participants with the opportunity to provide context to data provided in response to information requests and required MISO to rectify this failure on compliance.¹⁶⁴

98. In its March 2012 Compliance Filing, among other things, MISO stated that it would delete the third sentence of section 53.3.1.a regarding referrals by the Independent Market Monitor, as required by the December 2011 Order on Compliance.¹⁶⁵ However, MISO's proposed Tariff revisions did not make this change. MISO also proposed to remove language from section 53.1 that required the Independent Market Monitor to review and analyze the schedules and offers submitted by several types of resources in or affecting any of MISO's markets and services.¹⁶⁶ MISO also stated that it was directed to provide that "all bid and offer data will be provided rather than only cleared bids and offers," and it had made that change.¹⁶⁷

b. July 19 Order

99. The Commission again required MISO to remove the third sentence of section 53.3.1.a that relates to exclusions from referrals (of objectively identifiable violations) to the Commission.¹⁶⁸ The Commission also required MISO to revise Article III, section 8(a) of Attachment Z of the Tariff to ensure that all bid and offer data, not just that of cleared bids and offers, would be released.¹⁶⁹ Finally, the Commission required MISO either to explain its removal of language in section 53.1 regarding the Independent Market

transparency, the Commission require MISO to release both cleared and non-cleared bid and offer data. *Id.* PP 307, 313.

¹⁶³ *Id.* P 313.

¹⁶⁴ *Id.* P 322.

¹⁶⁵ March 2012 Compliance Filing, Transmittal Letter at 24.

¹⁶⁶ March 2012 Compliance Filing, MISO, FERC Electric Tariff, [53.1, Conditions, Functions or Actions Monitored, 2.0.0](#), § 53.1.a.

¹⁶⁷ March 2012 Compliance Filing, Transmittal Letter at 22 & n.67 (citing December 2011 Order, 137 FERC ¶ 61,214 at P 313).

¹⁶⁸ July 19 Order, 140 FERC ¶ 61,060 at P 162 (citing December 2011 Order on Compliance, 137 FERC ¶ 61,214 at P 326).

¹⁶⁹ *Id.* P 161.

Monitor's review and analysis of certain schedules and offers, or to reinsert this language.¹⁷⁰

c. August 2012 Compliance Filing

100. MISO proposes to revise section 53.3.1.a by removing the third sentence, which would have allowed MISO rather than the Commission to determine if a violation could be excluded from the referral protocol as being objectively identifiable, as required by the Commission. MISO states that it remains mindful that the Independent Market Monitor will remain responsible for making a referral in all instances where the Independent Market Monitor has reason to believe a market violation has occurred. MISO explains that it does not propose at this time to add a new provision in the Tariff that lists specific existing provisions within the Tariff that MISO believes meet the exclusion from referral by the Independent Market Monitor to the Commission of suspected market violations and perceived design flaws, as set forth in 18 C.F.R. § 35.28(g)(3)(iv)(v). MISO, however, states that it will work with the Independent Market Monitor to develop a list of the specific existing provisions within the Tariff that MISO believes warrant exclusion from referral by the Independent Market Monitor, and file them separately with the Commission. MISO anticipates that such a section 205 filing will be made with the Commission in the near future.¹⁷¹

101. Additionally, MISO proposes to reinsert the deleted sentence from section 53.1.¹⁷² Finally, MISO proposes to revise Article III, section 8(a) of Attachment Z, sections 53.3.1 and 53.3.1, to stipulate that all bid and offer data will be released, rather than only cleared bids and offers.

d. Commission Determination

102. MISO has complied with the July 19 Order by removing the third sentence of section 53.3.1.a, which would have allowed MISO rather than the Commission to determine if a violation could be excluded from the referral protocol as being objectively identifiable. Consistent with precedent, MISO may propose, although it is not required to propose, to add a new provision to its Tariff that lists the specific provisions within the Tariff that warrant exclusion from referral to the Commission.¹⁷³

¹⁷⁰ *Id.* P 163.

¹⁷¹ MISO August 2012 Compliance Filing, Transmittal Letter at 13.

¹⁷² *Id.*

¹⁷³ *See NYISO*, 129 FERC ¶ 61,164 at P 99.

103. We also find that MISO's revisions to Article III, section 8(a) of Attachment Z, sections 53.3.1 and 53.3.1, comply with the Commission's directive to stipulate that all bids and offer data be provided, rather than only cleared bid and offer data. Finally, we accept as compliant with our directive MISO's reinsertion of its previously deleted sentence from section 53.1, concerning the Independent Market Monitor's review and analysis of certain schedules and offers.

4. Miscellaneous Issues

a. July 19 Order

104. In the July 19 Order, the Commission found that MISO had not fully complied with the Commission's requirement to correct certain typographical errors.¹⁷⁴ Accordingly, the Commission required MISO to submit in its compliance filing ten specific Tariff revisions concerning consistent abbreviation and capitalization, punctuation, defined terms, and various clarifications.¹⁷⁵ The Commission also asked MISO to ensure in its compliance filing that its Tariff sheets reflect previously-accepted Tariff revisions, noting, for example, certain provisions of the March 2012 Compliance Filing that did not reflect language previously accepted by the Commission.¹⁷⁶

b. August 2012 Compliance Filing

105. MISO states that it has confirmed that the proposed revisions reflect the Tariff provisions that the Commission accepted in prior proceedings.¹⁷⁷

106. Regarding the Commission's concern for consistent capitalization of terms, MISO states that it has carefully reviewed the Tariff to achieve this goal.¹⁷⁸ Thus, MISO proposes to capitalize the terms as directed in the July 19 Order, with minor exceptions. MISO explains that it uses the term "behind the meter generation" generically in the Tariff to refer to a generator that is not in front of the meter that MISO uses to determine which

¹⁷⁴ July 19 Order, 140 FERC ¶ 61,060 at PP 167, 169.

¹⁷⁵ *Id.* P 169.

¹⁷⁶ *Id.* P 168 & n.285 (citing *Midwest Indep. Trans. Sys. Operator, Inc.*, Docket Nos. ER12-1459-000 and ER12-1459-001 (Jun. 20, 2012) (letter order)).

¹⁷⁷ MISO August 2012 Compliance Filing, Transmittal Letter at 14 & n.62 (citing, as an example, changing 345 hours to 304 hours in Attachment L, Section 1.A.7.c(ii), as approved by the Commission in its delegated letter order, *Midwest Indep. Trans. Sys. Operator, Inc.*, Docket Nos. ER12-1459-000 and ER12-1459-001 (June 20, 2012) (delegated letter order)).

¹⁷⁸ *Id.* at 15.

generators are capable of being dispatched by MISO. MISO states that the term “BTMG” is used elsewhere in the Tariff to refer to behind the meter generation that is a Load Modifying Resource under the resource adequacy provisions of the Tariff. MISO adds that it intentionally does not capitalize “resource” when referring to an Emergency Demand Response resource because an Emergency Demand Response resource is not a “Resource” as that word is defined in Module A of the Tariff. MISO states that ARC resources are also not “Resources” as that word is defined in Module A of the Tariff because the individual components that the ARC aggregates are not “Resources” as defined in Module A. Rather, MISO states that aggregation of an ARC’s resources are demand response resources, Emergency Demand Response resources, or Load Modifying Resources. Also, MISO states that the definition of “Settlement” refers to a process; therefore, where the Tariff refers to the Settlement process, MISO has revised the Tariff to reflect proper capitalization of this term.¹⁷⁹

107. Furthermore, in light of the related and overlapping Tariff provisions that are being addressed in the Order Nos. 719 and 745 proceedings, MISO states that, out of an abundance of caution, because it is simultaneously submitting compliance filings in each of the Order Nos. 719 and 745 proceedings, MISO is electronically filing the proposed Tariff amendments together to avoid the potential concern that Commission acceptance of one set of Tariff revisions would negate the changes put forward in the other docket.¹⁸⁰

c. Commission Determination

108. We find that MISO has complied with our directives in the July 19 Order by appropriately revising specific provisions of the Tariff, and therefore we accept these revisions.

109. However, we also require MISO to submit in its compliance filing Tariff revisions to address the following concerns:

- 1) Change section 38.7.1.1(i) from the “Net Benefits Supply curve” to the “Net Benefits Supply Curve.”

¹⁷⁹ *Id.*

¹⁸⁰ *Id.* (citing Order No. 745 Rehearing and Compliance Order, 140 FERC ¶ 61,059 at P 136 (requiring MISO to submit revisions in the Order No. 745 compliance filing to ensure that Tariff revisions accepted in the July 19 Order are appropriately reflected in the Tariff provisions accepted in the Order No. 745 proceeding, as needed)). MISO also notes that its filing does not reflect any of the Tariff revisions it proposed in its April 30, 2012 filing in compliance with Order No. 755 because the Commission had not accepted those provisions by the time it submitted its August 2012 Compliance Filing in this proceeding. *Id.*

- 2) Change sections 1.1a and 1.142 from “capacity” to “Capacity.”
- 3) Change section 38.6.4 from “resources” to “Resources.”
- 4) Change section 38.7.1.1(i) from “resource outage index” to “the Resource Outage Index.” We also direct MISO to define the term, “Resource Outage Index.”
- 5) Define and capitalize in the Tariff the term “aggregate power supply curve,” used in section 38.7.1.
- 6) Change section 38.7.2.4 from “Transmission Provider” to “the Transmission Provider.”
- 7) In section 38.7.1.1(i), change “Resource outage index” to “the Resource Outage Index.”
- 8) In sections 38.7.2.4 and 38.7.1.2, change “Transmission Provider” to “the Transmission Provider.”
- 9) In section 40.3.3.a(iii)(7), remove one of the two identical paragraphs beginning with “The sum, by Asset Owner.”
- 10) Throughout the Tariff, capitalize the term “Aggregate Power Supply Curve.”
- 11) Correct the section headings in section 40.2.5 of the Tariff, which contains subsections c and e but no subsection d.
- 12) The section that was referred to in the July 19 Order and MISO’s August 2012 Compliance Filing as section 4(e) is part of section 3(d) based on the proposed elimination of certain section headings. We find however, that section 3(d) is specific to custom baselines, while the former section 4(e) pertains to contingency reserves. Accordingly, we direct MISO to make a new subsection, such that it is section 3(e).
- 13) Correct the section headings in section 40.2.5 of the Tariff, which contains subsections c and e but no subsection d.

5. Tariff Inconsistencies

a. Inconsistencies between Tariff Provisions Accepted in the July 19 Order for Order No. 745 and MISO's August 2012 Order No. 745 Compliance Filing

110. As discussed in paragraphs 100 and 104 of the Order No. 745-related compliance order issued concurrently with the instant order,¹⁸¹ MISO, without explanation, has reinserted language in proposed section 40.3.3 of the Tariff that had been removed as ordered by the Commission, and in other places in that section of the Tariff, MISO has removed language that the Commission had previously accepted regarding compensation for demand response resources and behind-the-meter generation.¹⁸² We order MISO to follow the directives in the Order No. 745-related compliance order with respect to those provisions, filing any explanation or revisions in both compliance filings.

111. Consistent with the directives in paragraphs 104 through 107 of the Order No. 745-related compliance order, we also direct MISO, in both proceedings to address other inconsistencies within proposed Tariff section 40.3.3 of MISO's August 2012 Compliance Filing by either submitting: (1) detailed explanations for the basis for each such discrepancy (excluding those specifically accepted in the July 19 Order) between the section 40.3.3 provisions in MISO's March and August 2012 Compliance Filings, including, where applicable, a description of any dockets in which the Commission has accepted the provisions included in MISO's August 2012 Compliance Filing; or (2) proposed Tariff revisions to address such inconsistencies.

112. In addition, MISO, without explanation, includes in its filing numerous proposed revisions to Tariff Schedule 27: Real-Time Offer Revenue Sufficiency Guarantee Payment and Day-Ahead Margin Assurance Payment. Those revisions are included in sections A.2.b, A.2.c, A.2.d, B.2.b.i, B.2.b.ii, B.2.c.i and B.2.c.ii of Schedule 27.

113. We find that MISO's proposed revisions to Schedule 27 are beyond the scope of this compliance proceeding and lack support or explanation. As such, we direct MISO to remove any proposed revisions to Schedule 27 unless and until those revisions have been properly proposed and accepted by the Commission in another proceeding.

114. Finally, except for where the Commission has required additional explanation of Tariff changes, as described above, to the extent that we do not specifically address any of

¹⁸¹ *Midwest Indep. Trans. Sys. Operator, Inc.*, 143 FERC ¶ 61,146 (2013).

¹⁸² Such changes were made in sections 40.3.3.b(vi), 40.3.3.c(ii), and 40.3.3.c(iii).

the Tariff revisions MISO proposes in its August 2012 Compliance Filing to comply with Order No. 719, we accept them.¹⁸³

b. Inconsistencies between eLibrary and eTariff Filings

115. Pursuant to Order No. 714,¹⁸⁴ the Commission requires public utilities to file all tariffs, tariff revisions and rate change applications with the Commission.¹⁸⁵ The Commission specified that no substantive differences should exist between the tariff provisions filed as part of the XML data (in eTariff) and the tariff provisions filed as attachments (in eLibrary).¹⁸⁶ As such, MISO's filings in eTariff and in eLibrary should be identical. However, in this proceeding, MISO has omitted certain parts of the filing in eTariff that it included in eLibrary. For example, sections 1.74, 39.2.5a, 39.3.1, 39.3.1A, and 39.3.1B are included with changes in redline in the eLibrary filing but are not included in the eTariff filing for this proceeding. Conversely, section 1.569a is included in the eTariff filing but not the eLibrary filing for this proceeding. We also note inconsistency between the eTariff and eLibrary filings in section 38.6(3), in which only the eLibrary version contains the phrase "or energy provision of an EDR resource." Additionally, in section 40.2.6(b)(viii), the eLibrary version refers to "Module E-1" and the eTariff version refers to "Section 69." We direct MISO to review the entire eLibrary and eTariff filings in this proceeding and, with respect to each inconsistency, to submit appropriate modifications to either the eTariff version or the eLibrary version of the filing, or both, to ensure consistency, and to provide an explanation supporting each change. The compliance filing is due within 45 days of the issuance of this order.

6. Effective Date

a. July 19 Order

116. In the July 19 Order, the Commission approved MISO's request for an effective date of June 12, 2012 for the Tariff provisions that are necessary to comply with Order No. 719.

¹⁸³ We note that in an order issued concurrently today, we address the Tariff provisions MISO submitted in compliance with the Commission's Order No. 745-related directive. *See Midwest Indep. Transmission Sys. Operator, Inc.* 143 FERC ¶ 61,146 (2013).

¹⁸⁴ *Electronic Tariff Filings*, Order No. 714, FERC Stats. & Regs. ¶ 31,276 (2008).

¹⁸⁵ *Id.* P 114.

¹⁸⁶ *Id.* P 59.

b. August 2012 Compliance Filing

117. In the August 2012 Compliance Filing, MISO requests an effective date of June 12, 2012 for all Tariff provisions, except those that address: (1) provisions to allow demand response providers to provide multi-part offer curves for operating reserves; (2) the provisions to allow Maximum Daily Regulating Reserve and Maximum Daily Contingency Reserve; and (3) the removal of the Host Load Zone association for Demand Response Resource – Type II.¹⁸⁷ MISO requests an effective date of December 1, 2014 for Tariff provisions that address these three matters, stating that each of these changes requires significant modifications to MISO’s market software. Additionally, MISO states that the removal of the Host Load Zone concept from the Tariff will require changes to MISO’s Energy Management System (EMS) network model because the Host Load Zone (a physical load in the EMS network model) will no longer exist. MISO adds that this removal will require significant changes to the interface between the EMS network model and the market software, and also changes to the Security-Constrained Unit Commitment and Security-Constrained Economic Dispatch algorithm. MISO states that these changes will also require changes to processing of the new method for Demand Response Resources – Type II that are regulation-qualified resources. MISO maintains that it will have to spend substantial time working with its vendors and making and extensively testing the changes before implementation. MISO argues that taking into consideration all of these hurdles, as well as the other initiatives MISO is currently developing for implementation, an extended time-frame for implementation is necessary.¹⁸⁸

c. Commission Determination

118. For the reasons MISO expressed in its August 2012 Compliance Filing, we accept MISO’s request to extend the effective date of the following revisions associated with following categories of revisions until December 1, 2014, at the latest: (1) provisions to allow demand response providers to provide multi-part offer curves for operating reserves; (2) provisions to allow Maximum Daily Regulating Reserve and Maximum Daily Contingency Reserve; and (3) removal of Host Load Zone association for Demand Response Resources – Type II. Nevertheless, to enhance appropriate provision of demand response, we direct MISO to make such Tariff revisions and accompanying software and other modifications as expeditiously as possible, and in any event no later than December 1, 2014. We further require MISO to notify the Commission at least 10 days in advance of the effective date of implementation of these Tariff provisions.

¹⁸⁷ August 2012 Compliance Filing, Transmittal Letter at 16-17.

¹⁸⁸ *Id.* at 17 & n.69 (noting that Tab D lists the Tariff sections that MISO requests to become effective December 1, 2014).

119. Consistent with our prior ruling, all other proposed Tariff revisions accepted in this order are effective June 12, 2012.¹⁸⁹

The Commission orders:

(A) Midwest TDUs' request for rehearing is hereby denied, as discussed in the body of this order.

(B) MISO's August 2012 Compliance Filing is hereby conditionally accepted, as modified, as discussed in the body of this order.

(C) MISO is hereby directed to submit a compliance filing, due 45 days after issuance of this order, as discussed in the body of this order.

By the Commission. Commissioner Moeller is dissenting in part.
Commissioner Clark is dissenting with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁸⁹ July 19 Order, 140 FERC ¶ 61,060 at P 166.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission
System Operator, Inc.

Docket Nos. ER12-1265-002
ER12-1265-003

Midwest Independent Transmission
System Operator, Inc

ER09-1049-006

(Issued May 16, 2013)

CLARK, Commissioner, *dissenting in part*:

While I agree with the decisions made in today's order, I write separately to highlight my disagreement with the underlying decision in Order No. 745 to overcompensate demand response resources by paying them full LMP in the energy markets.¹

Order No. 745 was created to alleviate barriers to demand response in wholesale energy markets by ensuring greater comparability between the compensation of demand response resources and supply-side resources. However, the compensation settled on by the Commission goes beyond the level needed to promote competition, and overcompensates demand response resources.

I support comparable treatment and compensation between resources as necessary precursors to a diverse resource pool and robust wholesale energy markets. These fundamental principles prevent me from supporting full LMP compensation for demand response. As a resource, demand response is capable of delivering benefits to the markets by curtailing load when our grid is most in need. However, when a demand response resource provides a service to the market, it avoids a payment that it would otherwise incur. These savings should be accounted for when determining a just, reasonable, and not unduly discriminatory rate. This is where Order No. 745 falls short. By providing full LMP compensation, the wholesale energy markets are now overcompensating demand response resources for their services and forcing consumers to pay more than needed to ensure comparability and overcome barriers faced by demand response.

¹ For further analysis, see the dissent of Commissioner Moeller in *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, FERC Stats. & Regs. ¶ 31,322 (Order No. 745) (Moeller, Comm'r, Dissenting), *order on reh'g*, Order No. 745-A, 137 FERC ¶ 61,215 (2011) (Order No. 745-A), *reh'g denied*, 138 FERC ¶ 61,148 (2012) (Order No. 745-B).

The decision to compensate demand response at full LMP also leads to differential treatment between resources participating in the energy market. Order No. 745 provides demand response with a payment equal to LMP plus the savings associated with avoided energy usage. This extra incentive places other resources at a disadvantage and at risk of being displaced. I cannot support this preferential treatment, especially at a time when resources are relying on accurate market signals to weather a storm of changing economic and regulatory conditions.

For these reasons, I respectfully partially dissent from this order.

Tony Clark
Commissioner